THE STATE AND INDIGENOUS PEOPLES RIGHTS IN INDIA

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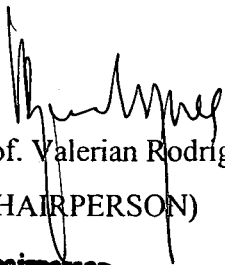JAWAHARLAL NEHRU UNIVERSITY

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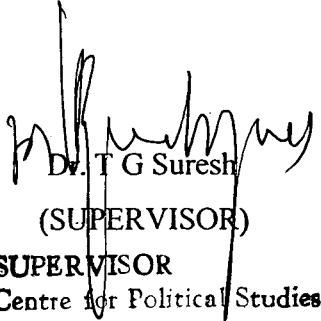
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It is certified that the dissertation entitled *"THE STATE AND INDIGENEOUS PEOPLES RIGHTS IN INDIA"* submitted by Arunima Deka is in partial fulfillment of the requirements for the award of the degree of *MASTER OF PHILOSOPHY* of this university. This dissertation has not been submitted for the award of any other degree in this university or any other university and is her own work.

We recommend that this dissertation be placed before the examiners for evaluation.

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ACKNOWLEDGEMENT

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List of abbreviations

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ABPGYF	All Boro Post Graduate Youth's Federation.
BJWF	Boro Women's Justice Forum.
FDST	Forest Dwelling Scheduled Tribes.
ICITP NEZ	Indian Confederation of Indigenous and Tribal Peoples North East Zone.
ICITP	Indian Confederation of Indigenous and Tribal Peoples.
ILO	International Labour Organisation.
IWGIA	International Work Group for Indigenous Affairs.
JFM	Joint Forest Management.
JOHAR	Jharkhandi Organisation for Human Rights.
MFP	Minor Forest Products.
NEFIN	Nepal Federation of Indigenous Nationalities.
NGOs	Non Governmental Organisations.
NPMHR	The Naga Peoples Movement for Human Rights.
NWFP	Non Wood Forest Product.
PESA	Panchayat Extension to Scheduled Areas.
STs	Scheduled Tribes.
TSP	Tribal Sub-Plan.
UN	United Nations.

Recent years have witnessed a momentous growth in the concern for indigenous people all over the world. Their presence and claims as the first settler of the land they inhabit has formed part of a veritable discussion. Ironically, however, over the time the concept of indigenous people has become "synonymous with powerlessness, marginalisation"[1] and social insecurity.

Indigenous people everywhere have been continually subjected to marginalisation by the other sections of the population. Their basic rights are curtailed, land is alienated and their habitats are encroached by the ever increasing demands of development of the state. A general tendency towards these people globally has been - that they are "either to be conquered or converted to the dominant belief of advanced society"[2]. As a result, they have undergone tremendous onslaught on their culture, tradition, rights. And their desire to exist peacefully has also been threatened.

A steady rise of these problems has evoked a world wide concern and these have been recognised at international level and also many institutions are now making a tremendous effort to the cause. The year 1993 was declared an International Year of the Indigenous Peoples by the United Nations[3]. This Declaration enumerated a wide range of rights and fundamental freedom the indigenous people ought to enjoy, their security and protection, besides their inalienable right to belong to an indigenous community and continue practicing their tradition, customs as matter of their individual choice, including land rights. The Declaration strongly adhered to prevention of discrimination and protection of minority rights by giving ample scope for these people to control any development over their land, resources and to maintain and strengthen their

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[1]Ken S. Coates: *A Global History of Indigenous Peoples: Struggle and Survival*, United Kingdom: Palgrave, 2004. pp 5.

[2]Hurst Hannum: *Autonomy, Sovereignty and Self Determination: The Accommodation of Conflicting Rights*, University of Pennsylvania Press, Philadelphia, 1990, pp 75.

[3]Elsa Stamatopoulou: 'Indigenous Peoples and the United Nations: Human Rights as a Developing Dynamics', *Human Rights Quarterly*, 16: 58-81, 1994.

institutions, culture and tradition. Furthermore, these people are guaranteed the right to be free from any adverse discrimination. Indigenous Peoples, in particular, have long asserted the right to determine their own development. Their right to accept or reject developmental proposals is implicit in their inherent right to self-determination and this has been well recognised in the Declaration.

There is now some persistent solidarity undercurrent working among different indigenous peoples as a resistance to the ongoing economic, political and cultural denial. The First Decade of the United Nations Declaration for the Rights of the Indigenous Peoples[4] it self has stirred up a demand for recognition of their distinct identity as the indigenous people of the country. The indigenous people have even been accorded the right to determine their relationship with the state, in matters relating to their local affairs and function autonomously. Even the Second Decade for the Rights of the Indigenous Peoples (2004-2014) stated main objective to the strengthening of international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, education and health.[5] Surely the Declaration has a huge appeal embracing every aspect that these indigenous people could garner for themselves.

The problem and the issues:

Contemporary political scenario has turned into an arena of continuous struggle for the protection of rights and cultural identities. With the presence of multiple identities the problem of promotion of various identities and differences has turned to be extremely difficult. Today, we find plurality of identities within a single political structure and for this the dilemma has turned to be more acute.

The liberal democratic notion of politics gives primacy to individual rights and freedom. It is committed to individual well being where he can fulfill his interests

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[4]'First International Decade of the World's Indigenous People' http://www.iwgia.org/sw11131.org accessed on 21st September 2007.
[5]'Second International Decade of the World's Indigenous People' http://www.un.org/esa/socdev/unpfii/en/second.html accessed on 21st September 2007.

and make progress. On the other hand there are many advocates who give priority to community life. This results in unresolved tensions between these two constituents of individual freedom and community ideals. Every nation today is aimed towards the preservation of a single, determinate identity. This universal concept of singular and predominant identity falls short to uphold differences and over time every fragmented feeling has to be submerged in the larger ideal of the society. The struggle between the community and individual ideals is infact has turned into an irreconcilable difference.

The indigenous peoples since ages have maintained a distinctness of their own, which is now widely threatened by the project of establishing an overarching national identity. Certain thematic concerns are identified in this work which seems to be integrally linked with these people.

Community is one such idea which is widely debate in the academic circle concerning the indigenous people. It is infact a building block on which the life of the indigenous people is catered around. The ideal of community took many different forms, from class solidarity or shared citizenship to a common ethnic descent or cultural identity.[6] It lays higher emphasis on community life and shared understanding among the members. Shared values, identity, language, history or way of life are all essential elements of tribal life. Community is not a novel construct but already existed in the shared social customs, social practices, tradition, belief and some form of common understanding. The lives of persons within an indigenous community are often closely integrated and interdependent. Not only in terms of shared feelings but they also possess a parallel notion of community sentiments in matters of ownership of resources and land. This understanding is under commendable strain now, because the present system greatly finds it impossible to adhere to the principle of community. Owing to this different changes are increasingly visible in tribal society.

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[6]Will Kymlicka: *Contemporary Political Philosophy,* Oxford University Press, New Delhi, 2005, pp 208.

Identity is another important aspect of tribal life all over the world. The indigenous people are increasingly asserting their identity to be closely interconnected with the natural environment in which they live- include the land and the resources that are available. Over the span of their existence they have developed not just a close link with the natural environment for their sustenance but also formed culture, tradition, myths, an economy and even a social control mechanism. So, the sense of identity via a community is through which the tribals confirm their commonalities with each other. It is not that this recognition of community would solve all their problems but it can definitely help them affirm their demands better and can face newer challenges.

Autonomy is one of the most debatable ideal of the Declaration on the Rights of the Indigenous People. Many signatory nations have problems with the inclusion of this principle of autonomy or of self determination. By the virtue of this principle the indigenous people are free to decide their own future course of action in matters of decision making both internal and external. And, therefore, this is being interpreted by many as a support for the secessionist principle. However the present work would elaborate on this principle only as a justified demand on the part of the indigenous people to control their resources and participate in the process of decision making affecting their future and use of the resources of their habitat.[7]

Continuous struggle of the indigenous people for their rights and protection of their distinct identity has made way in the United Nations Declaration on the Rights of Indigenous People to stipulate special articles stating the rights of these people to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal areas, and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard. Also they have the right to assert their cultural identity and practice their traditions,

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[7]Walter Fernandes: 'Natural Resources, Self Determination and the Indigenous Identity: An Introduction', pp 6 In Walter Fernades (ed): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delhi, 1993.

including their religion, languages, and arts and the traditional right to maintain and develop their cultural structures and institutions.

With such an international pressure no nation could abstain from reacting to the problems of the indigenous peoples as this issue is very much inherent in every state. India is a land of geographical diversity, also characterised by ethnic diversity as well as linguistic and religious pluralism. More than two hundred groups of indigenous peoples are found in the country and they are referred as *'Scheduled Tribes'* or *'Adivasis'*. However, the country produces no contrasting picture to their plight as suffered all world over. They have suffered the same fate whether in the colonial period or after the independence.

India too had to give a heed to her indigenous people. Although the adivasis have found their very own mode of resisting the outside intrusion along with searching for a new identity. This search evolved as a new form of consciousness, an identity for themselves seemed to be crystallising among the tribes in different part of India since past. This reaction seemed to be the beginning of a new awakening like that among the Nagas, Mizos and in Jharkhand and other parts. The Naga identity was born to bring together the antagonistic tribes against outside invasion, resist the economic colonisation from people outside their state in the 1950s. Similarly, the Mizo rebellion and Jharkhand movement reacted to the exploitation of resources and the impoverishment of the indigenous people. Apart from the identity questions their struggle also encompassed a search for greater autonomy both political and economic. While for some other groups like in Jharkhand they interpreted self-determination to mean the local peoples control and doesn't move any further beyond for secession. But this was not the case for the Mizos and the Nagas. Many writers like Walter Fernandes, L P Vidyarthi, B K Roy Burman[8] and others have taken by this idea in their works. But one common ground has always been that of cultural identity which was perceived as a necessary step to resist the trend of assimilation.

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[8] Discussion of their ideas has been taken up in subsequent chapters of this work.

As a reaction to these vast arrays of inclusive rights articulated at an international level, there has been some initiative taken from the representatives of these people in practical expression and propagation. The various aspects of the indigenous peoples in India are promoted by an international platform granted by International Working Group on Indigenous Affairs (IWGIA) mainly supporting activities in the North East for protection of their rights and for constructive agreement with the state, whereas in Jharkhand it is aimed for strengthening the communal rights of the indigenous people over forest and also protecting them. The Declaration has fuelled an aspiration for various forums to put forth their demands to the state and seek an international support. Of these, the Naga People's Movement for Human Rights (NPMHR), Jharkhandi Organisation for Human Rights (JOHAR), Bharat Jan Andolan (Indian People's Movement) and various Human Rights activists and organisations are fighting for the rights of the indigenous people all over India.

Conceptualising the tribal problem:

Before moving on to the central concern of this work a brief note is made to the different writers who have conceptualised the tribal problem both in the national and the international context.

Hurst Hannum's[9] book is written from the perspective of international law and provides in depth analysis of the rights of minorities including that of indigenous people. The book over its four parts describes, provides analysis and concise introductions to matters as sovereignty, statehood, nationalism, self determination, rights of minorities, indigenous and human rights. He has taken up nine case studies to examine in detail the claims of autonomy in different parts of the world. The writer also goes on to provide a balanced solution to the conflicting claims of the different groups, individual and the state itself. And looks further in to how such conflicts can be reconciled.

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[9]Hurst Hannum: *Autonomy, Sovereignty and Self Determination: The Accommodation of Conflicting Rights*, University of Pennsylvania Press, Philadelphia, 1990.

Oliver Mendelsohn and Upendra Baxi in their edited work[10] starts with certain related thoughts about oppression, resistance and the attack on the aboriginal culture. Focus of this work remains to be the communities and people who have been culturally and ideologically subordinated. The central theme which runs in all the papers is the view that the process of overcoming the subordination of whole communities entails the recognition of their collective or group right.

Walter Fernandes[11] is one of the prolific writers on the issues of indigenous peoples in India. This work precisely revolves around the question of indigenous identity and natural resources. It provides a picture of the international events and the conditions of the Indian tribals. From questions of identity, land, resources, community to the larger issue of self determination and autonomy, the work offers an indepth study in this area of research.

Benedict Kingsbury in his work[12] has provided a brief but substantial account of the definition of Indigenous Peoples. This term has today become a very sensitive issue. As he has discussed the term to be employed widely to designate groups holding particular international right most debatably the right of people to self determination. Defining Indigenous People as a legal concept he has stated two uses of the term. The first relates to the scope of the international instrument which proclaims the rights of these people as well as the obligations on the part of the state, the second it relates to the groups with whom it is principally concerned.

Elsa Stamatopoulou's work[13] provides a background of the emergence of the Declaration of the Right of the Indigenous Peoples along with details of the active concern of the United Nations in Human Rights protection. The writer also

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[10]Oliver Mendelsohn & Upendra Baxi (eds): *The Rights of the Subordinated People*, Oxford University Press, New Delhi, 1994.
[11]Walter Fernades (ed): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delhi, 1993.
[12]Benedict Kingsbury: 'Indigenous Peoples as an International Legal Concept', pp 13-34, In R H Barnes, A Gray & Benedict Kingsbury (eds): *Indigenous People of Asia*, Association for Asian Studies, Ann Arbor, 1995.
[13]Elsa Stamatopoulou: 'Indigenous Peoples and the United Nations: Human Rights as a Developing Dynamics', *Human Rights Quarterly*, 16: 58-81, 1994.

deals in detail with certain key issues like the right to land, protection of cultural identities, self determination, autonomy and others affecting the lives of these people. More importantly besides other issues, the writer has also noted the emergence of NGOs and other civil liberty organisations in the active arena of protection of Human Rights of the indigenous peoples.

P C Jain's work is made from the perspective of globalisation and its effect on tribal economy and way of life. To him the tribals have been "drawn into the web of new economy" dominated by the market forces.[14] Their earlier self sufficient economy has been highly impacted by the penetration of the market forces adversely affecting them at many times.

R N Pati and Jagannath Dash[15], in their edited book cover a wide range of research articles on various dimensions of tribal and indigenous communities of India. Starting with the events in the international scenario it dwells on the problem of conceptualising the issue. The second, third and the fourth section covers the cases of tribes of Orissa and Madhya Pradesh and the diverse problems impacting their lives like that of bonded labour, food insecurity, problems of health, diseases etc. a significant section of this book is also devoted to the forest policies of the government, affects of change and development, impact of industrialisation etc.

B K Roy Burman[16] has provided an analysis of the rise of tribal unrest in India. Tracing its origin to the close association of the tribal population with land and natural resources and their identity he gives an indepth analysis of problems associated with alienation of land from them.

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[14]P C Jain: *Globalisation and tribal economy*, Rawat Publications, Jaipur, 2001 pp 9.
[15]R N Pati & Jagannath Dash: *Tribal & Indigenous people of India- Problems & Prospect*, APH Publishing Corp, Bubaneshwar, 2002.
[16]B K Roy Burman: 'Transfer and Alienation of Tribal Land' pp69-82 In Buddhadeb Chaudhuri (ed): *Tribal Development in India: Problem and Prospect*, Inter-India Publication, New Delhi, 1982.

Again Amar Kumar Singh and M K Jabbi[17] have made an attempt to take up a number of issues in their edited work. From the rise of international concern about the rights of the indigenous people to the problem of development and its impact on tribal culture has been dealt in this book. It also makes necessary reference to the situation of the tribal population in India.

Ken S Coates'[18] provides a brilliant exposition of the challenges facing the indigenous people in the world scenario. This work gives a detail introduction of the fundamental difficulty in defining the term indigenous peoples and even provides a brief history of the evolution of the term. The book also presents before us the problem of survival and the attack on indigenous culture. It states a detail account of the ironical position of the indigenous people in the face of attack from the forces of globalisation and occupation of their territory. Highly critical of the government policies of different countries the author successfully pictures the marginalised condition of the indigenous people all over the world.

Another important work on this issue is that of Julian Berger.[19] The book provides a very detail account of the conditions of the indigenous people all over the world. It begins with the difficulty encountered in the drafting a universally acceptable definition for the term 'indigenous peoples'. The work moves on to show their precarious existence at the bottom of social order consistently experiencing discrimination in every sphere. Added to this is the damage done by the political and economic system. The writer also provides detail account of the tribal population of Asia including that of India, Bangladesh, Malaysia, Thailand and other countries.

In contemporary times there exists a tripartite relation between the international agency/actors, the state and the indigenous people residing at the periphery.

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[17]Amar Kumar Singh & M C Jabbi (eds): *Tribals in India: Development, Deprivation and Discontent*, Har-Anand Publications, New Delhi, 1995.
[18]Ken S. Coates: *A Global History of Indigenous Peoples: Struggle and Survival*, United Kingdom: Palgrave, 2004.
[19]Julian Burger: *Reports from the Frontier-The State of the World's Indigenous Peoples*, Zed Book Ltd, London, 1987.

Owing to the significant changes in the international arena of Human Right there is a rise in active concerns for the rights of the indigenous peoples. This work seeks to analyse the steps taken by the Indian state towards the upliftment and protection of the rights of the tribal population. In return the tribals or the adivasis are greatly associating themselves and articulating their demands in the international platform, but to what extent they have been successful.

Research Objectives:

To see whether international recognition of the rights of the indigenous people made the government enter into some form of negotiation with the tribal population.

To see whether the claims for greater autonomy in decision making by the tribal people find adequate representation.

To see how the desirability of an assimilated tendency of a state accommodates the identity concerns of the tribals.

To this continuous international concern how the Indian state has responded over time.

Again to see whether there can be a striking balance between the state and these groups.

How far the indigenous people have been successful in placing their demands to the state.

Also importantly, to see whether any common representation been worked out amongst them, or they continue to be mere assertion of their diverse identity and needs. And how far any unity has been forged amongst these groups struggling in different parts of the country.

For the purpose of research, this work has employed analytical descriptive method to analyse the literature and the documents that are available from different libraries. It has also attempted to portray a comparative analysis of the two conflicting stands, the international Declaration of the Rights of Indigenous Peoples and the response of the adivasis on the one hand and on the other how effectively the state reacted to these.

The basic area of research chosen is not new either to international concern or internal contentions of any state but the theme needs to be revisited because of the mounting international concern in many parts of the world for their dignified rights. Earlier the tribal population lived a life of isolation, now with the emergence of global interconnectedness and the penetration of market into their territory, the questions of their rights and protection of their identity and survival is become central to political studies. This work does not revolve around any particular tribe or their description but how the global interconnectedness has influenced their lives today. Also in the present work the terms indigenous peoples, adivasis, tribes are used interchangeably.

Based on the above understanding the work outlines the following chapters. The first chapter tries to trace the growth of the international concern for indigenous peoples, moving to a crucial issue of defining the very idea of indigenous. The next section takes up three key issues of self determination, land rights and community and its space in international discourse and finally moving to the emergence of the Declaration on the Rights of the Indigenous Peoples.

The second chapter aims to trace out how with the passage of time the Indian state has handled this sensitive issue. Also an attempt has been made to analyse the history of relation between tribes and the Indian state since the colonial times. Providing a brief evaluation of the Constitutional guarantees and the Forest Right Act, the chapter moves to trace the nature and the response of the state to this indigenous issue. With the increasing importance of global political institution and the availability of an international platform how the government over time has responded to the pressure building upon it to widely acknowledge the rights

of these people The chapter discusses the practical problems that a state faces while dealing with various fractions of the society and the ultimate policy it undertakes to resolve the various tensions inherent in any social fabric.

The third chapter tries to analyse the tribal problem in the middle of three paradox-survival, identity and development. The state with its developmental agenda is striving towards greater progress and on the other hand the tribal interests are being negotiated with policy implementation. Again in the international arena of human rights the advocates of tribal rights are forging for a better life for them. This chapter tries to trace the question of tribal development and the protection of their identity and survival in the face of globalisation and its impact on the various aspects of their life. This chapter analyses how the global movement is affecting the local interactions among tribals. Here effort is also being made to see the emergence of new form of consciousness in the tribal communities of India and their global inter linkages. It also discusses the impact of civil liberty organisations on the tribal life and for further elucidation has taken up to analyse the working of one of such organisations-the Indian Confederation of Indigenous and Tribal People (ICITP) and then moving on the conclusion. Finally, the work tries to put up an analysis of the issues covered.

RIGHTS OF INDIGENOUS PEOPLES AND THE INTERNATIONAL INSTITUTIONAL DISCOURSE

The notion of rights has assumed a centrality over past few centuries in the social, legal and political discourse. Today, it finds space mostly within a liberal democratic framework and within its periphery we must meaningfully concentrate on the natural, human and inalienable rights. "Unlike the earlier times where communities and groups were the fore bearers of rights as a whole, the modern conception is based on individual as the sole custodian of such rights from which, further groups derive their subsequent rights".[20] Later, eminence of these individual rights further widened to his entitlement as a human being. Thus, his rights to life, property, liberties, democratic and social rights all came under the purview of Human Rights which are required essentially to maintain a humane condition of existence and for protection of dignity. This is not just related to justice, of good and democracy but even to the relationship that should prevail between the individual and the society. These are available today in the form of 'Universal Declaration of Human Rights, 1948'. It could very well garner accession of many states of the world and there was increased use of human right treaty bodies and vigilance in monitoring state actions. Despite this, it took more than four decades to assure specific rights pertaining to the indigenous people around the world who face considerable degree of attritions.

Significantly enough in the last few decades there has been a major shift from the socio political construct of these rights in general to the inclusion of the cultural aspect in it. Inspite of this general agreement on wide range of human rights, like that of right to life, attention is now more focused on the preservation of the culture and tradition of the minority groups. There was an extensive approval of the Declaration on the Rights of the Indigenous Peoples. Effective and comprehensive means were assured for not just monitoring the human right status of these people but even their heritage, to enjoy their own culture, profess and

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[20]Bhikhu Parekh: 'Marx and the Theory of Rights' pp 11 In Upendra Baxi, Geeti Sen & Jeanette Fernandes(eds): *The Right to be Human*, Lancer International, New Delhi, 1987.

practice their religion and a range of other such rights. The dynamics of the international debate about the indigenous peoples now significantly differs from the earlier Human Rights debate towards a commitment to cultural rights.

But there are certain inherent tension underlying the notion of rights and the way it is conceptualised today. They are often regarded as inalienable, basic and universal to be enjoyed equally by every human regardless of any other considerations. This creates some confusion when the right, say that of a dominant group is pitted against the other subservient group. So, there is this ever present dilemma in deciding the claims whether to individual rights, to community or cultural rights. Social science research concerned with or representing any of the diverse stands should aim for viable options where some form of adjustments and space can be made for every individual. Whatever the claims be, some shared notion has to be worked out where the need and aspirations of the minority group like the tribals are not crushed down but finds some space for their assertion.

The universal declaration of rights provides some minimum guarantee to a good life and certain freedom ought to be enjoyed by all alike. Though the notion of universality has done away with all the differences in culture and way of life and tries to accommodate all of them. Yet the presence of an internationally vigilant community makes the claims of rights of the marginalised section stronger. Right is still a crucial concept in dealing with a variety of problems in social and political discourse. This chapter tries to trace the growth of the international concern for indigenous peoples, moving to a crucial issue of defining the very idea of indigenous. The next section takes up three key issues of self determination, land rights and community and its space in international discourse and finally moving on to the Declaration on the Rights of the Indigenous Peoples.

HISTORICAL GROWTH OF INTERNATIONAL CONCERN:

In the last few decades the rights of the indigenous people has received increased attention at international level and in the discourse of political and legal studies.

This concern for indigenous peoples is therefore not a new phenomenon. It in fact began in the first half of the nineteenth century as a concern for aborigines or tribal peoples in the colonies. However at the very onset the question that comes to the fore front is who the indigenous people are? "These terms 'aborigine' or 'tribe' is being closely connected with European colonialism, carrying negative connotations like relative backwardness and supposed primitivism. Sections of the population in the colonies were demarcated as tribes. Anthropologists and other social scientists provided the academic justification by defining people on the basis of their distinct physical features, race and several other criteria like tribal languages, animism, hunting and gathering, meat eating, fondness for alcohol, dancing and naked or semi-naked people".[21]

After the First World War, people mobilised around several human rights causes, including minority rights, racial equality, and working conditions.[22] It was during this period that minority rights figured on the agenda of international concern, primarily because of the ill treatment of some of the minorities in mainland Europe and in the colonies during the war. Some standards for the treatment of colonised people were provided in the Covenant of the League of Nations. However, the work of the League of Nations on the indigenous issue was limited to criticism of the ill-treatment of the native tribal populations of Liberia ruled by African-Americans who had returned from the United States. The wider issue of the rights of indigenous or tribal populations of Asia, Africa, the Pacific areas and North and South America however were not addressed during this time.[23]

A significant milestone in this regard was the establishment of The International Labour Organisation (ILO) and it also involved in developing standards for the protection of the indigenous and tribal populations in the 1920s. Significant impacts were made in this area after the Second World War. Between 1950 and 1970, the ILO worked as the lead agency in an internationally funded multi-

[21]Tapan Bose: 'Definition and Delimitation of the Indigenous Peoples of Asia' in http://www.iwgia.org/sw312.asp

[22]Elsa Stamatopoulou: 'Indigenous Peoples and the United Nations, Human Rights as a Developing Dyamic', Human Rights Quarterly 16 (1994)

[23]Tapan Bose: 'Definition and Delimitation of the Indigenous Peoples of Asia' in http://www.iwgia.org/sw312.asp

dimensional development programme for indigenous populations in South America. Beginning since 1921, the organisation made several contributions to the study of conditions of indigenous populations. It was this involvement of the ILO which led to the adoption of the Indigenous and Tribal Peoples Convention' in 1957, popularly known as ILO Convention No. 107.

In 1957 the ILO adopted the Convention No 107 "Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries". This Convention was established with other international organisations. However as its name indicated it sought to integrate the indigenous groups into the national society in the condition of farmers, peasants and workers.[24]

But it was an instrument predominantly assimilationist in its approach. It was again partially revised in Convention No. 169 "Concerning Indigenous and Tribal Peoples in Independent Countries" in 1989. This latter Convention took into account some of the criticisms made by the indigenous organisations against the policy of integration and assimilation.[25] It focused more upon the protection of social, cultural, religious and spiritual values and practices of indigenous peoples. It also importantly stipulated "self-identification as indigenous or tribal as a fundamental criterion of determining to which group it applies".[26]

It is only in May 1948 that the United Nations first took up to study the social problems regarding the aboriginal populations of the American continent. Mario Ibarra has provided in detail the slow evolution of the United Nations concern for the indigenous peoples in particular.

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[24]Mario Ibarra: 'Annotations for a Chronology of Indigenous Peoples in International Law' pp 131-143. In Walter Fernandes (ed): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delh, 1993.
[25] *Ibid* pp 134-135.
[26]Malcolm N Shaw: *International Law*, Cambridge University Press, UK, 2005, pp 278.

However, it was in 1971 that a milestone was established in the history of indigenous concern.[27] In the 1970s, Mr. Willemsen Diaz, who worked in the United Nations Human Rights Centre in Geneva, initiated efforts to incorporate the indigenous issue into the United Nations agenda. As a result of his works, the Sub Commission on Prevention of Discrimination and Protection of Minority Rights accepted a recommendation to set up a separate study on the problems of discrimination against indigenous populations. The study was authorised in 1972 with Mr. José Martinez Cobo as the Special Rapporteur. From 1973 to 1980, the Sub Commission examined progress report and from 1981 to 1983 received various chapters from the final report for consideration. [28]Inadequate staffing and lack of funds hampered the work of the Special Rapporteur and Mr. Cobo was able to complete the study finally in 1983.[29]

In the 1960s the International Work Group for Indigenous Affairs (IWGIA) and Survival International were formed. They took up the campaign against the genocide and ethnocide of indigenous populations in South America. In 1975, some of the pioneer indigenous organisations such as the World Council of Indigenous Peoples in Canada and the International Indian Treaty Organisation in the US were formed. They started lobbying the United Nations and the Western European governments. The Government of Norway was the first to be convinced and other Northern European countries joined later on.[30]

Finally in 1982, at the initiative of the Netherlands, and with the support of some of the European states, a United Nations Working Group on Indigenous Populations was set up. The United Nations Working Group on Indigenous Populations started its work in 1982. It was entrusted with the task to develop a criterion for determining the concept of indigenous, to examine events relative to the promotion of human rights and fundamental freedom of indigenous

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[27]Mario Ibarra: 'Annotations for a Chronology of Indigenous Peoples in International Law' pp 140. In Walter Fernandes (ed): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delh, 1993.

[28] *Ibid* pp 140.

[29]Tapan Bose: 'Definition and Delimitation of the Indigenous Peoples of Asia' in http:// www.iwgia.org/sw312.asp

[30] *Ibid*

population and also to develop standards to guide member states of the United Nations in relation to the rights of the indigenous minorities in their jurisdictions. However, it is important to note that the Working Group, which is a part of a Sub Commission of the United Nations Human Rights Commission, had no adjudicatory or legislative functions. These bodies are to discuss human rights issues and draft proposals. They may indicate the norms of international law as established by member states in practice, but they do not have the power to establish new norms. Even the norms or principles established in the declarations of the United Nations General Assembly do not become international law until these are subsequently ratified by the state in the form of covenants and other international instruments.[31]

Since 1980s various steps were further taken to define the concept of indigenous and expand the campaign for protection of human rights. Significantly in 1988 the United Nations Voluntary Fund for Indigenous Populations met for the first time. It sought to facilitate the attendance of the indigenous representatives at the meeting of the working Group on Indigenous Populations.[32] It was infact a major step towards bringing the indigenous representatives on an international platform to forward the grievances and aspirations of these marginalised people. And in 1990 the United Nations adopted a resolution proclaiming 1993 as the International Year for Indigenous Peoples notably allowing scope for further expansion of their rights.

WHO ARE THE INDIGENOUS PEOPLE

"Although there have been numerous attempts at offering an objective or legal definition of who is an indigenous person, most are seriously lacking in clarity".[33] The development of "indigenous peoples" as a significant concept in international

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[31]Russel Lawrence Barsh: "Indigenous Peoples: An Emerging Object of International Law". *The American Journal of International Law*, Vol. 80, No. 2. Apr., 1986, pp. 369-385.

[32]Mario Ibarra: 'Annotations for a Chronology of Indigenous Peoples in International Law' pp 143. In Walter Fernandes (ed): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delh, 1993.

[33]H. Hannum: "New Developments in Indigenous Rights". *Virginia Journal of International Law* 23, 1998. pp 649-678.

practice has not been accompanied by any general agreement as to its meaning. The controversy further encompasses conflicting views about the norms applicable to the indigenous people and even their relationship with state and struggle over the potentially potent roles of international institutions and most importantly recognition of the distinct category of indigenous people.[34]

With the legal institutional nature of rights, defining a concept has turned out to be an essential prerequisite. Quite a higher degree of contention revolves around the very idea of defining the idea of indigenous or of the indigenous people at large. The term 'Indigenous Peoples' has not been universally accepted without objection. Even the alternatives to it have proved to be less acceptable. Earlier when these peoples were referred as primitive or backward is now considered inaccurate. The word Indian in the American context has offended Quechua, Aymara and other indigenous peoples of South America. Many other find the term tribal or tribe as derogatory while peoples in Asia makes no objection to it. Again in Australia the terms Aboriginal or Aboriginal People are preferred.[35]

Many writers in their turn even suggested alternatives like native peoples, tribal minorities, national minorities, autochthonous peoples or Fourth World. Julian Burger's work elucidates this definitional problem in detail. The writer has interestingly also found that governments with indigenous populations have themselves provided some official definition for their use. Like in Latin America these people are referred officially as Indian, in Philippines they are designated as national minorities and in India as the Scheduled Tribes. Nevertheless finding an overarching definition to fit in all the existing tribals around the world proved to be immensely difficult. Many attempts were made in different groups to map out an evolutionary conception of their transition from savage, barbaric stage to that of a civilised one.

[34]Benedict Kingsbury: 'Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy',*The American Journal of International Law*, Vol. 92, No. 3. Jul., 1998, pp. 414-457.
[35]Julian Burger: : *Reports from the Frontier-The state of the World's Indigenous Peoples*, Zed Book Ltd, London, 1987 pp 7.

Three different approaches to the problems of definition are found in texts of the United Nations, the International Labour Organisation (ILO) and the World Bank. The level of controversy and the perceived political stakes are highest in the United Nations, and no overarching definition of "indigenous peoples" has been adopted.

The ILO on its part described the indigenous people as those whose social and economic conditions are in less advanced stage and who are regulated wholly or partially by their own customs and traditions. Again the World Bank adopted a definition in 1982 with respect to indigenous peoples affected by developmental projects. The Bank identified various socio economic factors and geographical isolation, non monetised economy and economic base dependent on specific environment as the defining characteristic of indigenous peoples.[36] Both the definition forwarded by the ILO and the World Bank has certain paternalistic attitude attach to them. Neither the World Bank nor the ILO has been successfully able to conceptualise the definition properly. The United Nations on its part has tried to avoid the definition provided by them.

The United Nations as an institution, as Benedict Kingsbury has found, enjoys less autonomy from its member states and indigenous groups in matter of definition. Since its practice has a greater political implication it has avoided adopting any definition for defining these people.[37]

However in practice the organisation has to some extent been guided by a working definition in the 1986 report of UN Special Rapporteur Martinez Cobo:

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems. This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors:

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[36]Julian Burger: *Reports from the Frontier-The state of the World's Indigenous Peoples*, Zed Book Ltd, London, 1987 pp 7.

[37]Benedict Kingsbury: 'The Applicability of the International Legal Concept of "Indigenous Peoples" in Asia', pp 344-345 In Joanne R. Bauer and Daniel A. Bell (eds): *The East Asian Challenge for Human Right*, Cambridge University Press, United Kingdom, 1999.

(a) Occupation of ancestral lands, or at least of part of them;
(b) Common ancestry with the original occupants of these lands;
(c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, life-style, etc.).[38]

In his final report published almost decades later, Mr Cobo did not add anything new to the definition at the conceptual level. However, while defining an indigenous person it was added that any individual who identified himself or herself as indigenous and was accepted by the group or the community as one of its members was to be regarded as an indigenous person.[39]

However, this definition suffers from several shortcomings. Like that it defines indigenous peoples primarily from a chronological perspective. By identifying indigenous peoples with those who inhabited' an area before it was conquered or colonised by 'people from other parts of the world' it has limited the applicability of this definition mainly to pre-colonial populations. To decide the question only with reference to few centuries of European colonialism is to ignore the history of non-European civilisations. The survival of the indigenous identity is explained by its isolation on the one hand and its marginalisation and discrimination on the other ignores all the subsequent changes in the society like loss of territorial space, attack on their culture etc.

In 1983, again realising that Mr. Cobo's original definition was inadequate to cover the isolated and marginal tribal populations of the Asian continent, the scope and the ambit of the 'working definition' was enlarged. It was decided that all those marginal and isolated groups existing in many countries who may not have suffered conquest or direct colonisation might be considered as indigenous peoples if they fulfilled certain criteria like they are the descendants of groups, which were in the territory at the time when other groups of different cultures or ethnic origin arrived there, because of their isolation they have almost preserved intact the customs and traditions of their ancestors, which are similar to those,

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[38]José Martinez Cobo: 'Study of the Problem of Discrimination against indigenous populations', UN Doc. E/CN.4/Sub.2/1986/7/Add.4, paras. 379-80.

[39]Tapan Bose: 'Definition and delimitation of the indigenous peoples of Asia', in http://www.iwgia.org/sw312.asp

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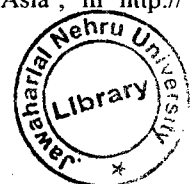
characterised as indigenous etc. Nevertheless, even these additional criteria did not remove the confusion that is in the definition. This confusion exists not only among governments and experts, but also among the 'isolated, marginalised and tribal' peoples of Africa, Asia and Asia Pacific.[40]

One very important aspect here is that even the Draft Declaration on the Rights of the Indigenous Peoples prepared by the Working Group does not include a definition of Indigenous Peoples or populations. This omission has been justified by the Chairperson - Rapporteur of the Working Group Ms. Erica Irene Daes - on the ground that "historically, indigenous peoples have suffered, from definitions imposed by others". She maintained that because of this reason, the members of the Working Group insisted that no indigenous community, organisation, nation or even indigenous person from whatever region should be denied the right to express peacefully an opinion without any abuse. According to her, through this participatory process the Working Group was able to develop the widely accepted comprehensive draft Declaration of Rights of the indigenous Peoples without feeling a need for elaborating a definition of Indigenous Peoples.[41]

Turning again to the question of definition, several Asian governments and many scholars state that this definition applies only to the conquered peoples of the Americas, Australia, New Zealand and the Pacific areas and leaves out the tribal peoples of Asia and Africa. In the countries where migration has continued for thousands of years, it is impossible to identify any group as indigenous on a chronological basis. Also there is no equivalent sense of understanding of the term 'indigenous', 'tribal' in the Asian region. For instance at many occasion representatives of countries like Pakistan and India strongly advocated for the use of the term 'tribal' and even interchangeably with *Adivasi,* a term in common use as in India, often translated as "indigenous" or "aboriginal." This question of definitional problem has been dealt in the next chapter. Many Asian states on the other hand have also challenged the applicability of the term 'indigenous', with

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[40]Tapan Bose: 'Definition and delimitation of the indigenous peoples of Asia', in http://www.iwgia.org/sw312.asp.
[41]José Martinez Cobo: 'Study of the Problem of Discrimination against Indigenous Populations', UN Doc. (E/ CN.4/Sub.2/AC.4/1995/3, page 3).

the Indonesian representatives declaring majority in their country as indigenous.[42] In China or Burma, the term used is 'nationality'. It is not recognition of an equal partner in an assembly of nationalities. It is used to define a minority, which needs to be 'developed and integrated' into the mainstream of Chinese or Burmese society.[43]

The response as to the applicability of the concept has been quite challenging. However, for a long time it worked quite successfully in many countries like that of North America, Australia, Sub Saharan Africa but in counties of South Asia like as in India the problem persisted because here "the tribal population coexisted in close proximity with the non tribal groups for centuries together".[44] This work has however used the terms Indigenous Peoples, tribals and adivasis interchangeably many a times.

SOME KEY ISSUES IN INTERNATIONAL DEBATES ON INDIGENOUS PEOPLE

"Much of the discussion on the human rights of indigenous peoples over the past years has focused on issues linked with their identities. Apart from their demand for respect for their fundamental right to life and the end to genocidal practices, indigenous representatives have stressed the importance of self-definition, the respect for their land and natural resources, their community sentiments, the honouring of treaties and other agreements that indigenous peoples concluded with states and, in differing degrees, the right to self-determination."[45] The three issues of land rights, self determination and community ideas have formed central debate in the international arena. The chapter tries to provide some reflection on these issues of debate.

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[42]Douglas Sanders: 'The UN Working Group on Indigenous Populations' *Human Rights Quarterly*, Vol. 11, No. 3. Aug., 1989, pp. 406-433.
[43]Tapan Bose: 'Definition and delimitation of the Indigenous Peoples of Asia' in http://www.iwgia.org/ sw312.asp.
[44]Andre Beteille: 'The Idea of Indigenous People' *Current Anthropology*, Vol 39, April 1998, pp 187-191.
[45]Hilary N. Weaver: 'Indigenous Identity: What Is It, and Who Really Has It?' *American Indian Quarterly*, Vol. 25, No. 2. (Spring, 2001), pp. 240-255.

Land Rights:

The right to land and natural resource has always been considered as central by the indigenous people. Today land is not just important to their physical survival but they are also culturally linked to it. These people have a history of shared community feelings which extends to all their practices and even land is under such communal control. Various studies by Fernandes, Ken S Coates and others substantiate this argument. So closely these indigenous people are linked to their natural surrounding that any disruptive practice and alienation is viewed as a threat to their existence. Many writers have found that the "Indigenous people in many countries like Brazil, Argentina Africa and others have been pushed off arable land and forced into unattractive territory where they struggle to maintain a living".[46]

The indigenous people all around the world are increasingly asserting their identity to be closely interconnected with the natural environment in which they live which include the land and the resources that are available. Over the span of their existence they have developed not just a close link with them for their sustenance but also formed culture, tradition, myths, an economy and even a social control mechanism. "Land, in its most comprehensive manifestation includes water, forest, mountains, is the basis of all human life"[47]. Here the work has used the terms land and forest many a times interchangeably. "Indigenous people derive a profound sense of identity from a place, and are strongly connected to their traditional territories and resources. As such, the alienation of their land and resources is often viewed as critical to their survival. They have infact developed a strong multi generational attachment to land".[48]

For indigenous peoples land occupies a scared quality. It is not only revered and respected but is also regarded as inalienable in their philosophy. "For them land

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[46]Ken S Coates: *A Global History of Struggle and Survival*, United Kingdom: Palgrave, 2004 pp189.

[47]Minar Pimple & Manpreet Sethi: 'Occupation of Land in India: Experiences and Challenges' pp235 In Sam Moyo & Paris Yeros, (eds): *Reclaiming the land: The Resurgence of Rural Movements in Africa, Asia and Latin America*, Zed Books, United Kingdom, 2005.

[48]Ken S Coates: *A Global History of Struggle and Survival*, Palgrave, United Kingdom, 2004, pp 13.

is a living entity which can neither be claimed for oneself nor subjugated".[49] The centrality conferred on land is also a recognisable phenomenon among the tribal population of India. Here in matter of marginalisation and exploitation the condition of these people reflects no better position.

"The tribals of India have got a heterogeneous cultural pattern with variegated economic conditions and activities largely based on ecological setting and ethnic environment."[50] As such the tribal economy has been classified by a number of scholars into food gathering, pastoral, shifting-hill, cultivation, handicraft etc. The notable aspect here is that different tribal communities all depend on forest or land either directly or indirectly for their livelihood. Analysis of tribal economy clearly establishes their dependence on forest, land and their environment. This goes on to form the very basis of the tribals, land and forest interface which is guided by a principle of mutual coexistence and sustainable development. They collect food and other minor forest products for consumption, building houses, making implements, medicinal purposes and variety of such other uses. A number of tribal people in India make their livelihood by collecting non timber forest products like sal (*Shorea robusta*), tendu leaves, mahua flowers, fruit, resins, lac, tassar cocoons, honey etc.[51] Such activity has been the major source of sustenance for tribals of Bihar, Orissa, Himachal Pradesh, Madhya Pradesh, West Bengal and other places. Also importantly these people have depended conspicuously on forest for fuel for consumption. Undoubtedly the negative consequences of these are quite visible yet the hardship involved in it cannot be undermined anyway. Their symbiotic relation with the forest has imbibed in them the need to preserve the forest, conservation skills and they don't appreciate cutting trees. This is manifest in their rituals and practices where they believe different deities to reside in these trees and plants and are traditionally bound to protect and preserve them. They need forest for their

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[49]Julian Burger: *Reports from the Frontier-The state of the World's Indigenous Peoples*, Zed Book Ltd, London, 1987 pp-14.

[50]Buddhadeb Chaudhuri & Sumita Chaudhuri: 'On Some Tribal Problems', pp 83, In Buddhadeb Chaudhuri;(ed): *Tribal Development in India-Problems and Prospect*. Inter-India Publication New Delhi, 1982.

[51]Debashish Debnath: 'Tribal-Forest Relationship', pp 113 In Vidyut Joshi (ed): *Tribal Situation in India Issues in Development*, Rawat Publication, Jaipur, 1998.

survival unlike the commercial undertaking exploiting the resources for their profit which infact poses a greater threat to the forests.

The origin of tribal problem regarding their right over land can be traced to their immemorial custom of regarding "land belongs to God."[52] It is for which they regarded the right of inheritance to land as meaningless. But the complication of a modern nation state imposes some set limitations on this occupation of land like the need to pay revenue as a token of ownership. This has led the original inhibitor of land to loss all their community claims to it and also the right to collect timber or firewood without prior permission. Traditionally, there were many tribal communities in the North East India where different clans claimed communal ownership to land. They upheld that land belonged to the people and to the community at large and families merely enjoyed an occupancy right over it for sustenance. Like for instance in Meghalaya, the *Ri-Raid* land the ownership vests on the whole village community. Under it every villager has a right to cultivate any piece of land or to build a dwelling house. But his right is being confined only to use and occupation, and doesn't extend to include the right to transfer. When he abandons the land it is again reverted to the village community many here also practice shifting cultivation or *Jhum*. But has permanent, heritable and transferable rights though subject to customary regulation and return to the same plot at the beginning of a new cycle. Communal ownership of land was also seen in Nagaland. J N Das in his work has given a detail picture of the land rights among tribes of the states of North East with in depth analyses of their customary practices. But the irony as Videh Upadhyay points out, customary usages becomes law and are recognised by legal bodies only when they are recorded as rights in land records or other such documents.[53]

However over the past few years all such communal ownership to land and to forest resources has been erased only to add on to the miseries of the forest dwellers and the indigenous people. "In 1995 to conserve the country's forest

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[52] J N Das: 'Rights over Land among Tribes of North East' pp 91 In Sarthak Sengupta: (ed): *Tribal Situation in North-East India*, Inter-India Publication New Delhi, 1994.
[53] Videh Upadhyay: 'Customary Rights over Tanks', *Economic and Political Weekly*, 38, November 2003, pp 4643-4645.

resource the Supreme Court in a judgment has banned felling of trees and wood based activities in different states".[54] Tiplut Nongbri in her work has in detail dealt with the impact of such law in the state of Meghalaya which can be very well used to analyse the pitiable condition of indigenous people elsewhere as a result of this process.

The process of economic development is gradually usurping the natural resources of water, land and tree vital for the subsistence of the tribal communities.[55] The mainstream society, as Fernandes has pointed out in his work views such resource only as raw material for furthering the industrial growth. This ironically transforms the means of livelihood of a community to a source of profit for some one else. This in process weakened the "symbiotic relation" between these people and the environment. Tribals are now fast losing the areas traditionally under their possession and slowly being pushed into the cycle of poverty and indebtedness. They have gradually turned into landless labourers and tenants. The rapid expansion of economy has threatened the stability of local ecosystem and drained available resources. The ideology of the new order based on personal land ownership was imposed on indigenous territories. The traditional rights of the tribals are ignored and the ideology of national development is used to legitimise their exploitation in the name of developing 'backward areas'.[56]

"In the past their existed a symbiotic relation between the tribes and the natural resource, particularly forest and land. They depend on them for all their needs and ensure that balance is kept between their needs and the resources".[57] Because of this dependence, the tribals over time developed the type of culture that would ensure their renewability, equitable distribution and safeguard the environment.

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[54]Tiplut Nongbri: 'Effects of Logging Ban in North-east India: The Case of Meghalaya' *Economic and Political Weekly* 36,no.31, 3 August 2001.
[55]Sharad Kulkarni: 'Policy for Tribal Communities: Yesterday Today and Tomorrow', pp 4 in Ambrose Pinto (ed): *State, Development and Alternatives*, Indian Social Institute, New Delhi, 1999.
[56]Walter Fernandes: 'Natural Resources, Self Determination and the Indigenous Identity: An Introduction', pp. 5 In Walter Fernades (ed): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delhi, 1993.
[57] *Ibid*, pp 4.

Earlier during the colonial times, "Indian traditional land ownership and land use pattern were changed to facilitate acquisition of land at low prices by British entrepreneurs for mining, plantation, and other economic pursuits."[58] The land and the forest resources provided low cost raw materials for the British industries and thus their economic pursuit had to encroach upon the tribal areas rich in such resources. Not only that the colonial rule entered into the tribal land but also increasingly brought it under the legal jurisdiction. With these changes came in the notion of private property as modern laws recognises only individual claims. This notion was in complete contrast to the tribal practice as they regarded land, forest and other national resources with their habitat as customarily belonging to the community as a whole. And in the absence of the concept of private property the tribals failed to record their claims and further alienated them from their traditional holding. The lose of control over their natural resources, ambiguity in terms of land rights are all giving way to their powerlessness and definite threat to identity.[59]

Rapid destruction of forest has provided to be disastrous to the tribals also because they it adversely effecting their means of subsistence and livelihood which is solely depended on forest resources. "The state claims the chief natural resources like forest and minerals as national property and excludes the local communities from their productive use."[60]

Continuous exploitation of the tribal population all world the world has directed the international community-organisation, activists and others to actively look in to this important issue of survival of the indigenous peoples.

The United Nations Declaration on the Rights of Indigenous Peoples stipulates special articles stating the rights of the Indigenous Peoples to maintain and

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[58]Minar Pimple & Manpreet Sethi: 'Occupation of Land in India: Experiences and Challenges' pp 236 In Sam Moyo & Paris Yeros, (eds): *Reclaiming the land: The Resurgence of Rural Movements in Africa, Asia and Latin America*, United Kingdom, Zed Books, 2005.

[59]B K Roy Burman: 'Indigenous People and their Quest for Justice, pp 3-12, In Buddhadeb Chaudhuri (ed): *Tribal Transformation In India- Ethnopolitics and Identity Crises*, Vol III, Inter India Publication, New Delhi, 1992.

[60]Dev Nathan & Govind Kelkar: 'Introduction', pp23 In Dev Nathan, Govind Kelkar & Walter Pierre Walter (eds): *Globalisation and Indigenous Poeples in Asia*, Sage Publications, New Delhi, 2004.

strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal areas, and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard. Also they have the right to assert their cultural identity and practice their traditions, including their religion, languages, and arts and the traditional right to maintain and develop their cultural structures and institutions.

Self determination:

The cultural and the generational link of the indigenous people have combined to shape the debate of self determination. Both self determination and minority rights have turned out to be importantly debatable in present times. Its emergence could be well traced to the times when government based on popular will was instituted against the monarchical institution. With it the people gained the right to organise themselves as they wished. Even in contemporary times this principle has been well set within the framework of the United Nations. It well establishes the right of self determination as a fundamental human right which refers to individual and even collective whole.

The principle of national self determination can be applied where people who inhabit a continuous piece of territory unite to form a national community and there they have the right to determine their own future, through established political institutions of self-government to control that territory and live according to a uniformly decision. They are even entitled to form their own collective autonomy and follow particular value system. It therefore requires every national government to be accountable to the aspirations of the masses irrespective of any other considerations.[61]

Self determination may be equally valuable to groups as to individuals so that they are able to decide the fate of the resources which are at their disposal. However this doesn't guarantee always that individual preferences will be upheld

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[61] David Miller: *Citizenship and National Identity*, Polity Press, UK, 2000 pp162

but what is important that some from of consensus and deliberative discourse along with civil and political rights is involved in it. This principle as Miller points out not only allows dissenting views to be heard, but also "exposes its prevailing principles and practices to crucial scrutiny".[62]

Many a writers and scholars on this aspect comfortably distinguishes between two forms, external and internal self determination.[63] This work takes up both the forms and tries to see them in the Third World perspective. External refers to the ability of people or minority to choose freely for independence or union with other states, whereas internal self determination means people of a sovereign state can elect and keep the government of their choice and has the right not to be oppressed by the central government. But this in course necessarily turned to be identified with fight only against colonialism where external self determination may be granted. Internal self determination on the other hand is often interpreted synonymously with local autonomy. It is understood as the right of people to control significant aspects such as culture, education, property relations, social matter, welfare etc.[64] This is a tendency normally seemed to be at work in the Third World countries where stronger assertion of self government, claims for greater autonomy might lead to instability in the state. Even countries like Australia, New Zealand and the United States could not support its adoption. For example, its reference to self determination could be misrepresented as conferring a unilateral right of self determination and possible secession upon a specific subset of a nation's populace, thus threatening the political unity, territorial integrity and stability of existing member states.

The intrinsic value of just and good differs from society to society but the basic human rights of people should be respected by every individual and nations world wide. A general phenomenon seems to be at work everywhere, the powerful exploiting the powerless and the marginalised. So it becomes imperative for the powerful to refrain from exploiting the vulnerable section to

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[62] David Miller: *Citizenship and National Identity*, Polity Press, UK, 2000 pp166
[63] V T Thamilmaran: *Human Rights in Third World Perspective*, Har Anand Publishing, New Delhi,1992 pp191
[64] *Ibid* pp 195

put the human rights into practice. Not only this, there is also an obligation to ensure that all political communities have the opportunity to determine their own future.

Hence the question of self determination has turned to be very crucial in international discourse. Like the notion of good is likely to vary from society so also the notion of self determination. The issue many a times has been branded as secessionist movement and a threat to the territorial integrity. The entire question of self determination is a vast one and can singly form a formidable debate but this work is not probing into the depth of this. Discussion here only concerns the present debate revolving around the indigenous people and their aspiration to have some control over the resources and their way of life.[65] It is basically the acknowledgement of their right to control the resources and their socio political structure which has found space in the debate emerging in many states like India.

Self determination can satisfactorily be analysed as the demand of the indigenous people to have control over their own resources rather than critically viewing it as a secessionist movement. Self determination can well acknowledge the fact that these people are the first or the original occupant of the land and are to be actively engaged in the decision making process which impacts upon their lives. However as Fernandes has pointed out, a distinction has to be clearly crafted out to see the difference between autonomy and secession. The demand for right to run their affairs, their socio political structure, and control over their resources can not always be interpreted as secessionist and anti nationalist movement.[66] Self determination to many writers like Jaganath Pathy implies the right to natural resources and the appropriate political institutions and power to manage these. The assertion of self determination in Indian context is largely "directed

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[65]Walter Fernandes and many other writers have basically concentrated on this nature of the debate. See Fernandes for further elaboration.

[66]Walter Fernandes: 'Natural Resources, Self Determination and the Indigenous Identity: An Introduction', pp 6-7 In Walter Fernades (ed): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delhi, 1993.

towards negotiating their relationship with the state so as to defend their rights to maintain their identity"[67].

It is often found true that national identities once formed is resistant to incorporate any new political underpinnings especially if it talks of greater role in power sharing and autonomy per se. At present it is also very hard to "find political communities with shared national identities inhabiting continuous and neatly bounded territories, instead we find intermingled ethnic and other groups on the same ground."[68] Like pointed out we cannot always presuppose shared values to make a national identity. Likewise the aspiration for secession may not run common ground in many societies. There are undoubtedly few secessionist movements like in the North East. But when deeply analysed they too are reactions to their deprived existence, marginalisation and alienation which they face from the resources.

Tribals have a strong link with the natural resource and the habitat they abound in. Not only it is their important means of sustenance but also their identity and culture structured around it. Several writers, therefore, notes that the tribals have lost or are in the process of losing their identity because of the loss of control over the natural resources and their destruction by the mainstream.

Community based sentiments are very strong among the indigenous people and their whole lives revolve around community and group. Self determination thus forms an essential condition for indigenous people to live a dignified life because it gives the power to determine for them the value and necessity of collective life and decide their future course of action. They have all the right to determine for themselves the relationship with one another and the state and the other people that influences their lives.

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[67]Jaganath Pathy: 'Tribal and the Indigenous People of the World' pp 22 In Buddhadeb Chaudhuri (ed): *Tribal Transformation In India- Ethnopolitics and Identity Crises*, Vol III, Inter India Publication, New Delhi, 1992.
[68]David Miller: *Citizenship and National Identity*, Polity Press UK, 2000, pp 162.

Self determination becomes important for the indigenous people because of the value these people attach to their collective autonomy, value living according to laws and practices that are compatible with their local understanding of social justice.[69]

Self determination is the idea of a community's right to control its own future, and thus physically to survive and prosper to the fullest extent possible. "A community's power of self determination is perceived as a crucial aspect of its identity and so also, in holistic terms, of its health and survival. When the phrase self determination is part of a community's political lexicon it therefore becomes a very powerful expression, and carries great hope for the birth of physical changes in a community's circumstances."[70]

The inclusion of this right in the Declaration of the Rights of the Indigenous Peoples has made it pertinent to clarify the issue on an international understanding. Article 3 of the Declaration mentions self determination as it reads:

> 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
> development.[71]

It is often understood as to require representative government which would open up genuine avenues for political participation by individual and communities based on their distinct identity.[72] Government policies it means should reflect the aspirations of these marginalised people and should keep their interest in the forefront. The inclusion of right to self determination in the Declaration provides better scope on the part of the indigenous people to limit the overarching nature

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[69]David Miller: *Citizenship and National Identity*, Polity Press UK, 2000, pp 177.
[70]Caroline E Foster: 'Articulating Self determination in the Draft Declaration on the Rights of Indigenous Peoples', *EJIL* (2001) Vol 12 No.1, pp 142.
[71]Declaration on the Rights of the Indigenous Peoples, http://www.iwgia.org/graphics/Synkron-Library/Documents/InternationalProcesses/DraftDeclaration/07-09-13ResolutiontextDeclaration.pdf. accessed on 15th September, 2007.
[72]Caroline E Foster has taken up the development of the concept of self determination in international law in detail

of the state and also recognise the importance of the participation of these people in the political process.

The recognition of the right to self determination is one of the challenging aspects of the Declaration and the international institutional debate surrounding it. Self determination has over the debate assumed different connotations in different situations. The self determination of people colonised under foreign rule; of racial group suffering oppression and importantly also the right to self determination of the indigenous people. There is a constant tension between the exact definition of the term and its applicability. Self determination is a group's right to make decision together and for themselves about the condition and terms that govern shared aspects of life.[73]

Indigenous people all over the world have actively asserted self determination and control over their resources and lives as effective tools of their survival. Many instances hinting at the protection of indigenous language and culture in different parts of the world can best be understood as the consistent struggle by this group for the revival of their political, social and cultural communities. Indigenous people have come to realise that their well being can be assured if they have the right to control their lives and decision making apparatus which have been constantly denied by the dominating group of the population. This in turn would mean some form of political autonomy to decide their own future and their preferences. It is undoubtedly true that the claims made by the indigenous peoples vary according to their circumstances, diverse situation and their diverse character but the underlying essence is the same, effective control over their own destiny. Whatever they are called whether self determination, self government or autonomy they are all directed towards a common goal.

Most tribal struggles today are mostly concentrated around autonomy by which they mean control over the local economy and their political life. Another crucial

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[73]Cindy Holder: 'Self-determination as a basic Human Right', pp 303 In Avigail Eisenberg & Jeff Spinner-Halev (eds.): *Minorities within Minorities- Equality Rights and Diversity*, Cambridge University Press, UK, 2005.

element of autonomy and self determination is respect for and preservation of their traditional culture. [74]

Self determination is a human right. Even the Declaration presents certain rights of peoples (such as the rights to culture and to self determination) not just as claims that must be respected as "a *matter* of human right, but as fundamental or basic right in themselves. It also implies that the states must refrain from attempts to assimilate, submerge or otherwise manipulate the organisation, culture and development of insular minorities."[75]

The right of the indigenous people to self determination is specifically based on the conditions in which they survive. It arises from the historical injustice inflicted on them and the need to protect their distinctiveness from the onslaught of time. This need protection from further encroachment. This right to self determination essentially attempts to secure the basic human dignity of the indigenous people and therefore needs active recognition.

There has been lot of oppositions from different states like United States, Argentina, Brazil etc against the inclusion of the right to self determination in the Declaration arguing that they ought not to be given the power to break up as common parlance suggest its meaning. But the representatives of these people disagreed to settle for anything less to protect their identity and existence. There is a long history of this debate while framing the Declaration and conforming to it which is not discussed here. This aspect has been taken up by Caroline E Foster, Cindy Holder and many other legal experts.

Indigenous peoples claim to the right of self determination is deeply problematic when the obvious question of strengthening either the state or the group arises in the debate. But it is not always, as the general view stand, be taken as a

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[74]Walter Fernandes: 'Natural Resources, Self Determination and the Indigenous Identity: An Introduction', pp 3 In Walter Fernades (ed): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delhi, 1993.
[75]Cindy Holder: 'Self-determination as a basic Human Right', pp 297 In Avigail Eisenberg & Jeff Spinner-Halev (eds.): *Minorities within Minorities- Equality Rights and Diversity*. Cambridge University Press, UK, 2005.

secessionist claim on the part of the indigenous people. Infact stating self determination as a basic human right and its very inclusion in the Declaration provides these people better bargaining power visa via the state and other people. It is not always as stated a claim for independent nationhood or secession. In equating self determination with setting up an independent state, conservative approach make it look like something, that Cindy Holder finds, that which "only select number of groups may have by *reducing* it to the bundle of right traditionally associated with independent statehood. Political autonomy in turn may suggest something more radical, like the governing authorities may have substantial positive obligations to these people." [76]

The state over time has made certain provision to accommodate the demand for some control of the indigenous people over their way of life but to adhere to a demand for a state within the Union is often labeled as secessionist claim. But is essential to recognise that the rights of the tribals to self determination is not always that of secession rather control over their natural resources and decision making process. This understanding of autonomy can also make it possible for the identity and rights of the tribals as indigenous people of the country to be upheld. Infact recognising their indigenous status and their right to self determination is to be an important step in changing the pattern of development that has marginalised them.[77]

Due to the diversity of their circumstances, indigenous peoples aspirations vary significantly as to the degree of autonomy or self determination which they would pursue: from administrative or local autonomy over matters such as education, health, public services, to the full-fledged right to determine their own mode of development and their relation to other state. Their desire to control their own destiny is very much manifest in the movement for effective participation in their decision making process.

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[76]Cindy Holder: 'Self-determination as a basic Human Right', pp 309 In Avigail Eisenberg & Jeff Spinner-Halev (eds): *Minorities within Minorities- Equality Rights and Diversity*. Cambridge University Press, UK, 2005.

[77]Walter Fernandes & Arundhuti Roy Chaudhury: 'Search for a Tribal Identity: Dominant and the Subaltern',pp 22 In Walter Fernandes (ed):*The Indigenous Question: Search For an Identity*, New Delhi: Indian Social Institute, 1993.

Genuine aspiration for proper representation of the rights and establishing principle of fairness and of a just society, when incorporated in the political structures can solve many a problem of secession. Infact the legitimacy of the state rest on how effectively it is able to safeguard 'human rights and ensure participation of every section of people in the economic and political decision making process and not just a commitment to numerical majority.'[78]

There is undoubtedly a tension between the demands for self determination and national objective of unification and for providing an overarching nationalist ideology. But this can be resolved if we balance the pursuit of national development on one hand and the obligation towards these marginalised people on the other to enjoy their space. Because it is necessary to note that if these people cannot express their view freely and find space within a state and if they do not get scope to decide their own mode of development or progress, exercise their rights freely in their internal affair, and then may at times they are compelled to take the other means to exercise it. Infact the right to make decision about themselves, to protect and develop their social and cultural life, are all expression of universally acknowledged rights.[79] And therefore these should have space within any democratic state.

Community:

Human lives are lived in concert with other people, and not just in separation from them. People live their lives in groups as well as individually. This implies that some of the decision they make will be decisions about aspects of life that they share with specific others and about features of themselves that tie others to them.[80]

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[78]Hurst Hannum: *Autonomy, Sovereignty and Self Determination: The Accommodation of Conflicting Rights*, Philadelphia, University of Pennsylvania Press, 1990. pp 13

[79]Jaganath Pathy: 'Tribal and the Indigenous People of the World' pp 22 In Buddhadeb Chaudhuri (ed): *Tribal Transformation In India- Ethnopolitics and Identity Crises*, Vol III, Inter India Publication, New Delhi, 1992.

[80]Cindy Holder: 'Self-Determination as a Basic Human Right', pp 300 in Avigail Eisenberg & Jeff Spinner-Halev (eds): *Minorities within Minorities- Equality, Rights and Diversity*. Cambridge University Press, United Kingdom, 2005.

Illiteracy being rampant among the tribes, they have found it increasingly difficult to understand the nuances of the formal economy and the legal system of the state today. For centuries they have survived in the informal society of a culture based on the word of mouth, legitimisation by the community and common property resources. The formal society on the other hand depends on the principle of written document given to an individual. Property owned by an individual is the basis of this economy.[81]

This is one of the most crucial concerns centering the whole debate. Shared values, identity, language, history or way of life are all essential elements of tribal life. Community is not a novel construct but already existed in the shared social customs, social practices, tradition, belief and some form of common understanding. The lives of persons within an indigenous community are often closely integrated and interdependent. Common life of an indigenous community thus includes much more than property and not always competitive rather cooperative in nature.

But this notion has undergone commendable strains at present times. Earlier the resources were too under the control of the community to which they belonged but the present legal system only recognises individual rights. The crises in communities began when profit and market oriented activities took control over their land and resources and thus over their existence too. No doubt in some cases the tribal identity is exploited by the upper and the well to do section and accrue the benefits themselves.

The intervention of market forces has lead to strong institutionalisation of private property, not prevalent among these people, and earlier form of community concern has turned to market orientation and accumulation. Many writers like P C Jain,[82] Yash Ghai[83] and others have noted the tremendous affects of

[81]B D Sharma: *Tribal Development: The Concept and the Frame*, Prachi Prakashan, New Delhi, 1978 pp 8-12.

[82]P C Jain: *Globalisation and tribal economy*, Rawat Publications, Jaipur, 2001

[83]Ghai, Yash: 'Rights, Social Justice, and Globalization in East Asia', In Joanne R. Bauer and Daniel A. Bell (eds) (1999), *The East Asian Challenge for Human Right*, United Kingdom, Cambridge University Press.

globalization on tribal life. Under this influence the indigenous economies and social system are witnessing great change earlier based on survival and stability concern to now that of accumulation. This has consequently led to the decline in traditional social welfare system and spread of commoditisation. With the inroads made into their societies by the market economy and mechanised agriculture, the adivasis have been destabilised and social stratification has crept into their egalitarian society. The market it is often claimed disperses power and frees individual from the bonds of community and the state. The destruction of old communal economy, people's values etc are now increasingly being shaped by the matrix of market and the state. But since the market mechanisms is not geared towards social justice and equality how far they could necessarily benefit the marginalised communities. The impact of globalisation on the community life has been further elucidated in the third chapter.

It is very essential to reestablish the link between community's control over their natural resources and their identity. Ken S Coates has taken the issue how contrary to the emphasis on the community sentiments by many indigenous groups many governments hoped that the indigenous people would soon abandon communitarian approaches to property ownership in favour of individual control over land. The writer for instance refers to the Maori Land Courts and the Native Lands Act set up to protect Maori land rights and holdings, individualised what had been *iwi* (tribal) and family rights. The result was an administrative mess, in which individuals held rights to small share of specific parcels of the land and complicated Maori landholdings and sales. Again in the US, the Dawes Act reflected the American government's belief in "civilizing power" of private property. This Act gave the Native American tribes the authority to replace collective ownership with individual land rights. In operation the Act resulted in the dispossession of thousands of Native Americans and hundreds of tribes and proved to be an administrative disaster and as an effort at cultural transformation was a dismal failure. Even when Canada made similar efforts in 1969, aboriginal organisations mounted an effective campaign against it.[84]

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[84]Ken S Coates: *A Global History of Struggle and Survival*, United Kingdom: Palgrave, 2004 pp189

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Active alienation of indigenous people from their land has turned in to a global occurrence. Today as already noted there is only recognition of the individual ownership to property. Similar institutional structure based on individual rights and claims are also prevalent in India. Therefore it is assumed that the "land occupied by the tribals is state property because the inhabitants do not hold a *patta* or an individual title to it."[85] The tribal culture in turn always centered around community control. So they have increasingly failed understand and adapt to the new legal mechanism and development projects of the state.

It is also true on the other side that market generated demands and use of resources can bring about development into the tribal areas but how far they will benefit these people is debatable. Inception of market forces has obviously destroyed the traditional community interaction to a large extent. But it can be recreated by emphasising the necessity of community based mechanism. Community control over their natural resources is very crucial. The tribals get from the forest whatever they need for their existence besides fruits; flowers and other produce known as minor forest produce (MFP) or Non Wood Forest Product (NWFP). Such self initiated community institutions involved in forest management are widely prevalent in Jharkhand villages as in a study by Sudha Vasan has found. Every village there had some form of community establishment instituting and enforcing rules of use for community. The study further found that people were voluntarily involved in forest management activities but in spaces outside forest laws.[86]

Community control over their natural resources is very crucial as already stated. Since the tribal life values forest greatly they have over generations developed certain practices which were both environmental viable and also catered to their livelihood needs. Because of the close interaction between man and nature the tribals also valued the need to protect the forest and the environment. Their knowledge about the forest can be thus combined at the present times and there

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[85]Walter Fernandes: 'Natural Resources, Self Determination and the Indigenous Identity: An Introduction', pp 3 In Walter Fernades (ed): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delhi, 1993.
[86]Sudha Vasan: 'In the Name of Law-Legality, Illegality and Practice in Jharkhand Forests', Economic and Political Weekly, October 2005, pp 4447 -4450.

can be certain viable alternative which conceives people's involvement and some protection for customary access rights to the forest. Many important studies on this issue has inferred on some available conception of capacity building among forest communities and regenerating forest through planned initiatives. The concept of joint forest management (JFM) as a participatory model for managing forest can be effectively used to profit both the tribals and also protect forests.[87]

The collective right to exist as distinct peoples with their own cultural identities has been one of the themes voiced most persistently by the indigenous advocates. Even the Declaration expresses its concern for the recognition of collective rights to exist as distinct people to maintain and develop their ethnic and cultural characteristics and distinct identities through their own tradition, language and culture including education system. The positive benefit of the community can be utilised by the modern nations to benefit both the tribals and protect the ecological balance and the culture.

Steady rise of the problems of indigenous peoples all over has evoked a world wide concern and this has been recognised at international level and many institutions are now making a tremendous effort to the cause. Wide concern about their inhuman existence everywhere and the continuous struggle for recognition of their distinctness in culture, way of life, the threat of survival suffered by them has brought about the necessity to institutionalise their demands. This has found recognition in the form of the Declaration on the Rights of the Indigenous Peoples.

UNITED NATIONS DECLARATION ON THE RIGHTS OF THE INDIGENOUS PEOPLES

Despite international recognition and acceptance of the Universal Declaration of Human Rights[88], which guarantees the fundamental rights of all human beings, in

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[87]Arnab Sen & Esther Lalhrietpui: 'Scheduled Tribes (Recognition of Forest Rights) Bill A View from Anthropology and Call for Dialogue', *Economic and Political Weekly*, September 30, 2006, pp 4205-4210.
[88] http://www1.umn.edu/humanrts/instree/b1udhr.htm. accessed on 4th October, 2007.

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practical fact Indigenous Peoples' human rights remain without specifically designated safeguards. To this day, Indigenous Peoples continue to face serious threats to their basic existence, face discrimination in schools and are exploited in the workplace. They are continually denied the right to live in and manage their traditional lands and often policies are implemented to exploit the lands that have sustained them for centuries. Today we witness an utter lack of respect for Indigenous values, traditions and human rights.

Indigenous representatives from the world over argue that the international human rights standards have considerably failed to protect them so far and therefore argue for a need to develop a new international document addressing to their pertinent needs and differences. The Declaration would be a human rights instrument that will set the standard for the relationship that should exist between indigenous peoples and states. It addresses the historical injustice and continuing discrimination of indigenous peoples' rights to language, education, self-government, cultural expression, the collective right to use of land, territories and resources.

Declaration on the Rights of Indigenous Peoples is till date the most comprehensive statement of the rights of Indigenous Peoples, establishing collective rights to a greater extent than any other document in international human rights law. It establishes the rights of Indigenous Peoples to the protection of their cultural property and identity as well as the rights to education, employment, health, religion, language and more.[89] It also protects the right of Indigenous Peoples to own land collectively. The Declaration exerts a considerable amount of moral force on every signatory nation when adopted by the General Assembly. Consisting of 46 Articles, the Declaration is divided into nine parts: Fundamental Rights; Life and security; Culture, religion and language; education, media and employment; Participation and development; Land and resources; Self Determination; Implementation and Minimum standards of living and a range of different other rights for the protection of their socio cultural and

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[89] Study Guide: The Rights of Indigenous Peoples. http://www1.umn.edu/humanrts/edumat/studyguide/indigenous.

religious practices of these people. Of these some fundamental aspects would be discussed in the subsequent chapters.

However the collective rights of the indigenous people to maintain and develop their distinctive identities are specially emphasised in the Declaration. These rights basically form part of new found focus towards various expressions of collective rights, although it is usually very difficult to maintain a strict distinction between individual and collective rights. Some such rights as that of right to life are purely individual. Many others are individual rights that are necessarily expressed collectively such as freedom of assembly. Some other are purely collective like the right to self determination or the physical protection of groups through the prohibition of genocide, others constitute collective manifestation of individual rights such as right of person belonging to minority to enjoy culture, practice their own religion and speak their own language.[90] This obviously demands a balancing of the legitimate rights of the state, group and individual without none encroaching the other.

The Declaration took over two decades in the making when the idea originated in 1982 as the result of the study by José R. Martinez Cobo on the problem of discrimination faced by the indigenous people as noted earlier. The Draft was completed in 1993 and was submitted to the Sub Commission on the Prevention of Discrimination and Protection of Minorities, which gave its approval in following year.

The year 1993 was also declared an International Year of the Indigenous People by the United Nations. The Declaration is a comprehensive international standard on the Human Rights of the Indigenous People. It however does not create new rights but elaborates upon the existing international human rights, norms and principles as they apply to the indigenous people. It catalogues the kind of violations that have historically plagued and still continue to plague the indigenous people with attack on their culture, land, identity and their own voice. In short the Declaration lays down the minimum standard for survival, well being

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[90]Malcolm N Shaw: *International Law,* Cambridge University Press, UK, 2005, pp277-279

and dignity of the indigenous people[91]. This Declaration enumerated a wide range of rights and fundamental freedom they ought to enjoy, security and protection besides their inalienable right to belong to an indigenous community and continue practicing their tradition, customs as matter of their individual choice, including even land rights. It strongly adhered to prevention of discrimination and protection of minority rights by giving ample scope for these people to control any development over their land, resources and even to maintain and strengthen their institutions, culture and tradition. Furthermore these people are even guaranteed the right to be free from any adverse discrimination. Indigenous Peoples, in particular, have long asserted the right to determine their own development, considering their right to accept or reject development proposals to be implicit in their inherent right to self-determination and this has been well recognised in the Declaration.

They have even been accorded the right to determine their relationship with the state, in matters relating to their local affairs and function autonomously. Even the Second Decade for the Rights of the Indigenous People (2004-2014) stated main objective to the strengthening of international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, education and health. With the unified activity by groups from around the world even to the national level resources could be better dispersed to the different countries to support the programme for the indigenous people.

The Working Group on Indigenous Population which completed the draft Declaration in 1993 mainly addressed the important question as to how the indigenous representatives will be able to participate. The common ground of exploitation could forge a common cord of cooperation with the international organisation and indigenous organisations. This surely has made a mark in many places like New Zealand where efforts are being taken to open up democratic debate to issues concerning to the Maori people. Different countries lend their full support for the goals of human rights and fundamental freedom of the indigenous people.

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[91] IWGIA- The Indigenous World-2007. http:// www.iwgia.org/sw294.asp

The Declaration was then finally referred to the General Assembly, which voted on the adoption of the proposal on 13th September 2007 during its 61st regular session. The vote was 143 countries in favour, 4 against and 11 abstaining.[92]

The concern is not just about the historical growth of the rights of the Indigenous People and their place sought through international cooperation but to what extent the different substantive issues like that of land, self determination, autonomy and the control over their own destinies could find adequate space in the sphere of political debate and theorisation. The very notion of universality and absolute nature of Human Rights is fraught with contentions and contradictions. The civil and political rights to liberty, freedom from torture, slavery, arbitrary rules and those similarly associated with a welfare state like right to work, food, housing, health care and adequate standard of living are undoubtedly essential but they cannot be overarching the 'only' good sought by every tribal society. Their demand for preservation of traditional cultural practices may often posit imperious stand. It may sometimes be a hegemonic project to define their rights with specific preview of international conceptions. The modern notion of rights is very much a homogenous entity which seeks to undermine the differences in nature, structure and consequence and gives a single identity.[93] Furthermore how successfully can the concern for Human Rights alone be sufficient to deal the claims of myriad nature. Demand alone for better living conditions, recognition of rights and cultural diversity cannot undo the historical injustice meted out towards them. Group rights aiming towards greater autonomy relating to their own existence and surrounding is what can substantially bring about changes.

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[92]Declaration on the Rights of the Indigenous Peoples. http://www.iwgia.org/sw248.asp, accessed on 5th October, 2007.
[93]Bhikhu Parekh: 'Marx and the Theory of Rights' pp 11 In Upendra Baxi, Geeti Sen & Jeanette Fernandes(eds): *The Right to be Human*, Lancer International, New Delhi, 1987.

CONCLUSION

The three issues discussed above have found space in the international discussion of indigenous issues. Their centrality has not only been asserted in the struggle and the movement of the indigenous peoples but also has come to assume a legal recognition owing to inclusion in the Declaration. However the question when addressed in the tribal context, the notion of rights cannot be all inclusive if it constitutes each human being as a self contained unit. Accordingly, it would be appropriate here to talk of group or community rights, which would articulate demands that arise from their specific needs. These people are linked to their natural surrounding – land, water, resources, forest not as any atomised self but they share a communal sentiment. They together form a part of the whole habitat in which they exist. In reality this mutual existence is being threatened and their present situation projects a precarious existence and they being treated as inferior. Since these tribal people have continuously being subjected to a system of cultural and ideological subordination and their own powerlessness, concept of individual right would not benefit them much and therefore largely require group assertions. These people were always bonded by a close link to their communities and land. Community identification becomes an important element and is even connected to a sense of people hood inseparably linked to sacred traditions, homeland and also shared history. So the sense of identity via a community is through which the tribals confirm their commonalities with each other. It is not that this recognition of community would solve all their problems but it can definitely help them affirm their demands better and can face newer challenges better. Upendra Baxi and Oliver Mendelsohn[94] in their edited work have argued that the whole process of overcoming the subordination of the communities entails recognition of their collective rights to order their own affair and community rights can be appropriately applied to this situation.

Where the problem comes to recognition of the rights of the indigenous people mere engagement with the protection and promotion of human rights can prove to be insufficient. The problem with a universal narrative of rights is a dilemma

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[94]Oliver & Upendra Baxi, (eds) (1994), *The Rights of the Subordinated People,* Delhi, Oxford University Press.

drawn from, as already noted, a modern liberal – democratic state which allow us little scope to speak of community sentiments. Also a strict distinction is created between the public and the private. Even the state here started acting as an instrument for protecting the inviolability of the domain of an individual. Therefore the idea of a community centric approach to the problems of the Indigenous People could not capture much the imagination. However the tribal societies are centrally rooted in religious practices, customs and tradition which define their very existence. A self definition of territorial space, a principle of community could give their aspiration a fundamental constitutive character. This collective membership of community would not just be as self interested individuals but forging a deep solidarity, a kind of consciousness. Indian tribals projects no homogenous pattern, they are all submerged in different cultural trends and practices. The problems of tribes of the North eastern region are quite different from that of Central or of far South India. So other than subjection to exploitation and marginality, common ground cannot be struck with their aspirations. However accepting their indigenous status would have a way for the recognising the principle of equality and community.[95] A form of community feeling could be shaped up which would create a meeting ground of divergent culture without loss of identity of their own. This notion of community has to find space even in the realm of state, so that its particular invocation is not seen as a threat to integrity of any nation. The implications of such demands need to be analysed from the standpoint of building a more human society.[96]

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[95]Walter Fernandes: 'Indian tribals and Search for an Indigenous Identity',pp 77, In Amar Kumar Singh & M C Jabbi (eds): *Tribals in India*. Har-Anand Publications, New Delhi, 1995.
[96] *Ibid* pp 77.

INDIAN STATE AND THE INDIGENOUS QUESTION

Every state has its own ways of handling the minorities and the marginalised section and accordingly formulates policies. There are many which follow a policy of repression and others of cooptation. State has over the past few decades has turned into the focal point where the rights of different sections are balanced. Thus it is obliged not only to protect rights but even compensate for the historical wrong meted out towards any section. State has not lost its identity in the present context but gained greater importance due to its formal, institutional nature. Thus, over the past few decades various section of the society actively looks up to it for protection of their rights. The indigenous question has become primarily important due to the awareness about their inhuman existence and the continuous torture they are subjected to. States has its own way of dealing every issue that arises and approaches it in its specific manner. Thus even while dealing with the indigenous question lot of factors like historical influence, colonial legacy, core value or ideals that it enshrines and ensures to maintain are taken into consideration.

This chapter aims to trace out how with the passage of time the Indian state has handled this sensitive issue. Also an attempt has been made to analyse the history of relation between tribes and the Indian state since the colonial times. Providing a brief evaluation of the Constitutional guarantees and the Forest Right Act, the chapter moves to trace the nature and the response of the state to the indigenous issue. With the increasing importance of global political institution and the availability of an international platform how the government over time has responded to the pressure building upon it to widely acknowledge the rights of these people The chapter tries to discuss the practical problems that a state faces while dealing with various fractions of the society and the ultimate policy it undertakes to resolve the various tensions inherent in any social fabric.

THE IDEA OF INDIGENOUS IN INDIAN CONTEXT

Various socio political realities have contributed to the difficulties in defining the concept of "Indigenous Peoples". The use of the term in political discourse and attitudes of state governments toward the concept vary considerably among Asian countries. The concept of "Indigenous Peoples" has multiple lineages. In the era of decolonisation, the term was regularly used by Afro-Asian state governments and colonial governments to refer to the non-European majority populations of European colonies in Asia and Africa.

In regions of older settlement, in Asia, in particular, population diversity has arisen and been maintained by processes of a somewhat different nature. Tribal and non tribal populations have coexisted for centuries. Confrontation and usurpation have certainly occurred but not in ways that have led to the destruction of the tribal population.[97]

The concept of 'indigenous' faced serious oppositions when it was sought to be implemented and India was one of the counties in the forefront to oppose the definition. In India, the history of interaction between tribal and non tribal populations has been a long and complex one in which both populations have undergone many transformations through usurpation, miscegenation, and migration. By the middle of the 19th century, tribes had on the whole been either subordinated or marginalised economically, politically and socially. This could be seen quite clearly in their general concentration in the hill and forest areas in the interior or on the frontiers of the subcontinent. Indeed, communities were often categorised as tribal by reason of the habitats in which they were found at the time of the first ethnographic surveys.[98]

The term 'tribal' or 'adivasi' which literally translated means 'original inhabitants' is used to refer to the indigenous people, though this is not the meaning in which it was customarily used. It has always been interpreted with

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[97]Andre Beteille: The Idea of Indigenous People, Current Anthropology Volume 39, Number z, April 1998, pp 187-191
[98]*Ibid* pp 187-191.

certain known criteria in mind like that of use of simple technology, simple living conditions, general backwardness, even to the extent of language and distinctive physical traits. But this view too proved to be narrow lacking in uniformity of applicability for the entire group settled in different parts of the country.

To add to this problem the colonial era particularly the 18th century official writings hardly made any distinction between caste and tribe both being used synonymously. Then the next transition saw them living in complete isolation from the rest of the population with no interaction between them. Since there was no precise definition of the term 'tribe', certain groups have been categorised as tribes on the basis of the earlier precedents of the British administration and geographical location, economic condition and the life style of the group. But what is central is that they were basically seen as an excluded group. In 1939 Verrier Elwin advocated the establishment of a sort of 'National Park' of the tribals and advised that their contact with the outside world should be reduced to the minimum and again in 1941 he supported the idea of 'isolationism' to a great extent and his views continued to be the model for administration. Tribals for Elwin are noble savage, possessing good human qualities. They lived gloriously until they came in contact with the so called civilised people. He forwarded a four fold classification of aboriginals in India, the primitive, living in hills; second who equally lives in remote areas but began to change in small ways; the third most numerous and under the influence of external contact has lost hold of their culture and lastly the fourth have adopted Hindu religion and live in European style yet retaining their clan names. But he at no point accounts the long history of India to locate the tribes and takes it for granted that tribe represents the earliest stage of mankind and also failed to analyse the consequences of colonial economy on the tribes.[99]

Historically, the tribals lived a life of complete independence in the remote forest and hilly areas. It was only in the immediate past in the British period of Indian history that these people were approached differently. The British came in

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[99]P K Misra: 'Some Thoughts on Elwin and Tribe-Non-tribe Relationship in Indian Civilisation', pp 64-68, In T B Subba & Sujit Som (ed) *Between Ethnography and Fiction: Verrier Elwin and the Tribal Question in India,* Orient Longman, New Delhi 2004.

contact with the tribals in the beginning of the 19th century. The foremost policies which were adopted by the British rulers were to isolate these people from the general mass and separate the tribal areas from the purview of normal administration. This policy of isolation was a deliberate effort to keep them cut off. The British also created "excluded" and "partially excluded" areas and gave them separate political representation. This area wise isolation began with the enactment of the Government of India Act 1870 and a few tracts were specified as "scheduled tracts", viz the Himalayan region, Assam, Chotanagpur, and Santhal Pargana and other areas. A number of Acts were then enforced from time to time when certain territories were declared backward tracts even under the Government of India Act 1919.[100] This infact continued to be the policy in the whole era of colonial rule.

The general perspective towards the tribals is that they are "either to be conquered or converted to the belief of the dominant, more advanced society".[101] But owing to a series of tribal revolts, political association and movements a kind of consciousness seemed to take root. By this different groups came to develop a kind of distinct association with certain territories, with land becoming their central concern. They considered themselves to have prior and preferential if not exclusive rights over the territory where they live. Central to the conception of the indigenous people are the prevalent understandings that these are the people who lived in that country prior to the settlement of any outsiders and were subsequently marginalised due to colonisation. Furthermore these people are seen to govern their life on social, economic and cultural laws of own.[102] These seek to distinguish the people from the others. Because of huge scale migration of the non tribal people to their area which posed a threat to their existence. This has changed the very equation between the tribals and the non tribals in different areas. B Agarwal has shown that this interaction between the two groups has lead to different changes like cooperation, competition, conflict, cultural borrowing,

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[100] L P Vidyarthi & B K Rai: *The Tribal Culture in India*, Concept Publishing Company, New Delhi, 1976. pp 413.

[101] Hurst Hannum: *Autonomy, Sovereignty and Self Determination: The Accommodation of Conflicting Rights*, Philadelphia, University of Pennsylvania Press, 1990. pp 75

[102] Virginius Xaxa: 'Tribes as Indigenous People of India', *Economic and Political Weekly*, December 18, 1999, pp 3589-3595.

assimilation, change of religion etc.[103] On the other hand due to these changes the neglected character of their identity seemed to be crystallising in different parts of India. Though there seems some obvious validity about the sense of marginalisation and the fact the tribal groups here lived in close association with the non tribal people for centuries. But in reference to the historical debate about their indigenous claim to the land and rights the very legitimacy of their claim forms substantive question. Subsequent migration and their absorption into the dominant Hindu society weaken their claim of original settlement. And their lives were never wholly unaffected by the larger currents of Hindu civilisation. [104]

Owing to the immense changes in the tribal life and society, many writers like KS Singh find the internationally accepted definition of the term 'indigenous peoples' as restrictive. It does not to him reflect the specificities of many countries historical situations where tribals from a significant section of the population. There is a need for redefining the term in context of the larger colonial and post colonial historical experiences so as to encompass the people who have shared almost similar experiences.[105] In India, most "tribal" peoples are classed under the administrative category of scheduled tribes: a category neither comprehensive, nor always sociologically valid. Many writers like Andre Beteille warns against the unquestioning use of scheduled tribes as a category in social science.

But despite this there are certain consensus regarding special feature of these people or the adivasis. That they have a simple social system with almost no hierarchy, their economic system is simple and largely self sufficient with almost no or minimal specialisation of functions, the basis of their economic life is their entire habitat or a geographical area with deeply connected religious, cultural and

[103]B Agarwal: 'Interaction Between Tribes and the Non Tribes' In S C Dube (ed) *Tribal Heritage of India*, Vikas Publishing House, New Delhi, 1977.
[104]B K Roy Burman: 'Transformation of Tribes and Analogous social Formations', *Economic and Political Weekly*, 18(27), 1983
[105]K S Singh: 'Reflections on the Current Debate Concerning the Indigenous Peoples', pp 32-33, In Amar Kumar Singh & M C Jabbi (eds.): *Tribals in India*. Har-Anand Publications, New Delhi, 1995.

emotional ties and lastly their life has remained largely exclusive with minimal contact with the outside world.[106]

The new consciousness

But the problem of definition, settlement and the historical intricacies linked up with it can be put aside when the question of adivasi consciousness comes in to the forefront of the debate. The very word 'adivasi', 'aboriginals' and more particularly 'indigenous' has given them a world wide platform to express their grievances and communicate with others. The notion has given them a sense of identity with which now they relate to each other. A public sphere has been commonly created among them which guarantee them the possibility to assemble, unite, express and publicise their opinions freely. It is in this process that communication is established and the desirability of attaining their distinct identity materialised. This consciousness of kind helps them perceive that disperse entities would not help them forge a singular identity. Rather the use of a singular term can help them articulate their identity and seek empowerment. Many like Amita baviskar in her work has argued that the concept of adivasi has taken on a life of its own. It is now actively used by the different adivasi groups to define themselves as a collectivity and to stake claim to material and symbolic resources.[107]

Though many view the use of the term as a "political construct rather than an empirical reality"[108]. Yet it has undoubtedly invoked a feeling of collective identity even at an international stage. It had offered indigenous people a platform to put forward their argument in a wider forum. The existence of an indigenous peoples' movement contributed immensely to impact on the indigenous people as such at an international level. Both groups and people participating in this movement have focused on the element of commonality. This

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[106]B D Sharma: *Tribal Affairs in India-The Crucial Transition*, Sahyog Pustak Kuteer(Trust), New Delhi, 2002, pp 55

[107]Amita Baviskar: 'Adivasi Encounters with Hindu Nationalism in India' *Economic and Political Weekly*, November, 2005. pp 5105-5113.

[108]Virginius Xaxa,: 'Tribes as Indigenous People of India', *Economic and Political Weekly*, December 18, 1999, pp 3589-3595.

has helped the movement to cohere its relationship with land, territory, aspiration for autonomy and for self determination, historical backwardness and concern over their myriad needs. Some of these concerns have already been taken up in the first chapter. This choice of a need of an over arching self conception to unify the international political movement of the indigenous people has abstracted in the course a range of understanding and discourse from different groups. In ordinary language "indigenous peoples" connotes priority in time, if not immemorial occupancy. It also suggests continuity of group identity over a very long period, even as conditions have been altered by colonialism, influx, migration, or the frequent changes in group structures and ethnic identities. These elements of historical priority and group continuity have acquired significance as "indigenous people" has evolved from ordinary language into a specialised term in transnational mobilisation instruments and impacts on their political consciousness.[109]

This consciousness is further fuelled by the notion of distinctness in culture that the tribal population seeks to uphold. The tribals over ages have maintained a close relationship with nature and this association has been central to their philosophy. Different writers on tribal issues have argued to show the control over resources have been closely related to their identity and the subsequent challenges they face when this is at stake.[110]

The cultural right arguments for mobilising the adivasis was found to be a powerful resource in the 1980s and early 1990s when the adivasis themselves claimed their distinctness and that "their culture was organically linked to particular ecology"[111]. This support for cultural rights also echoes in the works of

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[109]Benedict Kingsbury: "Indigenous Peoples" in International Law: A Constructivist Approach to the Asian Controversy *The American Journal of International Law*, Vol. 92, No. 3. (Jul., 1998), pp. 414-457.
[110]B K Roy Burman: 'Challenges and Responses in Tribal India', pp 101-122 In M S A Rao (ed): *Social Movements in India-Sectarian,Tribals and Women's Movement*. Vol II, Manohar, New Delhi, 1979.
[111]Amita Baviskar: 'Adivasi Encounters with Hindu Nationalism in India' *Economic and Political Weekly*, November, 2005. pp 5105-5113.

many other writers. Upendra Baxi and Oliver Mendelsohn's[112] edited work focuses on communities and people who are culturally and ideologically subordinate. The very process of overcoming the subordination of the communities requires recognition of their distinct rights.

Despite the fragmentation of the tribal societies the sense of identity is one the rise. The upheaval of this form of consciousness provided a wider international platform to the various groups and individuals representing indigenous interest. In Asian context, The Bangladesh Indigenous Peoples Forum had on several occasion demanded to the government for constitutional recognition of the indigenous peoples, right to land, forest and natural resources, the right to mother tongue education at the primary level, ensuring security to women, special measures for economic development, reservation of membership in government council and others among their various demands. Similarly in Nepal, The Nepal Federation of Indigenous Nationalities (NEFIN) is the umbrella organisation aims at achieving social equality and justice for the indigenous people along with preservation of distinct identities and promotion of an all inclusive democracy.[113]

It is widely believed that the Declaration on the Rights of the Indigenous Peoples is a landmark that would ensure considerable rights and progress to the indigenous people all around the world. There is a hopeful sign of the willingness of these people to stand for their rights. But given the subordinated and the marginalised existence of the indigenous people, how far it could really succeed in representing them. The role of the state stands to be very crucial here. It is necessary to trace briefly the role of the state.

HISTORICAL GROWTH OF THE ATTITUDE TOWARDS TRIBALS

The advent of the British power in the Indian subcontinent has brought about new changes in the life of the people. The new rule was basically occupied with the idea of consolidation and expansion of their power. Based on their early

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[112]Oliver Mendelsohn & Upendra Baxi (eds.): *The Rights of the Subordinated People*, Oxford University Press, New Delhi, 1994.
[113] IWGIA- The Indigenous World-2006

experiences in America, Africa, Australia and other societies they took it for granted that the people who inhabited the mountains, the forest and other peripheral areas were outside the Hindu fold and labeled them as 'tribes'. Totally disregarding the local tradition and the rights of the local people, the British established the right of the state over forest and land. They imposed taxes and brought in a uniform administrative system, together with new communication and networking facilities.[114] They opened up new hinterland for exploration of resources to suffice British industries and economic pursuit. Over a period this took up proposition of confrontation between tribes and other interest groups. This encroachment into the tribal areas was perceived as a threat by the community to their existence. But towards the end of the nineteenth century earlier repressive measures were followed by a series of protective, administrative and legislative measures for the group called tribe. The British intent was to keep them separated from the other population and not interfere in their affair. Although they kept some control over them by way of administrative machinery and by strengthening the feudal crust.[115] The government in this pre independence era also created some 'excluded' and 'partially excluded' areas and gave them separate political representation.

Tracing the advent of the question of indigenous people the chapter makes an attempt to trace the period before independence, in the Constituent Assembly and subsequent developments. Even in the mainstream nationalist imagination of the colonial times the tribals received no great attention. What was attempted was to bring them in the broader framework of Hindu culture. They were never acknowledged of their separate identity neither their distinct need were taken note of. Lack of any strong leadership again kept their engagement with the movement very low. The Indian approaches to the tribal have been always a mixed one. To begin with the attitude of the nationalist movement towards the tribals is ambiguous. The freedom fighters coined the terms such as Raniparaj, Girijan,

[114] P K Misra: 'Some Thoughts on Elwin and Tribe-Non-tribe Relationship in Indian Civilisation', In T B Subba & Sujit Som (ed) *Between Ethnography and Fiction: Verrier Elwin and the Tribal Question in India*, Orient Longman, New Delhi 2004,pp 58.
[115] P K Misra: 'Some Thoughts on Elwin and Tribe-Non-tribe Relationship in Indian Civilisation', In T B Subba & Sujit Som (ed) *Between Ethnography and Fiction: Verrier Elwin and the Tribal Question in India*, Orient Longman, New Delhi 2004, pp 58.

Vanyajati and Kalipraja to identify them. These terms conveyed the idea of the wild yet noble denizen of the forest. The nationalist elite by and large failed to respond to the tribal resistance to the colonial rule. Only towards the later part of the 20th century that some note was taken of the anticolonial nature of the tribal upsurges. Even prominent nationalist leaders like Gandhi didn't claim much attention towards them until 1940s. His keen interest though was the welfare and upliftment of the Harijans or the untouchables and even persuaded leaders like Thakkar Bapa and others not to overlook the untouchables. Also significantly a large part of the programme during this phase was basically to mobilise the tribals to change their lifestyle through the process of purification (shuddhi) to reclaim them into the original Hindu fold.[116]

But with the emergence of a modern India some heed began to be paid to the pitiable existence of these people. The new founded dream of a liberal society to be established on the ideals of equality, justice and fairness could not resist keeping them off for any longer.

The Cabinet Mission Plan and subsequently the Constituent Assembly made specific references to safeguard the interest of the tribals. As such there has been an increasing engagement with the issue of tribal identity, culture, rights and a lot of questions integrally linked with their existence. Though their separate existence has been acknowledged since the colonial rule, the formulation of a democratic Constitution for a free nation could not but needed to incorporate some of their aspirations in the debate. The Constitution has been a defining edifice of our existence as a free nation and even after several decades of its formulation we still take recourse to it to solve our emerging problems. And as such the Constituent Assembly Debates which formed the very basis of this foundation is still relevant to us to see how far they were successful in addressing the tribal question and analyse them in present context.

As noted the general perspective towards the tribals is that they are either to be conquered or converted to the belief of the dominant, more advanced society. But

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[116]L P Vidyarthi & B K Rai: *The Tribal Culture in India*, Concept Publishing Company, New Delhi, 1976. pp 412-418.

owing to a series of tribal revolts, political association and movements a kind of consciousness seemed to take root. By this different groups came to develop a kind of distinct association with certain territories, with land becoming their central concern. They considered themselves to have prior and preferential if not exclusive rights over the territory where they live. This occupied such importance because of the huge scale migration of the non tribal people to their area which posed a threat to their existence. The neglected character of their identity seemed to be crystallising in different parts of India. This even sought space in the discussion of their future rights and due in the debate of the Constituent Assembly.

In the Assembly deliberations, the minority question was regarded as encompassing the claims of three kinds of communities: religious minority, backward castes and tribals.[117] Representative of each group sought to establish their claim as more eligible for safeguards. Tribal issues received prominence in the draft constitution, largely through the efforts of Jaipal Singh, the most prominent among the tribal leaders of that time. The pre-independence Constituent Assembly debates reveal the contrasting positions taken on the issue of the tribals; on the one hand, there were those who wanted to let the tribal people develop on their own, and on the other, there were those who wanted to assimilate the tribals in the national mainstream. However the claims for special treatment to the tribals evoked arguments about the historical injustice and reparation being done to them. While the backward castes implicitly appealed for power share via reserved seats in legislatures and public services, the tribal representatives emphasised on the importance of land in tribal life. Centrality was accorded only to the element of territoriality in their discourse.[118]

Also during the framing of the Constitution for the free nation the tribal question could no longer be kept neglected. Some engagement with this issue has resulted in certain tendencies being worked out. While there were diverse opinion on this

[117] Rachana Bajpai: 'Constituent Assembly Debates and Minority Rights', *Economic and Political Weekly*, May 27, 2000, pp 1837-1845.
[118] Rachana Bajpai: Constituent Assembly Debates and Minority Rights, *Economic and Political Weekly*, May 27, 2000, pp 1837 – 1845.

leaders like Nehru, sought the tribals to develop along the lines of their own genius where he felt there should be no imposition in the name of development. Nehru laid down five fundamental principles for tribal policy as following; these people should develop along their own genius and we should avoid imposing anything on them and encourage their traditional art and culture. Secondly that the tribal rights on land and forest shall be respected and that we should try to train and build up a team of their own people to do work of mainstream and development. That we should not over administer these areas or overwhelm with a multiplicity of schemes and lastly the results are to be judged not by the amount of money spent by quality that is evolved.[119] But with pursuit of rapid economic development these ideals soon became a past rhetoric.

Three such strong trends were basically witnessed while dealing with this issue. L P Vidyarthi, B K Rai[120] and many others working on the colonial and post colonial tribal policies has worked out these commonly found trends. The first was that the policy of segregation followed by the British ruler in the colonial period gave an impetus to autonomy assertion and to go ahead with a separatist movement for instance the demand for an independent Naga state and an autonomous Jharkhand. The second was the assimilation of the tribal people as a continuous process of the cultural contact with the rest of the neighboring population. The tribal people over time have come in contact with different Hindu and other communities leading to assimilation in different parts. This approach mainly sees any attempt to isolate them from the mainstream as basically meaningless. Like the tribes of north-west and central Himalayan regions, the Gujjars, Pangewals, Lahaulis, Mundas, Oraons, Bhils and many others have assimilated themselves into the framework of the Hindu way of life. The third talks of an integrational approach which seeks their integration with the broader view. This is often seen in context of national unity and opinions are that there is no one tribal culture but an admixture of so many tribal customs and

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[119]Sharad Kulkarni: Policy for Tribal Communities: Yesterday Today and Tomorrow, pp 2 in Ambrose Pinto (ed): *State, Development and Alternatives*, Indian Social Institute, New Delhi, 1999.
[120]L P Vidyarthi & B K Rai: *The Tribal Culture in India*, New Delhi, Concept Publishing Company, New Delhi, 1976. pp 412-418.

tradition and as such no consensual unity and therefore the most desirable course were to work for their integration and for greater benefit.

In the first few decades after independence deliberation in different circles of academicians, administrators, social workers and politicians on the tribal issue has been towards integration with the larger society[121]. Xaxa' work finds the provisions in regard to reservation in education, employment, political representation, the administration of tribal areas as well as the provisions in the Directive Principles as aiming towards bringing the tribes closer to the Indian society. The overall thrust in this regard is mainly geared towards integration rather than assimilation.

But we equally find the post colonial period in India was constantly faced with the problem of national integration and national sentiments, and accorded it the predominant importance. This development of nationalist feelings was a formidable challenge for the indigenous peoples. This created a paradoxical situation where they had to face the "threat of losing their distinct identity to a dominant national ethos and on the other hand had to absorb the pressure exerted on them to change and conform to national social codes and conventions, participate in national economy".[122]

Keeping in tune with the colonial legacy and the exigencies of time for national integration various approaches have been adopted to deal with the tribal issue over years. Here is a brief discussion of two such approaches[123] to give a picture of the attitude of the state towards handling such a crucial issue. However one does not notices much difference between both the approaches as they are very much interdependent.

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[121]Virginius Xaxa: 'Politics of Language, Religion and Identity: Tribes in India' *Economic and Political Weekly*, March 2005, pp 1363-1370.

[122] Ken S. Coates: *A Global History of Struggle and Survival*, United Kingdom: Palgrave, 2004, pp 201.

[123] It is important here to mention that L P Vidyarthi and B K Rai has given five approaches to tribal welfare of which work has taken up two to analyse the present political context.

The *political approach* to the solving of the tribal problem may be well understood in context of both pre independence and post independence periods. As already noted the colonial rule created 'excluded' and 'partly excluded' areas to deal separately with them. The government usually followed a policy of segregation during this time. The post colonial era saw the emergence of a large number of Constitutional safeguards for this section of people. The Constitutional provisions are discussed in the next section of this chapter. Closely watched development and welfare programmes of the government are initiated with the aim to bring them into the mainstream of Indian society. The centralised polity of the state and its institutional structure like the Panchayat, bureaucracy etc have been penetrated into the tribal areas. The intrusion of government into the lives of the aboriginal by was of structure and institution can be well analysed with the institutionalisation of the Panchayati Raj and legal land registration system. The modern state only recognises individual ownership of land and its registration which is in complete opposition to tribal culture and tradition. And the institution of local self government is mainly geared towards democratic participation and even precipitation of national political culture into the tribal life.

The *administrative approach* is closely followed by the political approach. The Government has infact constituted vast administrative machinery for tribal welfare. The President of India has been given the primary responsibilities to safeguard these communities. And at the state level, the Governor has been made responsible and on his behalf the Chief Minister and the Welfare Minister are to implement various schemes in the tribal areas. There is also the provision of Advisory Council, Tribal Research Institute and other state apparatus to protect the tribal interest.[124] These provisions seems to have a grand vision to protect the rights of these marginalised section of the society but the real intent is always debatable.

The highly centralised administrative and political structure instituted in the country is a witness to the overarching nature of the state. The modern state is

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[124] L P Vidyarthi, & B K Rai: *The Tribal Culture in India*, Concept Publishing Company, New Delhi, 1976. pp 423.

often intended to encroach upon all aspects of tribal life. The new post colonial state is no doubt federal but vested the large residual powers with the Union. It exercises overriding power for the protection and advancement of the rights of every citizen. Also the responsibility both for the welfare of the tribals and the administration of the Scheduled Areas under the Constitution rests with the Union.

Despite all the policy initiatives the state has continued to neglect its vital role concerning the protection and welfare of the tribal people. Planned economic development with industrial sector at the lead was adopted as a national policy. This brought about sea changes in the remote tribal areas and forest tracts. The emerging economic matrix aiming at national development was hugely dependent on raw materials. The tribal areas with huge deposits of unexplored minerals, forests and other natural resources acquired central importance.[125] The result was the destruction of the harmonious existence of man and nature profoundly found in these interior areas.

The state over the time assumed a leading role in the national development itself becoming the interested party or protecting the interest of individual in new economic pursuit. This has left the tribal population on the margin of the economic system. On the other hand the Constitutional goals of their welfare are placed as the responsibility of the executive, administrative and bureaucratic machinery that is increasingly found in nexus with profit seeking individuals. Thus the tribal people in the present context are found to need protection not only against outsiders but also the state that has been descending on their areas in the name of national development.[126] The planned economic development is often projected as an inevitable process. But in the process the land and resources of the indigenous people have not only been exploited but they have been forced to eviction too. And often there is a neglect of concern on the part of the state to this loss faced by the marginalised section.

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[125]Christoph V F Haimendorf: *Tribes of India- The Struggle for Survival*, Oxford University Press, New Delhi, 1989. pp 320.

[126] B D Sharma: *Tribal Affairs in India-The Crucial Transition*, Sahyog Pustak Kuteer(Trust), New Delhi, 2002,pp 74.

The formation of a modern nation state that came into being in the 1950s with a new construct of national unity, which undoubtedly recognised ethnic diversities but could not fully accept them.[127] While the pressing need of the time was for development, the claims of safeguards to the tribals and minority as such were regarded as distractions. These safeguards that were established in the various debates were admitted as temporary, transitional measures, until they were brought up to the level of the rest. During this period the liberal notions were at work where the nationalist opinion was also found to be supportive of ideal citizenship based on equal rights. So the question of tribal identity on one hand and the national unity on the other remained a ground of contestation.

CONSTITUTIONAL GUARANTEES

Within the territorial regime the status and the policies affecting the indigenous people are set in the constitutional provisions. It provides for measures to promote this special group of people. Domestic treatment towards the indigenous people is accorded by two ways. First, the state gives them special legal status which aims to protect them. Second, even while recognising the equal status of these people account is also taken of their special needs. This is the general approach of every state. The tracing of the historical growth in the concern of tribal rights it is important to look at the post colonial guarantees available for the tribals. These have reflected a continuation of colonial legacy by way of administrative and bureaucratic machinery and making a way for many old rules to continue.

The Constitution of India provides specific measures for the protection and promotion of the social and economic interests of the Scheduled Tribes (STs). These include: reservation of seats in the legislature, educational institutions, services and posts, a tribal development program and provisions for autonomy. The Constitution of India ensures the political representation of Scheduled Tribes in the Lower House (Lok Sabha) of the Parliament and in the State Legislative

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[127]Walter Fernandes & Arundhuti Roy Chaudhury: 'Search for a Tribal Identity: The Dominant and the Subaltern', pp 22 In Walter Fernandes (ed), *The Indigenous Question: Search For an Identity*, Indian Social Institute, New Delhi, 1993.

Assemblies through reserved seats. Also Article 15(4) of the Indian Constitution provides for the reservation of seats for Scheduled Tribes in educational institutions. In order to improve the social situation of the tribal people, the government has, in addition to quotas in education, also designed a reservation policy for employment in government services. Depending on the respective positions, posts reserved for members of Scheduled Tribes.[128]

Further, the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 has also been provided. This act is aimed primarily at promoting village-level democracy through the Panchayat Raj institutions. It includes changes aimed at adapting the generally established system for use in the Scheduled Areas, which have a different socio-economic and politico-administrative setting.

The National Commission for Scheduled Tribes instituted under Article 338(A) of the Constitution provides for the appointment of a Special Officer for Scheduled Tribes by the President, who is commissioned to investigate and report to the President on all matters relating to the constitutional safeguards to Scheduled Tribes. It can consider inquire into specific complaints with respect to deprivation of rights, advice the planning process of their socio- economic development and other functions as the President may specify. Scheduled tribe (ST) is an administrative specific terminology indicating communities notified by the President of India under Article 342 of the Constitution of India reflecting the level of socio-economic status.

Promotion of the economic and educational interests of the Scheduled Tribes and their protection from social injustice and exploitation are enshrined as a national goal in Article 46 of the Constitution. Realising that earlier programs under the government's Five-Year Plans had failed to address the development needs, marginalisation and exploitation of tribal communities, the Tribal Sub-Plan (TSP)

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[128]P C Mehta work on Tribal Rights has given a detail description of the constitutional provision and safeguards available to the tribals in India. P C Mehta: *Tribal Rights*, Shiva Publishers & Distributors, Udaipur, 1996.

was devised as a new strategy in the Fifth Five-Year Plan in 1973. It is still the approach that guides development programs in tribal areas. Its main objectives are to eliminate exploitation, to speed up social and economic development, and to promote and improve the organisational capacity of tribal people. Wide-ranging sector programs in tribal areas have been implemented since the launch of the TSP by the different agencies, with both state and central government funds. The focus has thus far clearly been on the development of physical infrastructure and on establishing and improving service institutions. And on a national level, a separate ministry, the Ministry of Tribal Affairs, has been created.

Geographical areas designated as Fifth and Sixth Scheduled areas by independent India are identical to those already delineated by the British as Scheduled Areas. Article 244(1) provides for a Fifth Schedule that can be applied to any state other than those few of North-East India. This Schedule has been termed a "Constitution within the Constitution". Under this Schedule, the governors of the states in question have been given extensive powers, and may prevent or amend any law enacted in the parliament or the state assembly that could harm the tribal interests. The Sixth Schedule is supposed to be informed by the ethos of self-management. The Schedule currently operates in the tribal-dominated areas of North-East India: Karbi Anglong and North Cachar districts in Assam; Khasi Hills, Jaintia Hills and Garo Hills districts in Meghalaya; Mizoram; and Tripura tribal areas in Tripura. Each Scheduled Tribe area covered by the Sixth Schedule has an Autonomous District Council with legislative, executive and judicial powers.[129]

Customary rights have been recognised by the British colonialist whenever there was fierce resistance by the tribal people concerned. In North east India , the Khasi, Garo, Mizo and Kuki peoples were brought under the Sixth Schedule of the Constitution, which allowed them to be governed under their customary laws and to enjoy their customary rights through their self governing, autonomous

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[129]Dr B D Sharma: *Tribal Affairs in India-The Crucial Transition*, Sahyog Pustak Kuteer(Trust), New Delhi, 2002, pp 55-58

District Councils. But this does not mean that state laws and interventions are completely inapplicable there. Some times the state uses its overriding authority. Under the Fifth Schedule, as in case of the Scheduled Areas with the tribal majority in population composition, the Governor makes regulations and implements State laws to the extent that these are not disruptive and destructive of the tribal culture and society.[130]

It is not possible within the scope of the present work to define and analyse each and every extent of the Constitutional provision in details. There has been many significant works like that of Dr B D Sharma dealing in depth with the provisions and detail analyses of the Fifth and the Sixth Schedule. The effort here is to see how the state apparatus with its various guarantees and policies have failed to protect the livelihood and culture of tribals. Despite the attempt on part of the state, especially in the post colonial times, there is a noticeable failure in bridging the gap between theory and practice.

The Constitution through its various guarantees endeavours both to protect their cultural identity and provide mechanism for their eventual assimilation. Countless laws exist both guaranteed within the given Constitutional framework and even outside for protecting and discriminating in their favour. Like their representation in the public services, special programmes for economic development, provisions for rural credit, education, provision prohibiting the sale of tribal land to outsiders etc. Despite the plethora of laws for their protection few are effectively implemented[131] and they still remain at the lowest tier of the society. Julian Burger's work has at a length dealt with the conditions of the tribal people of Asia with in depth description of each region. It is here that the writer notes that the most menacing for the tribal people in India are the national and state policies regarding the forests. It discusses how the various policies of the government have adversely impacted the lives of the tribal population. Like the 1952 New Forest and its greater emphasis on the national interest, then the

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[130]Dr B D Sharma: *Tribal Affairs in India-The Crucial Transition*, Sahyog Pustak Kuteer(Trust), New Delhi, 2002, pp 55-58

[131]Julian Burger: Reports from the Frontier-The state of the World's Indigenous Peoples, Zed Book Ltd, London, 1987 pp 125.

programme for commercial forestry which resulted in the landlessness of many forest dwellers, the wide destruction of forest to supply for industrial raw materials. Burger further dwells on the draconian measures initiated by the state again through the Forest Policy of 1980 which despite providing punitive action against the adivasis who collects food or fuel for survival failed to curtail the large scale commercial exploitation of forests. Here in India the writer sadly witnesses the failure of the state to implement laws and protect the tribals. Government fund allocated for tribal development is far less than the value of resource attracted.

The irony of the present situation is that tribals remain marginalised in spite of the Constitution providing for a comprehensive framework for their socio economic development Even after more than half a century, the State, the executive, the political system and the judiciary have failed to ensure the fulfillment of the Constitutional obligations towards the adivasis. Rather it is seen that there are indications that the executive and the politico-administrative system are subverting the Constitutional guarantees and the fail to reach the real needy. Xaxa's view points towards this gap between what is stipulate and promised and what is actually done. The gap turns to be more pronounced where the beneficiaries happens to be small, and dominated like the tribals.[132]

The adivasis are adopting political means beyond parliamentary structures to uphold the Constitution itself. The past few decades have witnessed a steep rise in the number of voluntary groups and organisations. They are today actively getting engaged in evolving policy formulations. They have started gaining political significance too owing to the international awareness about the gross violation of the rights of the indigenous people by the exploitative state activities.

The state over the time due to the pressure on the part of the people, civil rights organisation, tribal rights associations and tribals themselves are forced to formulate new policy to accommodate the rising demands and the exigencies of

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[132]Virginius Xaxa: 'Politics of Language, Religion and Identity: Tribes in India' *Economic and Political Weekly*, March 2005, pp 1363-1370.

time. The Forest Right Act resulted in the revisiting and the reformulating of the preceding forest policies.

FOREST RIGHT ACT [133]

Most forest dependent tribal communities in India are either marginalised or shifting cultivators, food gatherers or hunters. They have since ages been dependent on the forest for their sustenance. But unfortunately the post colonial state has largely continued the exploitation of these communities and deprivation. Owing to this there arose a need for an inclusive forest policy. Although India has a long history of forest policy, the livelihoods of forest dwellers have not been recognised in policy. Predominantly tribal land has been declared as state forest.

Forest Policy and the Tribals:

In India before the British came in power the forest dwellers and other population enjoyed freedom to use forest or exploit forest resources. There was, however, only the customary regulation of people's right over forest. Even during that period there were certain traditional restrictions in the cutting of certain varieties of trees or in certain forests. Besides, as the population was small and vast forest areas were available, it did not really create any problem. With the advent of the British realising the commercial value of the forests a number of restrictions were imposed on the use of forest resources by the indigenous population. It was after 1855, that a number of restrictions were imposed on the rights of different communities over the use of forests. Subsequently in 1878, 1894, 1927 and 1935 further curtailments and regulations were passed gradually bringing the forest resources fully under their control. [134] Further the Forest Acts passed during the colonial era is a continuation of this attempt. As early as 1855 certain restrictions were issued on the rights of the forest dwellers showing it as a necessity for public interest. Again the Forest Act passed in 1865, empowered the government

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[133]Ministry of Tribal Affairs (GoI): *The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005,* available at: www.tribal.nic.in/billTA05.pdf

[134]Buddhadeb Chaudhuri: 'Forest and Tribes', pp 234-235, In Georg Pfeffer & Deepak Kr Behera (eds):*Contemporary Societies: Tribal Studies, Vol I-Stucture and Process,* Concept Publishing Company, New Delhi, 1997.

to declare any land covered with trees as government forests. It even empowered administration for the imposing punishment for any violation. The Forest Act of 1878, classified forests as reserved, protected and village forests, also making way for provision to restrict certain activities in forest of different types. In the Forest Policy of 1894 the government declared public interest for their administrative control over the forest and that the forests with valuable timber should be managed on commercial lines as a source of revenue to the states. The Act of 1927 issued duty on timber and in that of 1935, the subject of forest was brought under the provincial list.[135] It can be well notice that the British policies mainly rested on the commercial exploitation of the forest resources. This led them to impose various restrictions on the use of forest resources by the indigenous communities who were further exploited in the name of national development.

Ironically the post colonial period brought no relief to the tribal communities as to their right over the forest resources. The National Forest Policy of 1952, declared the use of forest resources for national development and public needs. New policies further down the line failed to account for the needs of the Adivasis for the forest products for their sustenance. Forest which was a subject in the state list was transferred to the concurrent list in the amendment of 1976 further curtailed the power of the states to make some effort for their protection.

The different policies of the government like the Forest Bill of 1980 had infact adversely impacted the lives of the indigenous people. The tribal people have been alienated from the traditional rights they enjoyed and shared with the forests. The reservation of forests has been a historical process whereby the indigenous communities are pushed deeper into forest and tribal land is appropriated by the non tribals. The state too has appropriated large tracts of land without recognising the need of the tribals.

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[135]Buddhadeb Chaudhuri: 'Forest and Tribes', pp 234-235, In Georg Pfeffer & Deepak Kr Behera (eds): Contemporary Societies: Tribal Studies, Vol I-Stucture and Process, Concept Publishing Company, New Delhi, 1997.

Forest Right Act 2006:

The recognition of the right to livelihood of the tribals and the right to forest land and produces was an issue of livelihood debate in the present day especially in the background of the introduction of The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 in the Parliament. In keeping with the aspirations of the people the government passed the Bill seeking to grant them some relief and to undo the historical injustice done to the Forest Dwelling Scheduled Tribes (FDST). The Act for the first time recognises that the tribals have right over forests. The forest right include; the right to hold and live in the forest land, community rights over forest, right of ownership access to use and dispose of minor forest produces, right to manage any community forest resource and any other traditional rights enjoyed by the forest dwellers.

Main Features:

It would be useful to briefly examine the main features of the Act to reveal the discrepancy in it, not only in terms of its promise of empowering the communities by granting land rights to them, but also in terms of its accommodation of environmental concerns.

The Act safeguards the customary rights and interest of forest land to two communities, the Forest Dwelling Scheduled Tribes (FDST) and the Other Traditional Forest Dwellers. The former refers to those communities of Scheduled Tribes who primarily resides in and who depends on forest or forest land for their livelihood and the latter are those members or communities who has for at least three generations prior to 13th December, 2005, primarily resided in or depended on forest for their livelihood.

The object of the Act is to ensure livelihood and food security to the forest dwellers, maintain ecological balance and legally confer the forest rights to these marginalised people. The Act deals with the rights and responsibilities of FDSTs as well as spells out the administrative machinery through which the same would

be routed. It vests land rights, 2.5 hectares per FDST nuclear family, as the land would be registered jointly in the name of the male member and his spouse. This right however is heritable but not alienable and transferable. The land so procured cannot be used for commercial purposes and only for what the Act describes as "livelihood" purposes. Other rights include the right to access minor forest produce, biodiversity, community rights to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity; rights of conversion of 'pattas' or leases issued by any local authority or any state government on forest lands to titles and, to consolidate this right, the right to convert forest villages into revenue villages.[136]

As noted earlier the Act seeks to undo the historical injustice against the adivasis by providing some legal remedies and recognition of their rights to ancestral forest and land resources. The Act undoubtedly is a positive step towards social justice but has widely criticised as well. The Act at the very first instance has been lately initiated. These people widely dependent on forest for their sustenance should have been accorded legal status ever since forests came under the jurisdiction of the state.

The Act is silent on the issue of proving occupancy of forestland before 1980, the cut-off date for vesting land and recognising rights. Without contesting the cut-off date, which by its very nature has to be arbitrary leaves unwelcome space for manipulation by vested interests. But the Act has failed to evolve a standard practice mandatory for all states. Mechanisms of land transfer should ideally target collectivities rather than individuals as beneficiaries, given especially the communal nature of customary landholding in many of the forest areas. Another shortcoming of the Act is its insistence on recognising the rights of people scheduled in a particular area, which is typically a state level list. Moreover, what is rather strange, it ignores the fact that large populations have been forced to migrate over the past few centuries: drafted as slave labour in the colony, and persistently displaced by mining, dams, and land alienation in the post-colonial

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[136]Ritambhara Hebbar: 'Forest Bill 2005 and Tribal Areas, Case of Jharkhand', *Economic and Political Weekly*, December 2, 2006.pp 4952-4955.

state. State governments have been arbitrary in handling distribution of lands and have persistently refused to resettle people in social groupings of their own choice.[137] Various writers like Mihir Shah have also noted similar concerns about the interest of the adivasis being trampled over by development paradigm. He even notes the weakness of the Act in setting the 1980 as the cut- off date which will lead to many confrontations in forest areas.[138]

The FDSTs has been held responsible for the maintenance of the forests. However they have not been granted any authority in terms of penalising or pressing charges against violations. Their rights are subject to the approval of the Gram Sabha. The Gram Sabha as the lowest tier of the Panchayat Raj Act (Extension to Scheduled Areas) Act 1996 is the official body that has been vested with the authority to decide on the extent of forest rights that may be given to the forest dwelling tribes. In turn it would be answerable to the subdivisional committee. A district-level committee is also provisioned to hear appeals of and scrutinise the record of forest rights prepared by the subdivisional committee in cases of disputes and administrative confusion. A state level monitoring committee would also be constituted for periodic examination of the reports and records of the district level committee. The committees consists officials from the department of revenue, forests, tribal welfare and reputed members of civil society. While PESA vests certain rights in the decentralised system, this power cannot overrule state imperatives. Contrarily, the system can be pressed into approving state programmes and plans. This is of significance especially because the right to decide and annul the land rights of the beneficiaries is by the recognised decentralised body under PESA. Moreover, in giving the right of converting forest villages to revenue villages, it is circuitously deregulating forests and pushing for availability of land for revenue purposes, easily procurable for supposed development activities by state and private interests.[139]

[137]Arnab Sen, Esther Lalhrietpui: 'Scheduled Tribes (Recognition of Forest Rights) Bill, A View from Anthropology and Call for Dialogue', *Economic and Political Weekly* September 30, 2006, pp 4205-4210.
[138]Mihir Shah: 'First You Push Them In, Then You Throw Them Out', *Economic and Political Weekly*, November 19, 2005. pp 4895- 4899.
[139] Ritambhara Hebbar: 'Forest Bill 2005 and Tribal Areas, Case of Jharkhand', *Economic and Political Weekly* ,December 2, 2006, pp 4952-4955.

These features built into the Act has forces to ponder about the question of forest conservation versus tribal rights debate and its real purpose.

The environmental and wildlife protectionist points out that it would irreparable damages to the environment and wildlife. This reasoning may seem to put both tribals and wildlife on the same footing. But it is also important to note that recognition of adivasi rights and the issues of conservation are both important yet separate goals. The pursuit of one certainly has important implications for the other. But, it is unrealistic to assume that both goals can be fully achieved using the same legal means. It also broadly proposes to recognise two kinds of rights, the first of which is rights of adivasis over land where they currently reside. This is in congruence with the Wildlife Act, which requires that the rights of forest dwellers be recognised and settled adequately in the process of rendering national parks inviolate which has not been done. Apart from land rights, the Act also proposes to vest in the adivasis the right to resources in the forest. This is a provision that poses a very serious threat particularly in the context of wildlife reserves. Monitoring the exercise of rights over land is a relatively straightforward matter, whereas the exercise of resource use rights is far harder to monitor.[140]

The Act seeks to restore land rights to forest dwellers and scheduled tribes or the FDST and, in so doing, undo the historical wrong committed against FDSTs during colonial rule and thereafter. It even admits of the earlier disregard of the close association tribes have had with the natural environment, a colonial legacy perpetuated in independent India. It also concedes that if the hope for protection of forests is to be fulfilled then the rich tribal tradition based on the ethic of conservation have to be restored. The granting of land rights to FDSTs is supposedly a step towards that end. This has raised doubts about its real intention. There have been a number of reservations that have been raised as to its efficacy and intent labelling it as a vote catching, land-grabbing intent.

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[140]M D Madhusudan: 'Of Rights and Wrongs-Wildlife Conservation and the Tribal Bill, Economic and Political Weekly, Nov 19, 2005, pp 4893-4895.

The analysis of the Act reveals the new techniques of administration developed by the state to impact and influence issues concerning its interests. While the market limits the role of the state in economic and political matters, the state also creates markets where they did not exist. It has taken on an entrepreneurial role. The Act demonstrates the same wherein the state seeks to move away from its conventional welfare role towards its citizens to providing a set of services through its agencies enabling governance through decentralised institutions apparently managed by the people. The state still retaining its "regulatory and punitive role within the system by securing control over the local and ostensibly autonomous mechanisms and institutions instituted for governance".[141]The Act has yet not been implemented in many states and the tribals are deprived of the benefit it could possibly accrue.

STATE/GOVERNMENT ASPIRATIONS FOR THE INDIGENOUS PEOPLE

Most of the states all over the world have adopted a paternalistic view towards the indigenous people and culturally destructive initiative. They are often branded as backward people following primitive practices and so the urgent need is to bring them into the mainstream. One consistent feature of various domestic arrangements is that the central government attempts to retain ultimate authority over indigenous people.[142] It is often seen that the government usually extend their military, economic and political dominance over the population thereby weakening them. And the whole community suffers the negative consequences of external control of their resources. Already formed national identities are remarkably obstinate and often resistant to being reshaped according to the needs and aspirations of the different groups. The minorities being positioned in the lowest rung is further unable to press their case. The state is providing an overarching policy despite knowing the inherent differences of need. It is

[141]Ritambhara Hebbar: 'Forest Bill 2005 and Tribal Areas, Case of Jharkhand' , *Economic and Political Weekly*,December 2, 2006
[142]Hurst Hannum: *Autonomy, Sovereignty and Self Determination: The Accommodation of Conflicting Rights,* Philadelphia, University of Pennsylvania Press, 1990. pp 81.

essential to have a shared and collective policy to do away with the various forces disrupting the national unity. But this in no way is to be undertaken at the cost of the minority culture.

Governments all over the world devoted considerable effort and money to the challenge of assimilating the indigenous peoples to the national norms, but enjoyed many fewer success than they anticipated. Through the coercive power of the state, the indigenous people were forced to move out of their traditional land in many cases. In many other regions they undermined indigenous language and traditions. But to the dismay of many numerous national governments they did not surrender their indigenity.[143]

But over the years there has been a tremendous positive change in the attitude towards indigenous people. Impacts of the current international legal developments, practices within states, not only governmental and judicial policy but the efforts by civil society organisations is playing a central role in shaping some optimistic attitude for future development. This has taken the turn of determining utility. Recent practice of governments and claimant groups in different countries of the world concerning recognition and identities of distinct groups shows in some cases, rapid evolution.[144]

The struggle of the indigenous people has now gained some recognition all over the world. Many nations like Mexico, New Zealand, Brazil, and Canada are all actively concerned about acknowledging the rights of the indigenous peoples. They have agreed to the rightful place of the indigenous culture and tradition in society. Also have agreed to the aboriginal rights and their need for special rights and recognition. No government denies at least in theory that universal human rights apply equally to indigenous peoples. Besides, it has become clear that special problems of indigenous people and their own sense of identity require the

[143]Ken S. Coates: *A Global History of Struggle and Survival*, United Kingdom: Palgrave, 2004 pp 201
[144]Benedict Kingsbury: 'Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy', *The American Journal of International Law*, Vol. 92, No. 3. (Jul., 1998), pp. 414-457.

recognition of additional human rights and the detailing and analysis of already existing ones.

Indian scenario:

Even while the framing of the Draft Declaration the Government of India has taken a formal position in the United Nations stating that it is difficult to say who are the indigenous and who are not; but the representatives have also described India's concern for the welfare of the tribal population. This however does not seems to be an adequate response. The Declaration has significantly affected the political environment through out the world and the passive response on the part of the government has showed a lack of understanding of the emerging global reality.[145]

However, the issue becomes quite complex in the Asian context for recognition and identification of these people. Like India, Bangladesh and Myanmar have made similar arguments, stressing that indigenous peoples are descendants of the original inhabitants who have suffered from conquest or invasion from outside. Beside this building on the notion of indigenous peoples as the peoples who came first (or at least earlier than the others who are now dominant), representatives of the government of India have made the practical argument that the concept cannot apply there because, after centuries of migration, absorption and differentiation, it is impossible to say who came first. The representatives hold the view that India for long has been a 'melting pot'.[146] Similar position is echoed in China's argument that all of the nationalities in China have lived there for ages. Thus, in 1991 the representative of India in the Working Group on Indigenous Populations commented that most of the tribes in India share ethnic, racial and linguistic characteristics with other people in the country, and that three to four hundred million people there are distinct in some way from other

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[145]B K Roy Burman: 'Tribal Development in World System Perspective', pp 46 In Amar Kumar Singh & M C Jabbi (eds): *Tribals in India.* Har-Anand Publications, New Delhi, 1995.

[146]Douglas Sanders: 'Indigenous Peoples on the International Stage', pp 127 in Walter Fernandes(ed): *The Indigenous Question: Search for an Identity,* Indian Social Institute, New Delhi 1993.

categories of people in India." Nonetheless, it has proved possible as a practical matter to enumerate detailed lists of Scheduled Tribes under the Fifth and Sixth Schedules to the Indian Constitution; these constitutional categories have provided a practical starting point for identification of groups to whom policies of international agencies relating to "indigenous peoples" have been applied in India."[147]

Kingsbury in his work further noted that the Indian government pressed its point by stating that some groups in need of social protection would be excluded and many others not in need might be included. Also that recognition of special rights for been the earliest occupants might spur chauvinist claims by many other groups. This would all make it impossible for the government to control its repercussion and abuse of power.

Indian representatives at many occasion further elaborated how due to intermarriages among communities made it impossible to determine the case of tribal identity. And as such is difficult to find communities that retain their pristine tribal character. Eminent internationally acclaimed writer on this issue Douglas Sanders has found two obvious problems with the statement made by India. There is a paradox when the Indian side state that all tribals have been absorbed and on the other hand refer to the special provisions initiated by the state to aid the tribal population and even noted the existence of tribal majority in the North East India. Also the importance on the racial purity and pristine nature of the tribes creates problems, this when universally applied there would be no indigenous peoples anywhere.[148]

Despite the obvious fallacies on the India's stand on the international forum the states today is under pressure of international agencies, organisations, civil liberty associations and have agreed to respect indigenous culture, language, religion,

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[147]Benedict Kingsbury: 'Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy', *The American Journal of International Law*, Vol. 92, No. 3. (Jul., 1998), pp. 414-457.
[148]Douglas Sanders: 'Indigenous Peoples on the International Stage', pp 128 In Walter Fernades (ed): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delhi, 1993.

land and distinct identity. In agreement to such international arrangement, governments over time have adopted explicit or implicit policies towards these people either through encouraging assimilation or through constitutional measures to penetrate the state structure. Government has taken steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession, the recent Forest Right Act is evidence to it.

But ironically the power sharing equation is asymmetrical. No doubt the Constitution has guaranteed right of extensive nature to the tribals to develop in their possible capacity. However in reality they have failed to reach to the needy section and remain mere 'policy prescriptions'.[149] The constitutional guarantees and the paternalistic nature of the state is a witness to the over emphasised role of the state as the only valid institution within whose purview rights can be guaranteed and even be protected.

Whether under the colonial state or the welfare state after independence, the predatory nature of the state has struck at the roots of the customary rights of the tribal people. Their century old right of ownership was struck down by the new legal system which acknowledges only individual ownership.

In any given historical context it is seen that the state attempts to incorporate the nationalist ethos into the different section of the society. With the projection of welfare and developmental notion it slowly permeates into the territory of the tribal people and through the guarantee of protective discrimination under the Constitution tries to bring them in to the mainstream society and polity. Along with the state, the ruling class and consolidates itself and establishes its alliance with the bureaucracy. Instruments of the state including the legal system bequeathed by the colonial rulers are adjusted and adapted to exploiting and extorting from the population in the periphery of the power structure, resources to serve the interest of the ruling class. For historical reasons in India, a good

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[149]Rajni Kothari: 'Human Rights-A movement in search of a Theory', pp 21, In Smitu Kothari & Harsh Sethi (eds): *Rethinking Human Rights: Challenge for Theory and Action*, New Horizon Press, New York, 1991.

section of the population who are in the periphery of the power structure also live in geographical peripheries of the country. Again these are the zones where the bulk of the physical resources of the country are concentrated. In the name of 'common good' the ruling class appropriates the resources.[150] This has negatively impacted the tribal population and even deprived them of their land and resources leading to their further marginalisation and pauperisation.

The state has encroached upon the rights of these marginalised sections in every way possible. It recognises only certain limited rights which can be enjoyed. Furthermore in the tribal context the universality of the nature of rights too is under scrutiny. Rights based on universal norms of freedom, equality, ownership and opportunity ignores historical specificities and community context that define human roles and undermine the positioning of less privileged groups in society.[151]

The past few decades of development through the construction of dams, factories and mines and exploitation of resources in the tribal areas have made them victims and refugees of developmental process. Added to this is the ill impact of the growing market forces on the already marginalised section. And the association of the state with it and actions undertaken in the name of national interest has lead to the surrender of the polity to the market. Many writers like Fernandes and others have infact gone to state that national development and tribal deprivation have become synonymous with each other.

Government land policy in many states and even in India has been reinforced the sense of indigenous identity within the nation states.[152] The need for individual ownership of land has dismantled the communitarian approach to property ownership prevalent among the indigenous people. This has managed to bring

[150]B K Roy Burman: 'Tribal Population: Interface of Historical Ecology', pp 184 in Miri; Mrinal (ed) : Continuity and Change in Tribal Society, IIAS, Shimla. 1993.
[151]Rajni Kothari: 'Human Rights-A movement in search of a Theory', pp 28, in Smitu Kothari & Harsh Sethi (ed): Rethinking Human Rights: Challenge for Theory and Action, New Horizon Press New York, 1991.
[152]Ken S Coates: A Global History of Struggle and Survival, United Kingdom: Palgrave, 2004, pp 184.

about a centralised land system and integrated control over land and resources. It is essential that the state intervene on behalf of the poor to restrain the market forces from destroying the local subsistence economy which provides food and shelter to them. But instead, the interventions of the state, in the form of development projects have ended up destroying the local subsistence economy without being able o replace it with adequate system of welfare.[153]

CONCLUSION

The modern state based on liberal values often is seen to accommodate differences to fit in to the framework of nationalist ideology which is both dominant and evident in every aspect. The state during its process of historical growth tries to carve out a distinct scheme of action and goals. This plan proceeds to take root and percolate in the mindset of the people, hence in national ideology. And thus securing itself as the all pervading belief it turns to be the philosophy of the nation. The state makes continuous attempt to consolidate and strengthen itself at every passage in the growth of the nation. Thus slowly this philosophy gets enshrined in the Constitutional setting, finds space in laws, programmes and policies. So often one can ponder as to how thus this gets converted into majority or the mainstream ideology. The obvious answer is by penetrating in the minds of every citizen. The security, the unity and integrity of the nation is imbibed in the minds of the people as a hegemonic concept. So any attempt to differ or dissent is labeled as anti national or one that threatens the security. So the prevalent tendency of the larger mass is to submit and adhere to it. "One notices an attempt on the part of the state and other vested interest to incorporate diversity not by recognising it but by eliminating it by categorising the adivasis as backward."[154]

[153]D L Seth: 'An Emerging Perspective on Human Rights in India', pp 33, In Smitu Kothari & Harsh Sethi (eds): *Rethinking Human Rights: Challenge for Theory and Action*, New Horizon Press New York, 1991.
[154]Walter Fernandes & Arundhuti Roy Chaudhury: 'Search for a Tribal Identity: The Dominant and the Subaltern', pp 19. In Walter Fernandes (ed): *The Indigenous Question: Search For an Identity*, Indian Social Institute, New Delhi, 1993.

But being excessively absorbed in this larger project of unity and integrity, the state at times have forgotten to value and respect the other aspirations. The tribal because of their isolation and due to their weakness has never been able to raise voice for protection of their rights. And even when they found representation within the post colonial structure, the pressure of nation building was so strong that the state found it unnecessary to protect their distinct ness and the state failed to acknowledge this diversity. Rather, it provided its own understanding of the situation. Instead of upholding their diversity; it sought their ultimate integration in to the mainstream way of life. State has infact made an encroachment in their lives by failing to value their discrete identity and aspiration.

This has caused resentments among the tribal population as they too have actively started to question the very legitimacy of the institution of state power. It has also resulted in the rise of tribal movement in various parts of the country. This has been taken up in the next chapter of this work.

Past few decades have undoubtedly witnessed some positive policy initiatives towards the betterment and upliftment of the conditions of the indigenous people. Though there is not complete compliance to the events in the international scenario yet as a signatory to the protection of the rights of the marginalised section, the tribals, it has shown some concern. Infact the recognition of the long pending demand for the right to livelihood, access to the forest resources made by human right organisation, activists and the tribals themselves had led to the opening up of legislation in this regard. In a world of vast global interconnectedness every state is under pressure to recognise the rights continuously asserted by the indigenous people. As a result the states have acknowledged to value their distinctness and stipulate policies to adopt the changing times.

INDIGENOUS PEOPLES RIGHTS MOVEMENTS IN INDIA:

THE RECENT TRENDS

Indigenous people around the world continue to be among the most marginalised section of the society and the victims of continuous prejudices and discrimination. They often have to face forced eviction, arbitrary detention, torture, killing and other atrocities. In many places they lack access to basic social rights, such as right to health, food, adequate housing and education. The tribals today are caught in the middle of a paradox of three important issues- survival, identity and development[155]. These three are intricately connected with their life and very existence.

The state with its development paradigm is actively striving towards progress and modernisation crushing down every obstacle in its way and on the other hand the marginalised people are suffering their untold miseries. Existing with this are the changes in the international arena of human right and the advocates of the tribal rights. There is a tripartite level of existence between the three and how they are working it out is an intriguing issue. The present chapter tries to analyse the tribal situation in the midst of the above stated three important issues or paradoxes - survival, identity and development. The tribals are now actively concerned about their survival, protection of their identity from the onslaught of time and also keeping up with a certain trait of development which could ensure a better life. Their interests today are being negotiated with policy implementation by the state. But this does not always provide for a better solution. Something more than mere policy formulation is required to make them aware of the rights available to them both locally and globally. And again in the international arena of human rights the advocates of tribal rights are forging for greater protection of their rights and for raising awareness. This chapter tries to trace the question of tribal

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[155]Sharad Kulkarni: 'Policy for Tribal Communities: Yesterday Today and Tomorrow', pp 10 In Ambrose Pinto (ed): *State, Development and Alternatives*, Indian Social Institute, New Delhi, 1991.

development and the protection of their identity and survival in the face of globalisation and its impact on the various aspects of their life. Response to the failure of protection of their rights and aspirations has often resulted in uprisal of movement. But in present times such movements have been able to invoke greater appeals by way of global inter linkages. The chapter analyses how the global movement is affecting the local interactions among tribals. Here effort is also being made to see the emergence of new form of consciousness in the tribal communities of India and their global manifestation. It also discusses the impact of civil liberty organisations on the tribal life and how they have turned into new mode of mobilisation. For further elucidation has taken up to analyse the working of one of such organisations-the ICITP. Then moving on the conclusion in the last part.

In the face of globalisation many new changes have been instituted in the lives of the tribal communities. Globalisation is a very complex phenomenon and every one would rightfully agree that it can simultaneously promote or diminish rights. It has both the positive and negative facets embodied in itself. It influences different section of the masses and different nations in diverse ways. It is not that tribal lives have been adversely affected only by the process of globalisation. But it is found to be true that the poor and the marginalised people are further pushed into the periphery by the global craze for development. The process has at many times an adverse effect on the tribal population and has led to the appropriation of their land and forest and even destruction of their culture and tradition.

Survival:

Dispossession of lands and territories is a major problem for indigenous peoples. Land and related resource rights are of fundamental importance to indigenous peoples since they constitute the basis of their economic livelihood and are the source of their spiritual, cultural and social identity. In many countries, development paradigms, perceive the modes of production of indigenous peoples - such as pastoralism, hunting, gathering and rotational slash and burn agriculture - as primitive, non-productive and not in line with the modernisation aspirations

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of present day. Therefore many development policies are either directly or indirectly geared towards weakening or eradicating the modes of production of indigenous peoples. In the name of national economic development, various policies are being put in place, which disposes indigenous peoples of their lands and natural resources and threaten to undermine their cultures and survival as distinct peoples.

Effects on tribal culture

Also the market mechanism has come into force in the tribal villages where earlier it was only sustenance economy. This was a very uncommon phenomenon in tribal life until a few years back but today it has turned itself into a necessity. They are now increasingly seen to have taken to the new products of the market and consequent changes have occurred in their modes of consumption, style of dress along with cultural changes and the weakening of the traditional base. Many studies have illustrated the effects of globalisation on the tribal population and the changes. Two views are widely prevalent, one which describes the ill effects of globalisation and modernisation on tribal life and supports that the tribals should still maintain their self reliant economy. The other which happens to find more supporters argues that these progressive changes have definitely improved their quality of life and even help them to get involved in the nation building process.

Whatever the debate be, the focal concern here is that these new changes have definitely impacted their lives. The invasion of global forces has changed the total nature of tribal economy. Not just their economy but their cultural patterns have also undergone changes, their food habit, way of dressing and all. The media, transportation, market have also created new needs among the tribals.[156] And this has changed the nature of consumption. Media has further pushed forwarded consumerism in these areas and multiplied needs. It has succeeded in creating demands for new things.

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[156] P C Jain: *Globalisation and tribal economy*, Rawat Publications, Jaipur, 2001 pp 9-25.

Globalisation has also brought about an asymmetry in social relationship. The existences of various social relation of community, kinship, family are being threatened today. The tribal population has increasingly dependent today on the national and international economy for their sustenance. Together with this the site of economic and political power has also changed to the more power attuned to the changing times.

Effects on women

The plight of women is often exacerbated as they face multiple forms of discrimination, both as women and as member of indigenous communities. Women and their condition are very adversely affected by the new changes. Earlier she used to hold control over the family resource and decision making which maintained her higher position in the family. But with the spread of land ownership in the name of the male member her position has been degraded. She has been reduced to a mere subordinate position to keep notice of the family's basic needs. With the change in the mode of economy, the men folk are increasingly going out seeking work and women are forced to look after the household. Unable to make contribution many tribal women are now subordinated in the economic sphere and there is growing dominance of man in every sphere. Several scholars like A K Singh & Rajyalakshmi[157], Fernandes[158] and others have shown the effects of development, displacement and migration on tribal women in many places.

No society or culture is static. With the passage of time even the tribal societies have witnessed a series of changes in their culture. The rate of change may not be same everywhere but they are obviously influenced by it. The contacts with the various external forces have exposed them to these changes. But many of these being superimposed they are today deprived of their rights over land and forest and means of livelihood. They are today continuously exploited by land owners,

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[157]A K Singh & C Rajyalakshmi: 'Tribal women in India: Health, education & employment', *Social Change*, 23(4), 1993, pp 3-17,.
[158]Walter Fernandes: 'The Impact of Displacement on Tribal Women', pp 70-85 In Deepak Kumar Behara & Georg Pfeffer (eds): *Contemporary Society: Tribal Studies, Structure and Process,* Concept Publishing Company, New Delhi, 1997.

traders, money lenders and power holders. The tribal communities are being continuously surrounded by the threat of their survival largely due to the erosion of their sustenance base, imposition of development projects, alienation from land and various factors.

Development:

With the need of the present times the state has embarked on several developmental projects and many of them located in the tribal areas. This process is "gradually usurping the natural resources of water, land and trees vital for the subsistence of the tribal communities".[159] In the face of modern changes indigenous people have been increasingly alienated from land and nature in different ways. Characterised by unchecked resources exploitation these development projects are constantly threatening their existence. The tribals have now been constantly drawn into the web of complex economy. With the penetration of globalisation there have been many structural adjustment programmes which are found to adversely affect the indigenous people. The reform measures it was argued by its supporters would promote broad based employment generating growth which would percolate to the poorest of the poor in the society. But the existing stratification in our society has led to the pocketing of the benefit by the people who possess the means of production. G B Nath and Japani Patel[160] in their study have infact brought to the light the impact of various structural adjustment programmes on the tribals and implications of these changes on their livelihood.

Development today has been synonymous with notion of good life and therefore those who are away from it are deprived. Therefore the state is widely concerned with imposition of development project in the tribal areas to bring them into the mainstream and intensive exploitation of the forest resources. With the industrial

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[159]Sharad Kulkarni: 'Policy for Tribal Communities: Yesterday Today and Tomorrow', pp 4 In Ambrose Pinto (ed): *State, Development and Alternatives*, Indian Social Institute, New Delhi, 1991.

[160]Dr G B Nath & Mrs Japani Patel: 'Structural Adjustment and its impact on Tribal Areas and People in India', pp 117-135 In S N Tripathy (ed): *Tribals in India: The Changing Scenario*, Democracy Publishing House, New Delhi, 1998.

advances in the tribal areas they have been forced to face threat to their land and forest. This has pushed them into the cycle of poverty and loss of control over their resources and their lives. The various development projects have destabilised their economy and removed their means of sustenance. Construction of dams and the launching of massive industrialisation in the tribal areas have caused displacement and even upset the socio cultural relation.

Many development projects have also displaced the tribal population from their original habitat. It is important to note that the tribals constitute a significant portion of the population displaced through the various development projects. This is because most of the projects, parks, dams, mines are located in the tribal areas because of the location of raw materials, vast and cheap labour force etc.[161] Not only they are estranged from their land and resource but also not paid adequate compensation. Moving on to new place and unable to practice their traditional mode of sustenance, many of them are forced to take up work of manual labourers. But here also being unskilled they are not ready to face the market compensation and consequently caught in the vicious cycle of poverty and poor living. The failure of agrarian reforms, commercialisation of agriculture and wide spread displacement without proper rehabilitation policy these people have been increasingly alienated from their life support system.[162] It is not always true that when the whole world it moving towards progress and development, that the indigenous population would simply oppose it. Instead they assert right to define and pursue development in a manner compatible with their own culture.

Economic encroachments into the tribal areas have brought about many new changes. Today there is a dominant new labour- market relation. It is profit driven and seeks to provide a level ground to all. With the creation of new demands for goods there is also the spread of accumulation oriented goal. There has been increasing commodification of land and labour. The development

[161]Dr G B Nath & Mrs Japani Patel: 'Structural Adjustment and its impact on Tribal Areas and People in India', pp 127 In S N Tripathy (ed): *Tribals in India: The Changing Scenario,* Democracy Publishing House, New Delhi, 1998.
[162]Walter Fernandes: 'Indian Tribals and Search for an Indigenous Identity', pp 64 In Amar Kumar Singh & M C Jabbi (eds): *Tribals in India.* Har-Anand Publications, New Delhi, 1995.

initiatives taken in the name of national interest has forced many of the tribal population to surrender their traditional land and migrate to new locations. Even as the tribal people are increasingly becoming depended on the market for their survival and as a result are forced to work in as labourers in various places. Tremendous development has definitely a qualitative change on the lives of many but such project often seems to exploit these already marginalised people. New occupation as migrant labourers has fewer benefits for them together with low wages and miserable working conditions. Thus today once the isolated, homogenous and primitive community has been thrown open to get assimilated in the global network of urban industralised civilisation[163].

Not only this, in the name of development they have been further pushed into the periphery. The destruction of the agricultural base and loss of control over the natural resources of land, water and forest has increased their misery and suffering. Deforestation and development projects have adversely affected the normal habitat of the tribals. Their economy is primarily based on forest and agriculture. Their multifarious needs, dietary requirements are all accessed from the forests besides shaping their culture, customs.

The question of development has become very crucial today because it is interlinked with industrialisation, construction of big dams etc which has turned into a necessity of modern life. It is infact very essential to find out a way with certain parameters like justice, equity and sustainable development in mind.

Identity:

It is only on the sense of identity that the tribal life is structured upon. Indigenous people in India and all over the world are greatly asserting that their identity is closed linked to the environment in which they live. As such their culture, socio religious customs, economic basis, livelihood are all centered around this. Their

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[163]L P Vidyarthi & B K Rai: *The Tribal Culture in India*, Concept Publishing Company, New Delhi, 1976. pp 463

identity is closely linked to the natural resource and dispossession from it is itself a threat to their identity.

The culture of a people must be built around the resources that sustain them.[164] Thus land, forest and other aspect of the natural world becomes integrally linked to them. The tribal way of life is a part of the natural surrounding and over generations they have developed a kind of consciousness about this. Kinship based solidarity and their identity has been very central to the tribal life. Through this they have been continuing and preserving their culture from one generation to another. Individual claim to ownership of land has open up resources not only to privitisation but also for sale to outside individuals and business interest.

Today not only that they are alienated from their culture but it is also branded as uncivilised, therefore inferior and hence the need to integrate them into the mainstream. Various studies have indicated the nature and impact of the cultural changes among the tribal people. Most of their struggles today are identity based since they are feeling alienated from their culture because of the threat to their natural resources around which they have built their cultural, economic, socio-religious and political structure.[165]

As a result the problem of tribal identity has also acquired a great significance today. They have now been pushed to a new form of competitive politics where they have to continuously struggle with the non tribal groups making them conscious of their distinct identity. This sense of identity has evolved strongly amongst them and they now even envisage their future in it. To infer this complex situation we need to see this change in terms of both continuity and change. It is very obvious now that there is a conscious of the fact that they are the original inhabitants of the land. Over the ages these people have developed a deep sense of group solidarity and group loyalty, aptly manifested in their customs and practices. However this group identity has also at many times lead to

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[164]Nirmal Minz: 'Identity of Tribals in India' pp 23 In Walter Fernandes (ed): *The Indigenous Question: Search For an Identity*, Indian Social Institute, New Delhi, 1993.
[165]Walter Fernandes: 'Indian Tribals and Search for an Indigenous Identity' pp 62, In Amar Kumar Singh & M C Jabbi (eds): *Tribals in India*. Har-Anand Publications, New Delhi 1995.

social tension among different groups and even pose resistance to the formation of a new overarching national identity. There has been a tremendous visible impact of modernisation on tribal societies. It has affected their family life, position of women and even their culture and value system. They are now infact caught in a paradox of modern education, economic impact and their traditional way of life. But these people are fully aware of the fact that they survive the onslaught of time if only they maintain their distinctive social character and identity.

A wide range of forces like development of communication in the tribal areas, introduction of monetised economy, spread of formal and modern education, extension of services by modern institutions including medical and administrative aid, introduction of technology to exploit mineral, forest and other resources has brought about significant changes in the traditional tribal societies.[166]

They are however still not sufficiently adapted to the market economy and competition. The local economy of the tribals has been extended. Earlier where their needs were fulfilled locally or by exchange in the weekly market, today there has been demand for new products of consumption. On the other hand globalisation and consumer centric economy has opened new market for tribal handicrafts and artefacts. A wide market has been created in the well developed cities for the tribal art and handicrafts but these people are not paid their dues and benefits and end up selling their products cheaply. Their culture and tradition has been transformed into commodity for sale[167]. They have been fully exploited in the name of promotion of their products and some profit oriented groups reap the gain. Increasingly today they are also becoming victims of money lenders and outside agents. With the penetration of monetised economy into the tribal life and the system of taxation they are being forced to borrow and are continuously being pushed to the cycle of debt. With the widening of transport system in the tribal areas more and more of the men folk are coming out in search of jobs. But most

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[166]L P Vidyarthi & B K Rai: *The Tribal Culture in India*, Concept Publishing Company, New Delhi, 1976.

[167]P C Jain: *Globalisation and Tribal Economy*, Rawat Publications, Jaipur, 2001 pp 24

of them being illiterate, sell their labour in agriculture, mining and non farm contract jobs with low wages. Market economies are fundamentally driven by principles of profit. It has its own mechanism of functioning and hence is very less concerned about the adverse affect it can have on the lives of these already marginalised people.

Community versus Individual:

Community has always been central to the life of these indigenous people. This debate has already been brought the very first chapter itself. However the rise of market economy in the past few decades has lead to the change in this relation. Market always recognises individual claims to the ownership of property and thereby establishes a clear relation between the land and the owner. This stands very contrary to the tribal culture but the exigencies of time has forced them to rework out this relation. Also in the name of development their land has been encroached upon and they have been alienated from it. Tribal life was always embedded in their social relationship and their land and culture being an important part. But changes in this have upset their existence and their relation with the community. Land is part of their survival and ritual as manifested in the sharing and community life. There is a strong obligation owing to their kinship bond. But today even this has undergone changes. Commodification of land destroys the communal right of ownership and subsequently it becomes dominant over the social relationship. With market penetrates the notion of individual ownership and profit and dependence on it. This slowly weakens the social matrix. The growth of market as many may argue has facilated the progress of growth and development. It has freed individual from the obligation of community and social relation, where he is free to take up his choice and enjoy fruits of his hard earned life. Land assets, irrigation and access to commercial markets have helped them achieve prosperity and social recognition. But this process has undoubtedly pushed him into new kinds of social discrimination[168]. This has not made his life any easier but he has been turned into a mere tool to

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[168]Yash Ghai: 'Rights, Social Justice, and Globalization in East Asia', pp 243 In Joanne R. Bauer and Daniel A. Bell (eds): *The East Asian Challenge for Human Right*, Cambridge University Press, United Kingdom, 1999

increase production. Failing to which, he is pushed into the dungeon of poverty, slavery and other social evils.

It is essential to note the impact of market based system on the rights of the people. They are not generally oriented towards social justice but seek profit at the first instance. Therefore there is a usually tendency of the movements for social justice and democracy to struggle against capitalistic development. It is in the capitalist economy that they see their common enemy that tries to override the rights and privileges of the weaker section.[169]

Gross violation of indigenous people's right and even assaults on their cultural survival, denial of access to resources have disturbed the symbiotic relation between man and nature and their existence. Therefore the demand for the control of their resources and life has become very central to their identity. Asserting their identity to be closely linked with the natural environment is a very powerful way of claming sovereign rights over the natural resources.[170] But the tribal population in India has failed to evolve a central and predominant identity. Lacking this unity their aspirations have not been able to exert the necessary pressure for the protection of their rights and culture. Despite the shortcomings there has been a wide penetration of the consciousness towards the repressive nature of the institutional structures of the society. Tribal movements in various stages of Indian history have attracted the attention of both the policy makers and the academic engagement. The next section moves on to a brief description of the movement of the tribals and the subsequent change in their nature in present times.

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[169]Yash Ghai: 'Rights, Social Justice, and Globalization in East Asia', pp 241 In Joanne R. Bauer and Daniel A. Bell (eds): *The East Asian Challenge for Human Right*, Cambridge University Press, United Kingdom, 1999.
[170]Amita Baviskar: 'Adivasi Encounter with Hindu Nationalism in MP'. *Economic and Political Weekly*, Nov 26, 2005.

THE MOVEMENT WITH A DIFFERENT ORIENTATION

Responses to the oppressive nature of the state are widely asserted by two ways either a movement or representation at the global level. Where the former is a result of increasing awareness about the deprivation these people are subjected to; the latter has been made possible due to the increased pressure of international agencies of human rights on the state to take steps for protection of the rights of the indigenous people. Today there is an active engagement and interdependency between the global, national and local institutions and taking advantage of this the tribal leadership has increasingly taken up their issue on an international forum. This representation no longer confines itself to the age old method of protesting against the state for the gross violation of human rights. There is a significant. shift "from politics of mere protest to one of active resistance and effective challenge of the status quo".[171]

Contemporary period in Indian society is ever witnessing the problem of multi ethnicity, armed rebellion, agitation, violence, secessionist tendencies all tearing the social fabric. But these are all manifestations of atrocities and restriction imposed on the section that is forced to raise its voice. Therefore all of these problems should not be dealt with an iron hand policy of repression but it is the duty of social science research to get to the root of the cause and forward analyses for better and humane solution of the problem.

Continuous atrocities against the masses have always resulted in the upsurgence of movement sometimes even taking up dangerous proposition. It is often understood as emancipation of the exploited section and the creation of new society by changing the earlier relation. Eminent writer on social movement, Ghanshyam Shah, has proposed five important components of it -objective, ideology, programmes, leadership and organisation. *Objective* changes from mere particular local issues to broad aims of social transformation, *ideology* is said to provide direction and sort strategies, various *programmes* mobilise the people, *leadership* plays its role of articulation and maintaining the spirit of the

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[171]Rajni Kothari: 'Human Rights-A movement in search of a Theory', pp 19 In Smitu Kothari, and Harsh Sethi (ed): *Rethinking Human Rights: Challenges for Theory and Action*, New Horizon Press, New York, 1991

participants and the *organisation*.[172] They evolve with the movement itself and even get changed in the course but are essentially found in all types of movement. It is true that not all movement claims drastic political change or are always concerned with the state power. Many truly aim at enlarging and protecting the autonomy and working sphere of the civil society. The chapter does not dwell into the debate between labelling such movement as political or social but stand by the view that any collective action for social transformation, no matter it be an environmental movements, struggle for justice, distribution of resources or striving for right all have a political ramification attached to it, though it may not be in their immediate agenda. This debate has been taken up by Shah in his work on Social Movements.

Tribal movements are not a new phenomenon of our society and as noted numerous of them hold space in the annals of history. The various ethnic based solidarity movements of the adivasis in the country are a reflection of their resistance to the ongoing economic, political and cultural denial that they are facing today. The basic difference with the earlier movement is that at present there is a search for a new identity[173] not found earlier. "Reactive action against state encroachment or against socio cultural and economic imposition and exploitation, the ethnic groups takes the form of political radicalisation, in the failure of which the concerned population may seek shelter in cult movements or social reform activities."[174]

There has been a long history of tribal uprising in India since the early days of British rule. Of these the Birsa, Kol, Santhal and Kacha Nagas movement are all well known. Surajit Sinha in his work has given an in depth analysis of the various movements. Accordingly there are some movements which emphasis on reforms to emulating the higher Hindu castes. In the post independence era there

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[172]Ghanshyam Shah (ed): *Social Movements and the State*, Sage Publication, New Delhi, 2002, pp 17.
[173]Walter Fernandes & Arundhuti Roy Choudhury: 'Search for a Tribal Identity: The Dominant and the Subaltern' pp 21; In Walter Fernandes (ed): *The Indigenous Question: Search For an Identity*, Indian Social Institute, New Delhi, 1993
[174]B K Roy Burman: 'Tribal Population: Interface of Historical Ecology', pp 186 In Mrinal Miri (ed): *Continuity and Change in Tribal Society*, Indian Institute of Advanced Study, Shimla, 1993.

arose some that demanded recognition of the Tribal state within the Union like the Jharkhand movement, other movements among the hill tribe of the North East. There are also some that are classified among violent secessionist movements like the Naga and the Mizo movements and others linked with the problem of agrarian unrest. Apart from being staged by the tribals at different stages under different conditions these popular movements have failed to engage in a shared framework of demands and articulation. Different factors produce different results and outcome in the tribal patterns. It is only the existential question which determines the nature of their movement. Like the tribals of Jharkhand being more concerned about recognition of their statehood and strike their grievances against the outside intrusion upon their homeland. On the contrary the tribes specially residing near the international boundary like the Nagas, the Mizos are more prone to secessionist movements. The tribes of these regions have continuously undergone a series of violent usurpation over the past few decades. A common feeling of deprivation is widespread in these regions, due to the locational factor and feeling of isolation. Ecological and socio-cultural isolation has played a defining factor in these regions. A strong sense of historical distinctiveness of culture and identity has strengthened their solidarity against any outsider. Also the spread of education and the cultural orientation of the elite leadership have positively contributed towards the strengthening of the movement.

Academic circle on the tribal issue has always used different models for looking at it. Like Sub Nationalism, based along the lines of religion, language and caste, usually found in economically backward communities as worked out by N K Bose.[175] Also there are others like Roy Burman[176] who forwards the distinction between Infra Nationalism and Sub Nationalism, in the former the tribes are involved in a progressive movement from primitive stage towards nationalism, and they are also in search for identity. But the latter is usually a product of social disorganisation, cultivated by a limited group of elite for economic and political power. Efforts are also made to label the tribal identity as a movement of

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[175]N K Bose: *Problems of National Integration*, Indian Institute of Advanced Study, Shimla, 1967
[176]Surajit Sinha: 'Tribal Solidarity Movements in India: A Review' pp 251-266 In Ghanshyam Shah, (ed): *Social Movements and the State*, Sage Publication, New Delhi, 2002.

ethnicity. Ethnicity is a sense of ethnic identity which can be defined in terms of objective attitude with reference to subjective feelings. There is also a fellow feeling through a variety of factors like language, race, religion, regional concentration. But the nature of semantics does not always prove fruitful. One would readily agree that there is a lack of single objective of the movement staged the tribals at different stages of history.

The tribal solidarity movements over the past few decades has depended on a variety of factors like the degree of exposure to and interrelationship with other communities, level of economy, their cultural orientation, besides the level of education of the leaders and even the pattern of articulation with the non tribal political association.[177] There are also other causes like ecological-cultural isolation, economic backwardness which fuels the movement. Though any of the above factors can incite a movement but the ultimate aspiration might not be the same. As such some form of inter group solidarity can strikingly be brought about but intra group solidarity has been hard to forge.

This chapter does not attempt to describe any tribal movement in particular but tries to see how in the face of changing times a new found social solidarity has been set up owing to a common platform. Various civil liberty groups have taken the form of organisation for articulating the rights of the tribals and other marginalised section of the society. "Through these organisations they aim at pressing their claims, not as passive subjects, but as self-confident citizens advancing their legitimate rights to survival and well being".[178] They identify new issues and even devise strategies to represent and fight for the marginalised sections of the society. These initiatives have greatly expanded the face of human rights struggle in India. Along with the oppressive power structure they have also been critical of the developmental model of the state. Not only that the land and the habitat of the tribal people been encroached upon but they are increasingly

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[177]Surajit Sinha: 'Tribal Solidarity Movements in India: A Review' pp 251-266 In Ghanshyam Shah, (ed): *Social Movements and the State*, Sage Publication, New Delhi, 2002.
[178]D L Seth: 'An Emerging Perspective on Human Rights in India' pp 31 In Smitu Kothari and Harsh Sethi (ed) *Rethinking Human Rights: Challenges for Theory and Action*, New Horizon Press, New York, 1991.

forced to work as labourers in various construction projects. Without any proper wage and minimum standard of living these poor people are further pushed into the dungeon of misfortune. The civil liberty organisations are increasingly taking up their cause and struggle to an international platform.

A violent outbreak, a protest against the state governments' repressive law or any curtailing of the rights has always led to upraisal of movement whether it just be of social or political nature or both. A movement with a strong agenda and the numerical support of the masses has always been successful in staging their grievances but the outcome or the changes it may bring may not be sufficient. State is always caught up in the paradox of balancing the demands of the diverse social groups and fractions. But with the emergence of a strong international forum for the guarantee of basic human rights and their protection has undoubtedly ushered in a new era of rights based movements. The Declaration of the Rights of the Indigenous Peoples has also provided them an equal platform to express their grievances and demands for a just and dignified living. The emergence of educated leadership from among them has further given impetus to their consciousness and the events going on around them. These leaders at many instances are able to arouse the political consciousness of the masses towards any policy formulation or the rights that they ought to enjoy. Earlier it was either the state which decided their fortune and future or some vigilant individual of the society who represented their case and their fight for justice. But today this scenario has undergone a great change, owing to the positive spread of education that fully conscious representatives are turning up to fight for their rights and of their underprivileged fellow beings.

Previously there were hardly any which could gain massive international concern but today the world wide platform is granting these movements special status. They are able to reach people better with global networking. The movements basically begin from the grassroot level which ventilates the grievances the marginalised people on an international platform. As such representatives of the indigenous people from all over the world share their views and sought out plans

to exert pressure on the government of their own country to take up better policy formulation.

Often one may come up with the question whether the state power is diminishing in the face of growing global intervention. This chapter does not aim to dwell on this debate but like to note that state still persist as an important source of political power. It still holds the reign of policy formulation and implementation. Rising political consciousness does not always erode the institutional set up but instead demands on them rises sharply. No much of these movements talk of abrupt alteration of state action but mainly struggle towards protection of their constitutional rights, better administrative actions, legislation or some judicial intervention. The state in turn responds by certain 'policy prescription'.[179] The paternalistic nature of the states makes it share a host of responsibilities with these organisations by way of promoting and recognising their functioning. The centric notion of national interest and security also fail to diminish the importance of state. The conflicting interest of caste, community or even of the tribes is seen to be sought out only under the aegis of the state. The institution of state is seen to be the only structure which protects the democratic and human rights of every section of the society. Therefore some encroachment into the liberties and rights of some section is often regarded necessary for a larger interest, a common good.

The old and the new leadership:

With the passage of time there has been sea change not only in tribal consciousness of their rights but also in the nature of leadership which represents them. This chapter dwells on this nature of the traditional and the new leadership and how it affects their future course of action for better bargaining power. There is no doubt that traditional tribal leadership is still significant at the village level in tribal societies but with the impact of globalisation and spread of education, a new set of western educated, urban breed and secularised type of tribal leaders is

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[179]Rajni Kothari: 'Human Rights-A movement in search of a Theory', pp 21 In Smitu Kothari and Harsh Sethi (ed): *Rethinking Human Rights: Challenges for Theory and Action,* New Horizon Press, New York, 1991

fast replacing the age old charismatic, rural bred and tradition oriented leadership. An elite structure has penetrated into. They by the virtue of education are strongly motivated and aware of the atrocities meted out towards their people and societies. Though the tribal leaders are aware of the rights and privileges they ought to enjoy but there exists a gap between them and the masses in terms of political consciousness.

The introduction of Panchayati Raj system in the tribal areas has also impacted upon the nature of leadership and established a sort of political linkage between tribal population and the state machinery. The paternalistic nature of the state and its aim of bringing these marginalised people within the fold of mainstream political structure it evident with the introduction of the system of implementing grassroot democracy. It is increasingly forming part of the hegemonic project of the state to improve these people and teach them the basic values of a democratic society and to turn them into individuals ready to inhabit a liberal, democratic society. The modern democratic experiment of the state has been extended up to these areas by way of periodic elections to legislatures and various panchayat bodies. State is taking up the sole responsibility of social transformation through the medium of democratic institutions. Efforts are being continuously made to extend the virtue of democratic system and citizenship rights to the vast majority existing in the peripheries.

Now the different political parties approach these tribal leaders for electoral support and in return offers promises and patronages of various types. The Panchayati Raj system has been instrumental in putting up a new type of leadership which is young, belongs to literate group as many studies suggest. One such researcher goes on to suggest that no clash however exists between the traditional and the new leadership attributing it to be a special feature of the tribal societies.[180] But at the same time there is also another group of leaders who are continuously struggling to bring to international notice of the various atrocities being inflicted on the tribal in the name of state and national interest and to represent them at an international forum.

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[180]Renuka Pamecha: *Elite in a tribal society*, Printwell publishers, Jaipur 1985.

It has been expected of the leadership that they would act as a catalyst for bringing about better change in the society. They would act as agent of change and thereby mobilise masses in every sphere. An entire range of responsibility has been shifted to this leadership who would also encourage political participation and accelerate the process of development and evolve consciousness for protection of their rights.

The elite leadership in tribal society is only in relation to an educated, urban breed influential person capable of motivating the masses and arousing their consciousness of their political and other rights. He breaks the exclusive nature of the traditional leader but the virtue of being well educated and well informed of the rights and privileges available at both the national and international arena. They have the potential to bring about desired changes and development benefits still owing their strength to traditional value and culture. "The modern leaders of various levels and types are spearheading the socio-economic and political change, and in the last few decades have been greatly instrumental in accelerating the pace of transformation in the tribal areas".[181] However their mode of action has undergone tremendous change from one engaged only with protest to one which is actively associating itself with an international platform. The present chapter attempts to see how the aspirations of the adivasis being represented at the international forum by the engagement of various civil liberty organisations.

Past few decades have witnessed active concern on the part of the international community and organisations for the rights of these people. These people don't get enough access to the institutions and the awareness about the basic human rights for a decent life. But there is a recent proliferation of different human right organisations and movement for the representation of the aspiration of these people on a global platform. The indigenous movement has grown out of a common experience and frustration that united them and characterised by global changes in means of communication and also an era of increased focus on

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[181] L P Vidyarthi & B K Rai: *The Tribal Culture in India*, Concept Publishing Company, New Delhi, 1976, pp 462.

international human rights and creation of new linkages between states. Today this movement has proliferated all over the world. With the creation of new institutions indigenous people from all over the world manage to institutionalise their demands, set procedures and rules to deal with new changes and face threats.

The notion of human rights has found a greater acceptance as an important concern today with an increasing in demand for their protection. Rights now have a preceding value over other issues due to the momentum created by these groups. This consciousness has positively contributed to emphasis the basis of human dignity, respect for the cultural and survival rights of the indigenous peoples. It has laid the foundation for a world wide networking of the movement for the protection of the rights of the indigenous people. The ideology of rights has been an effective means for the mobilisation of the disadvantaged groups. Even among the tribal people the awareness about their political, cultural and other rights has awakened a new reaction.

Infact the national and the international movement of rights is a product of globalisation. The international indigenous movement can be seen as a product of globalisation united by common sufferings and aspirations. The very concept of human rights has infact developed through the international exchange of ideas on rights. The earlier suppression of rights has brought in greater awareness for their preservation. Today the ambit of rights no longer remains confined to individuals but includes recognition of a variety of groups- women, children, indigenous peoples and others. Rights are increasingly seen as instruments in the hands of the weaker section for their protection and even their mobilisation. This has infact also facilitated the rise of NGOs, other civil liberty groups and movements. There is a wide seen networking among them keeping human rights as their basic agenda. The voice of the adivasis which has been hitherto fragmented has been united under the banner of different such organisations which finds representation at the international forum. They have facilated themselves as the new mode for mobilising the masses. This in result has

undoubtedly created a consciousness amongst different section of people about the need to protect the rights of these marginalised people.

The Declaration on the Rights of Indigenous Peoples is infact a product of the global concern for protection of their rights. It also refers to the right to assert their cultural identity and practice their traditions, including their religion, languages, and arts and the traditional right to maintain and develop their cultural structures and institutions. Owing to this there has been wide concern to develop international standard for the protection and guarantee of their rights whose existence and identity is at threat.

The close association of the United Nations with the protection of the rights of the indigenous people also supports the active involvement of NGOs and other associations. Following the patterns of group mobilisation in other countries, groups based in different Asian countries have begun to participate in international institutions and other gatherings and transnational networks have been formed in Asia under the rubrics of indigenous people.[182] These organisations have been turned to new weapon for the protection of the rights of these marginalised people all over the world.

THE CIVIL LIBERTIES ORGANISATION AS THE NEW MODE OF MOBILISATION

The section analyses the global movement for the protection of the rights of the indigenous people are affecting their relation with the state. They are today actively looking towards non state actors and different civil liberty organisation for representing their aspiration. Also these organisations have found to awaken the consciousness of the indigenous people to various issues affecting their lives. The rise of indigenous organisation and activism has served as a channel for resurgence of their identity.

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[182] Benedict Kingsbury: 'The Applicability of the International Legal Concept of "Indigenous Peoples" in Asia', pp 336 In Joanne R. Bauer and Daniel A. Bell (eds) : *The East Asian Challenge for Human Right*, Cambridge University Press, United Kingdom, 1999.

Today Non-governmental organisations (NGOs) have become increasingly influential in world affairs. They often impact the social, economic and political activities of communities and the country as a whole. NGOs address a host of issues including women's rights, environmental protection, human rights, economic development, political rights, or health care. In numerous countries, NGOs have led the way in democratisation, in battling diseases and illnesses, in promoting and enforcing human rights, and in increasing standards of living. The active participation of nongovernmental organisations (NGOs) in the human rights arena is crucial for the United Nations. "Primarily NGOs do not have the same reluctance as states in bringing public attention to certain violations. NGOs also submit complaints, thus activating the human rights monitoring mechanisms."[183]

Even at the international level organisations like the UN and its various agencies concerned directly with the protection and promotion of human rights have began working collectively with various struggle groups and other organisations, NGOs etc. These struggle groups try to impart meaning by installing in them awareness of their rights, by forming organisations and through active participation.[184] In order to achieve and secure cultural, political and economic rights, sovereignty and self-determination have become some of the most important values sought by the international movement of indigenous nations. Today there exist machinery at the international level no matter however minimal it be, for the supervision and guarantee of rights working effectively in many regions.

But cutting across differences of region, civilisation and nation the indigenous people are constantly constrained to construct their own historical identities. This leadership is searching out ways to mobilise the masses positively. Leadership in the backdrop of the Declaration has found a new international platform to put forth their views and create awareness amongst the nation about the needs and

[183]Elsa Stamatopoulou: 'Indigenous Peoples and the United Nations, Human Rights as a Developing Dyamic', *Human Rights Quarterly* 16 (1994)
[184]D L Seth: 'An Emerging Perspective on Human Rights in India' pp 34 In Smitu Kothari, and Harsh Sethi (eds): *Rethinking Human Rights: Challenges for Theory and Action*, New Horizon Press, New York, 1991.

aspirations of tribal people. In India there is growing participation by civil society institutions in the debate concerning environment. It is infact a positive sign where movements in Kerala, Madhya Pradesh, Chhattisgarh, Jharkhand, Nagaland, Manipur and Uttaranchal and other places are increasingly becoming important. Various organisations like The Naga Peoples Movement for Human Rights (NPMHR) actively pursuing the issue of self determination, Jharkhandi Organisation for Human Rights (JOHAR) engaged with the rights of the adivasis against the non adivasi population and many others are mobilising people and ideas, and making their voices heard in larger international platform. To elucidate the matter further this work has taken up a brief note on one such organisation The Indian Confederation of Indigenous and Tribal Peoples (ICITP). The aim here is to see how the organisation has been successful in forging a link with the international community since the initial years of its inception.

ICITP and its activities in India:

The Indian Confederation of Indigenous and Tribal Peoples (ICITP) was founded in 1987 as Indian Council of Indigenous and Tribal Peoples under the leadership of Late Professor A Kishu, Professor Ram Dayal Munda, Late Samar Chandra Brahma Chaudhuri and few others.[185] Over time it has been associated with the tribal people and their problems in different parts of India.

In the international arena it has made special attempts to represent the aspirations of the Indian tribal people. In 1991 the ICITP along with other organisation like the NPMHR, Asia Indigenous Peoples Pact (AIPP) and others presented a statement to the UN Working Group on Indigenous populations regarding the definitional problem of the concept of indigenous.[186] It has since its early phase very much concerned with this problem. At the 9th session of the Working Group there were vast differences between the opinions of the Permanent Mission of

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[185]http://www.icitp-nez.org/6th%20General%20Assembly%20Participant%20List.html accessed on 15th May 2008.

[186]Benedict Kingsbury: 'The Applicability of the International Legal Concept of "Indigenous Peoples" in Asia', pp 339 in Joanne R. Bauer and Daniel A. Bell (eds) : *The East Asian Challenge for Human Right*, Cambridge University Press, United Kingdom, 1999.

India to the UN office and the representative of the ICITP. The government position was that it could not settle the term 'indigenous peoples' to be equated with Scheduled Tribe because this category was created by the Constitution to promote certain section of our population who are less privileged and require special attention. But the then representative of the ICITP, Prof Kishu countered it by emphasising that Adivasis or Scheduled Tribes constitute indigenous people of India.[187] This organisation has been a dominant voice in the debate concerning the definition and application of the term indigenous peoples in the Indian context.

The ICITP is infact a Non Governmental Organisation which is actively working in the areas of concentration of tribal people.[188] With eight geographically recognised zones in the North East, Central, South-East, South, West, North-West, National Capital, East it is covering the entire country with its networking. ICITP actively acknowledges itself as a confederation of indigenous and tribal people involved in issue based movements. It basically focuses on the work for empowerment, protection and promotion of the rights of the indigenous people including Human Rights, Right to education, environment, language, and socio economic development, protection of biodiversity, land, water and forest. With a wide range of aims and objectives the Organisation tries to cater to the different needs of the tribal people and provide an overarching body to safeguard them. It seeks to develop, strengthen and ensure the solidarity of the organisations and institution of all indigenous people in India without interfering with their autonomy. Giving the utmost importance on the preservation of the heritage and culture of these people the organisation seeks to preserve and uphold the tradition, language, literature, script and even indigenous technology. As note earlier indigenous people are very much attached to their traditional social institutions and despite the onslaught of time, these institutions still hold a place of prominence in their day to day life, ICITP makes effort to ensure the existence of these traditional institutions and even coordinate the common interest of these

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[187]Jagannath Dash & R N Pati: 'The Indigenous and Tribal Peoples Today: Issues in Conceptualisation', pp 11-12, In R N Pati & Jagannath Dash (eds): *Tribal and Indigenous People of India-Problems and Prospects*, APH Publishing Corp, New Delhi, 2002
[188] http://www.icitp-nez.org/About%20us.html accessed on 15th May 2008

institutions in various regions of India. It has also come to play a crucial role in bringing to light all forms of social, economic, political and cultural atrocities of denial of social justice to the tribal people, raising voice against slavery, genocide, ethnocide and eviction from their traditional habitat. The Organisation also actively concerns itself to combating and denouncing of human rights and fundamental liberties.

The Organisation with its international connection has taken up issues which concern the day to day life of the indigenous people and the impact of different issues on their lives. It has taken up the debate of self- determination as a serious issue and seeks to campaign in the tribal areas for the right of land, forest and natural resources of these marginalised people including the right of self-determination in their own affairs. A significant issue comes out here when the Organisation sought to associate itself with the state, cooperate and participate in the discussion, debates, seminars and even campaigns of intellectual forms both at the state and the national level. In their ancillary objectives it even mentions ways to channelise funds, resources, government grant etc so they reach the needy in time. It seeks to take up issues and problems of the tribal people with the government of India and even various state government, to propose proper legislation and find solutions and to cooperate in the solution and for purpose attain consultative status with the government, so that this in turn could facilitate better policy formulation on such issues which affects these people. It has also in one of its aims sought to provide knowledge of facts to the legislators in the Parliament and State Legislatures for the constitutional rights and interest of the tribal people. As an organisation of the grassroot level ICITP also aims to promote the formation of association, organisation wherever these are non existent.

The Organisation as proper civil society association in one of its mission statement aims to coordinate and facilitate critical awareness and promote solidarity among different tribal groups in the various regions with a view to embark upon them a sense of consciousness so that they become well able to take care of themselves and raise voice in matters which concerns their very existence.

The ICITP has also identified besides the above mentioned certain crucial issues and to fight for any injustice. Like for instance it has identified dispossession fro life sustaining resources- land, forest, water, culture in the name of public interest and national development in the form of mining, setting up industries, mega power plants, big dams and even military installations threatening their survival as a very important issue.[189]

It is very important to note here that such Organisations which now have an active international platform to raise their voices has been using it to negotiate successfully matters with the state and other concerned agencies in favour of the indigenous people. Impact of globalisation and their active association with other international agencies have actually changed the bargaining equation in their favour. It now no longer just remains to mere pleading for protective policies but turned towards active participation, raising awareness, education, mass mobilisation and even at times peaceful democratic resistance. Owing up to the international pressure on the state, these organisations are now in a better bargaining position and even succeed negotiating rehabilitation and adequate compensation. So capacity building measures, training on conflict resolution, institution building and campaigning for solidarity among different groups has turned out to be its key focus over the years. Tribal people from different parts of Asia have become regular participants at the UN Working Group sessions.[190] Their views are often represented by the key civil liberty organisations working in the region. The ICITP over the past few years have been able to establish links with the World Council of Indigenous Peoples and other international bodies to focus better on the issues concerning the tribal people of India.

The ICITP NEZ has been one of its active branches and over the past few years represented the aspiration of the tribal people of the North East at various international meets including in The UN Permanent Forum on Indigenous Issues (UNPFII). In its agenda it has showcased the different agenda like that of Human Right, Self-Determination, land, forest, natural resources and other issues that the Organisation is working towards. For instance the organisation working with

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[189] http://www.icitp-nez.org/About%20us.html accessed on 15th May 2008
[190] Douglas Sanders: 'Indigenous People on the International Stage', pp 129 In Walter Fernandes (ed): *The Indigenous Question: Search For an Identity,* Indian Social Institute, New Delhi, 1993.

others like the All Boro Post Graduate Youth's Federation (ABPGYF), Boro Women's Justice Forum (BJWF), All Boro Peace Forum had taken up the issue of gross violation of human rights in the Boroland area in 2006 and pleaded for active intervention of international agencies for protection of their rights from various onslaught. These various organisations and their leaders from time to time in different national and international meetings forward their views regarding diverse issues concerning their day to day life.

At a collective statement made on behalf of the ICITP-NEZ, All India Tribal Literary Forum and other organisation in the sixth session of the United Nations Permanent Forum on Indigenous Issues (UNPFII) in New York in May 2007 it emphasised the need to understand the spiritual and special relationship between the indigenous peoples and their land as basic to their very existence.[191] The organisation specifically held that land of such people is not merely a possession or a means of production or a commodity but a material element to be enjoyed freely but also acknowledged the various complexities attached to this notion and the need for a cautious approach. Appeal was also made for support of various international agencies for protection of the rights of self-determination, non discrimination and even to provide platform to the indigenous people to raise their voices. The organisation had also taken up active step in regard to the formulation of the Forest Right Act and has identified the case of the Rabha People's demand for 6th Schedule status, the Boroland issue of the Boro People and the demands of the Dimasa People and the demand for Schedule Tribes status among different communities of Assam as priority issue.

The struggle of these groups for their rights for survival and development, for civil, political and other rights often has to carve a way as a collective effort. It is usually the language of rights which govern the relation between the civil society organisations and the state. The autonomy of these movements is centered around their life support system[192]. Therefore the articulation of these rights by

[191]Sabda Ram Rabha: http://old.docip.org/Permanent%20Forum/pf07/PF07sabda1022.pdf
[192]Walter Fernandes: 'Indian Tribals and Search for an Indigenous Identity', pp 64 Amar Kumar Singh & M C Jabbi (eds): *Tribals in India*. Har-Anand Publications, New Delhi, 1995.

those at the periphery is a continuous process and bound to emerge whenever there is any great threat to their existence.

CONCLUSION

The indigenous people have accepted the misery and discrimination that they have been facing since centuries and that appropriate time has arrive to take up positive steps towards amelioration of their conditions. Mere concern about the human rights of the tribal people for fighting the abuses faced by them sometimes proves to be insufficient. The Human rights movement are today restricted only to fighting abuses by the state. They do not go into root cause of the problem embedded in the age old structure of discrimination and domination of the powerless by the powerful. They have been co-opted within the state structure and work in a limited space defined by the state. These organisations of civil liberties are increasingly being endorsed by the state by way of endorsements-aids and grants and more importantly the need of these organisations for being acknowledged and registered within the state. They have also failed to intervene on behalf of these marginalised people to restrict the market forces from destroying their means of survival.

On the other hand these civil liberties organisations have done very "little to reduce the all embracing and monopolistic role and character" of the state.[193] They have failed to expose the majoritarian nature of the state and the notion of national interest and security being used by it. Their interpretation of violation of human rights, as to Kothari, consist of struggle against the state for violation of constitutional rights and particularly those involving unlawful arrests, police atrocities. It is only against the repressive nature of the state where the rights of these people are threatened that these movements has found place.

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[193]Rajni Kothari: 'Human Rights-A Movement in Search Of a Theory', pp 25 In Smitu Kothari and Harsh Sethi (eds): *Rethinking Human Rights: Challenges for Theory and Action*, New Horizon Press, New York, 1991.

Today many of the Human Rights organisations and movements have confine themselves to fighting against the atrocities committed by the state and not in dealing with the sources of these atrocities in the structure of the state.[194] With the passage of time demands from the part of the tribal people have undoubtedly increased but their articulation as a movement has failed to take the form of a larger integrated struggle. They are still in the form of assertion of rights against the developmental projects of the state by different segments like the dalits, women and tribals. It is this limited, segmented and largely apolitical self image of these various constituents of democratic struggle that has prevented them from becoming part of a more comprehensive human rights movement. In the absence of an organised community the fight against injustice cannot go a long way.

As already noted there has been tremendous mushrooming of civil liberties organisations and NGOs over the past few decades. But there has been tremendous pressure on them to carve out their domain of action keeping in mind both national and international demands. They have not been able to work independently as organisations for the protecting and promotion of civil liberties. Globalisation along with its other facets has also been upper hand in promoting powerful international institutions. There has been decisive shift of power to the major economic powers and the international institutions that they have promoted. National governments are also pressurised to bring about policy changes to cater to greater developmental needs, liberalise the economy, and curtail welfare provisions and others[195].

Despite the shortcomings there is active participation of the different civil society organisations and the Non Governmental Organisations (NGOs) in delivering services to the society. Working at the grassroot levels they are considered to be most essential institutional mechanism for mobilising people's support, initiative

[194]Rajni Kothari: 'Human Rights-A Movement in Search Of a Theory', pp 25 In Smitu Kothari and Harsh Sethi (eds): Rethinking Human Rights: Challenges for Theory and Action, New Horizon Press, New York, 1991. pp 20-21
[195]Yash Ghai: 'Rights, Social Justice, and Globalization in East Asia', pp 261 In Joanne R. Bauer and Daniel A. Bell (eds): The East Asian Challenge for Human Right, Cambridge University Press, United Kingdom, 1999

enthusiasm and cooperation for developmental purpose. Active concern for protection of democracy, anti corruption battle, community development, women emancipation, social justice is their important areas of action. The present times have seen a considerable decline of the state function in social welfare activities. This expansion of civil society institutions is the outcome of continuous struggle of those at the periphery.

Today, there is an urgent need to recognise the socio cultural, political and economic need of the tribal population and also to acknowledge their autonomy in these matters. It requires search for alternative ways of development and progress without slaughtering the existence of these people. A crisis is bound to occur if we try to hinder their search for identity and assertion of rights. Rather than trying to assimilate them into the mainstream ideology the need is to strengthen their institutions and empower them to participate in the development process in their own way possible.

The Declaration on the Rights of the Indigenous Peoples has brought about tremendous changes in the international concern for the rights of these people. The three issues of land, self determination and community ideals discussed in the work have found space in the international discussion of indigenous issues. Their centrality has not only been asserted in the struggle and the movement of the indigenous peoples but also has come to assume a legal recognition owing to inclusion in the Declaration.

The problem with a universal narrative of rights is a dilemma drawn from, as already noted, a modern liberal-democratic state which allow us little scope to speak of distinct rights of different sections. The modern state based on liberal values often is seen to accommodate differences to fit in to the framework of nationalist ideology which is dominant and evident in every aspect. The state during its process of historical growth tries to carve out a distinct scheme of action and goals. This plan proceeds to take root and percolate in the mindset of the people, hence in national ideology. And thus securing itself as the all pervading belief it turns to be the philosophy of the nation. The state makes continuous attempt to consolidate and strengthen it at every passage in the growth of the nation. Thus, slowly this philosophy gets enshrined in the Constitutional setting, finds space in laws, programmes and policies. The security, the unity and integrity of the nation is imbibed in the minds of the people as a hegemonic concept. So, any attempt to differ or dissent is labeled as anti – national or one that threatens the security. So the prevalent tendency of the larger mass is to submit and adhere to it.

But being excessively absorbed by this larger project of unity and integrity, the state at times have forgotten to value and respect the other voices. The tribal population in India because of their earlier isolation and now due to their weakness has never been able to raise voice for protection of their rights. And, when they found representation within the post colonial structure, the pressure of nation building was so strong that the state found it unnecessary to protect their

distinct ness. But they had distinct practices and way of life and state failed to acknowledge this diversity. Rather it provided its own understanding of the situation, instead of upholding their distinctness; it sought their ultimate integration in to the mainstream way of life. State has infact made an encroachment in their lives by failing to value their discrete identity and aspiration. This has resulted in resentments among the tribal population as they too have actively started to question the very legitimacy of the institution of state power. It has also resulted in the rise of tribal movement in various parts of the country.

However past few decades has undoubtedly seen some positive policy initiatives towards the betterment and upliftment of the conditions of the indigenous people in India. Though there is not complete compliance or immediate response to the events in the international scenario yet as a signatory to the protection of the rights of the marginalised section, the tribals, it has shown some concern. Infact the recognition of the long pending demand for the right to livelihood and access to the forest resources made by human right organisation, activists and the tribals themselves had led to the opening up of legislation in this regard. In a world where there is vast global interconnectedness every state is under pressure to recognise the rights continuously asserted by the indigenous people. As a result the states have learned to value their distinctness and stipulate policies to adopt the changing times.

The tribal problems can no longer be discussed in isolation today. There has been huge migration to their traditional land from outside, development projects implemented by the state, penetration of the institutional and Constitutional structure. As a result of these changes the tribal people has increasingly found caught in the middle of contradiction of deciding on the issue of their survival, protection of their distinct identity and also of development. These three issues are distinctly interconnected with their custom, practices and their future aspiration of a good life.

Only providing for the notion of individual rights cannot be all inclusive if it constitutes each human being as a self contained unit. Accordingly, it would be appropriate here to talk of group or community rights, which would articulate demands that arise from their specific needs. These people are linked to their natural surrounding- land, water, resources, forest not as any atomised self but they share a communal sentiment. They together form a part of the whole habitat in which they exist. In reality this mutual existence is being threatened and their present situation projects a precarious existence and they being treated as inferior. Since these tribal people have continuously being subjected to a system of cultural and ideological subordination and their own powerlessness, concept of individual right would not benefit them much and therefore largely require group assertions. For these people always were bonded by a close link to their communities and land. Community identification becomes an important element and is even connected to a sense of people hood inseparably linked to sacred traditions, homeland and also shared history. So the sense of identity via a community is through which the tribals confirm their commonalities with each other. It is not that this recognition of community would solve all their problems but it can definitely help them affirm their demands better and can face newer challenges better.

This collective membership of community would not just be as self interested individuals but forging a deep solidarity, a kind of consciousness. Indian tribals projects no homogenous pattern, they are all submerged in different cultural trends and practices. Yet based on certain central issues of identity, aspiration and the aim for a just and good life a commonality has been invoked. Civil liberty organisations and indigenous groups have turned in to new weapon for the protection and representation of the aspiration of the indigenous rights. There has been tremendous mushrooming of civil liberties organisations and NGOs over the past few decades. They are today actively working towards positive generation of the rights of the marginalised section in almost every part of the world.

But there has been great pressure on them to carve out their domain of action keeping in mind both national and international demands. They have not been

able to work independently as organisations for the protecting and promotion of civil liberties. Globalisation along with its other facets has also been upper hand in promoting powerful international institutions. There has been decisive shift of power to the major economic powers and the international institutions that they have promoted.

Despite the shortcomings there is active participation of the different civil society organisations and the Non Governmental Organisations (NGOs) in delivering services to the society. Working at the grassroot levels they are considered to be most essential institutional mechanism for mobilising people's support, initiative enthusiasm and cooperation for developmental purpose. Active concern for protection of democracy, anti corruption battle, community development, women emancipation, social justice is their important areas of action. The present times have seen a considerable decline of the state function in social welfare activities. This expansion of civil society institutions is the outcome of continuous struggle of those at the periphery.

While discussing the problems of the indigenous people it is necessary to see that the debate is not just between community or individual rights or that of development and survival. The central question of individual right, protection of their culture and identity, freedom of autonomy to decide their own future should find adequate space in the discursive practices of the state.

Today there is an urgent need to recognise the socio cultural, political and economic need of the tribal population and also to acknowledge their autonomy in these matters. It requires search for alternative ways of development and progress without slaughtering the existence of these people. A crisis is bound to occur if we try to hinder their search for identity and assertion of rights. Rather than trying to assimilate them into the mainstream ideology the need is to strengthen their institutions and empower them to participate in the development process in their own way possible. Accepting their indigenous status would have a way for the recognising the principle of equality, community and justice.

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