

# **TRIBAL AND INDIGENOUS RIGHTS AND WRONGS \***

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## **A CONCEPTUAL FRAMEWORK**

Indigenous and tribal peoples are treated alike by the ILO, with self-identification as “indigenous” or “tribal” being regarded as a fundamental criterion for determining the categorization of groups (Chandra Roy). There is, however, a snag in this approach. Thornberry reports the stir caused by the appearance of Boers (claiming to be indigenous) in a meeting organized by the UN Working Group on Indigenous Populations in Geneva. The self-identification criterion has not been given up but there is more than one sense in which the term is used. While most speak of self-identifications of groups, others refer to self-identification by individuals claiming ‘indigenous rights’. Still others believe that while any social group may identify itself as indigenous, recognition of this by the core indigenous people, who through their endeavours created an indigenous platform within UN framework, would legitimise such a claim. The propriety of vesting “patent rights” on any group of people claiming to be indigenous is, however, questionable.

The path-breaking ILO publication on ‘Indigenous Peoples: Living and Working Conditions of Aboriginal Populations in Independent Countries’ (1953) devoted a chapter to defining “indigenous”. The study could only offer an empirical guide which was used to categorise ‘indigenous’ along with tribal and semi-tribal populations in ILO Convention 107 of 1957 (*refer: Annexure II of Aspiring To Be – The Tribal/Indigenous Condition: Konark Publishers*).

Convention 107 refers to tribal and semi-tribal populations and then mentions indigenous populations as a special category within their social orbit.

Roy Burman (1992) drew attention to two important implications of the foregoing formulation. It tended to project a teleological world-view of the tribal and semi-tribal peoples, shedding their distinct identity. Though ‘indigenous’ populations possess tribal and semi-tribal attributes, they

are defined as a distinct international entity as victims of external conquest or colonialisation as in the Americas, Australia, New Zealand and some other Pacific Islands.

In the case of the tribal and semi-tribal people, ‘integration’ is highlighted, whereas in respect of the mainstream ‘indigenous’, the focus is negatively on conformity with mainstream social, economic or cultural institutions which implies assimilation.

This patronizing ethnocentric bias in ILO Convention 107 dismayed a lot of people. However, the new ILO Convention 169 of 1989 adopted a different approach (*refer*: Annexure III of *Aspiring To Be – The Tribal/Indigenous Condition*: Konark Publishers). While Article 1 of Convention 169 also stipulates self-identification as a fundamental criterion, it eschews the concept of stage of advancement and focuses on its distinctiveness. But it is silent about the nature of this distinctiveness. Besides, while in ILO 107, indigenous social entities have been explicitly stated to be a special category of tribal and semi-tribal social formation with a history attached to them, no such link is explicitly mentioned in ILO 169. Because tribal and indigenous peoples have been clubbed together, they may be considered analogous to one another as a logical corollary. But as an empirical reality, this may or may not be so.

In 1982, on the initiative of certain West European countries (Sander, 1989, p. 415), the Sub-Commission of the Human Rights Commission on the Prevention of Discrimination and Protection of Minorities set up a Working Group on Indigenous Populations without defining the indigenous. However, a working definition that had been developed in 1972 by a Special Rapporteur, Martinez Cobo, was used. Cobo had been appointed Special Rapporteur by the Sub-Commission in 1971 to report on the problem of discrimination against indigenous populations in the context of international publicity about threats to isolated tribes in America (Ibid, p. 406). Sanders (1993, p. 7) alleges that Cobo was not involved in the drafting and that the entire work was done by Williamson Diaz, a UN official. The 1972 Cobo definition is furnished at Annexure IV (*refer*: *Aspiring To Be – The Tribal/Indigenous Condition*: Konark Publishers). This UN

definition relates primarily to the pre-invasion peoples of the Americas, Australia and New Zealand (ICIHI, 1987, p. 6).

In 1983 a paragraph was added to the original definition in the name of Cobo to cover isolated and marginalized populations (UN Document No. E/CN.4/Sub.2/1983/21 Add para 379) (*refer*: Annexure V of *Aspiring To Be – The Tribal/Indigenous Condition*: Konark Publishers).

In one way, this marks a clear shift from the 1972 approach. The earlier approach is definitional; the latter descriptive. But there is another way to look at the matter. Based on Kunz, Rehman in his paper presented at the Workshop stated that “colonization is no less colonization if it is made by territorial contiguity rather than by overseas expansion”. It is the latter perspective that informs the Washington-based Centre for World Indigenous Studies. A publication of this Center has identified 120 indigenous peoples in Europe including Skanians in Sweden, Cornish in Wales, Shetlanders in the U.K., Basques in France and Spain and a number of people in North Italy and beyond (Griggs, 1993).

Obviously, West Europe and North America are polarised in different directions in the matter of identification of indigenous peoples/populations. In his analytical appraisal of the problem (1995), Roy Burman has suggested that while the American perspective is reflected in ILO 169, the West European perspective is reflected in the UN Working Group’s Draft Declaration. Thornberry in turn suggests that the ‘mechanism’ for recognition of indigenous claims is the United Nations itself. But, according to Julian Burger, General Secretary of the UN Working Group on ‘Indigenous Populations’, the UN does not recognize indigenous peoples as such (Burger, 1992, p. 144). He lays emphasis on self-identification. The whole issue seems to be moving in a circular fashion. We are not helped by the restatement once again made in the name of Cobo in 1986, that “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 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 continuous existence as peoples in accordance with their own cultural patterns, social institutions and legal systems” (E/CN.4/Sub.2/1986/7 Add 4 para 379).

It is noteworthy that by reimposing invasion and colonization as contingent facts, the revised definition has moved towards excluding indigenous people from the category of indigenous by contiguous rather than overseas conquest. This is as the Washington-based Centre for World Indigenous Studies would wish.

Rehman observes that identification and definition of indigenous peoples has proved to be controversial and politically sensitive. According to the World Council of Indigenous Peoples (perhaps one of the “core” indigenous groups attending the UN Working Group-sponsored meets), “Indigenous peoples are natives, usually descendants of earlier populations of a particular country, composed of different ethnic or racial groups, but who have no control over the government.” One wonders whether the indigenous claims of the Dalits (erstwhile untouchable castes of India), many of whom claim occupation of several regions of the country even prior to the tribal peoples, would be accepted as one of them by the “core” indigenous peoples.

An earlier NGO Workshop in India asserted that Martinez Cobo’s definition was largely based on Western experience. It instead suggested the following criteria for identifying adivasi/indigenous tribal peoples in India: (a) relative geographical isolation; (b) reliance on forests, ancestral lands and water bodies within the territory of the community for food and other necessities; (c) a distinctive culture which is community-oriented and gives primacy to nature; (d) relative freedom of women within their society; (e) absence of division of labour and the caste system; and (f) lack of food taboos. (Quoted by Thornberry)

It is not proposed to discuss whether all the foregoing criteria hang together. The NGO Workshop significantly did not go by the term indigenous alone but clubbed indigenous and tribal peoples in a single category.

Ram Dayal Munda, Member of the Presidium of the Indian Consortium of Indigenous and Tribal Peoples, while addressing agenda item 4 in the meet organized by the UN Working Group at Geneva in 1993 said that “in the Indian context, unless definitionally specified, everyone could be called ‘indigenous’ after the British colonizers left the country in 1947. Non-specification of the term has led to our Government’s refusal to equate the Scheduled Tribes with the Working Group intended for indigenous peoples.” He added that the term “tribal peoples, though considered somewhat pejorative in the Indo-European countries, is relatively more acceptable in India for this purpose. We therefore strongly suggest that the expression ‘indigenous and tribal peoples’ form a single segment when it comes to defining the peoples concerned, particularly in the Indian and Asian context.”

In his inaugural remarks at the present Workshop, Soli Sorabjee endorsed the position taken by Ram Dayal Munda and observed: “The eternal problem of definition, the ceaseless struggle with words and concepts, still persists.” How right he is comes out in the discourse opened up in the two papers of Thornberry and Rehman relating to the conceptual differences and similarities between the social categories ‘indigenous’ and ‘minority’.

## **INDIGENOUS AND MINORITIES**

For the purpose of the International Covenant on Civil and Political Rights, the UN Special Rapporteur, Capotorti, defined a minority as “a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members being nationals of the state possess ethnic, religious or linguistic characteristics differing from those of the rest of the

population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language” (UN Sales No. E 91 XIV No. 2, Para 68). Capotorti’s formula differs in significant detail from that offered in Recommendation 1201 of the Parliamentary Assembly of the Council of Europe. Even then, as pointed out by Thornberry, use of adjectives like ‘national, ethnic, religious and linguistic’ in the report of the Working Group which drafted the UN Declaration on the Minorities are indicative of the categories covered by the concept of minority.

Rehman observes that indigenous peoples, in general parlance and in many ways, epitomize the minority syndrome. In a number of instances, indigenous peoples occupy the position of minorities and, being weak and inarticulate, many of their demands coincide with those of other minorities. The limited jurisprudence that exists on the position of minorities is closely related to that of indigenous peoples.

But “while similar concerns are shared as regards both indigenous peoples and other minorities, there remains a pronounced view that the indigenous peoples belong to a distinct category”. Rehman quotes Thornberry, according to whom “in many ways the demands made by indigenous peoples are more forceful with a higher threshold, claiming to be more than minorities and asking for an entitlement of two sets of rights, one as an indigenous group and the other as a minority”. Further, “there remains an uneasiness that the claims of indigenous peoples, if applied generally to minorities, may threaten the established world order”. Perhaps the last word has not been said in this regard.

Taking a clue from the foregoing formulation, one may ask whether according to powerful lobbies, indigenous are minorities on whom rights may be conferred without disturbing or indeed reinforcing the established world order? The doubt arises because of the utter insensitivity shown by the concerned UN fora to the view of Ram Dayal Munda (expressed in his capacity as president of the organization projected by the concerned UN forum as the most representative

organization of the “indigenous” peoples of India). Munda had said that in Asia, where around 80 per cent of the indigenous and tribal peoples (according to ILO’s description) are found, the term ‘indigenous and tribal’ rather than ‘indigenous’ alone is more suitable. Doubts also arise because of the silence of campaigners of ‘indigenous rights’ about the pastoral peoples of Greece, the Gypsies (Romas) and Basques of Europe or about the Kurds and the Bedouins of the oil exporting countries of West and South West Asia. This does not mean that recognition of indigenous rights is wrong; rather, that the denial of indigenous rights to many social entities by manipulating the terms “indigenous” and “minority” is wrong.

## **COUNTRY PROFILES OF INDIGENOUS AND TRIBAL PEOPLES**

Skeletal historical and social profiles of countries from which participants attended the Workshop are presented here with particular reference to indigenous and tribal peoples. This could usefully background the CHRI-MRG deliberations.

Rehman’s paper gave an overview of the tribal situation in South Asia. Of particular interest was his write-up about the indigenous peoples in the Andaman Islands. There are four distinct peoples living in these Islands; Andamanese, Onge, Jarawa and Sentinelese. They are small groups of hunter-gatherers, who have no written language and have drastically declined in number over the last two centuries. In the aftermath of the Great Indian Revolt of 1857 against foreign rule, when a penal settlement and a jail were established in South Andaman, the strength of the Andamanese was 4,800. It came down to 625 in 1901; 90 in 1930; and 28 in 1988. There was a similar decline in the case of the other tribes.

Like other scheduled tribe peoples in India, the indigenous peoples of the Andamans enjoy special protection under the Constitution. The main threat to them comes from the development of the Islands through large-scale settlement and deforestation. Rehman quotes the late Prime

Minister, Indira Gandhi, who in 1971 observed, “Neither resettlement nor development should be made an excuse to uproot tribal groups or cut down forests.”

In Bangladesh, the tribal peoples constitute less than one per cent of the total population. While there are many differences among them, what they have in common “is their readily apparent differences from the Bengalis: ethnic, cultural, religious and linguistic.” According to official figures, the total numerical strength of the adivasis in Bangladesh was 623,216 in 1981. Of these, 43.7 per cent were estimated to be Buddhists, 24.1 per cent Hindus, 13.2 per cent Christians and the rest “others”. Many observers of the tribal situation in Bangladesh, however, feel that there has been deliberate undercounting to emphasise the marginal importance of the adivasi population.

Among the tribal peoples of Pakistan, Rehman particularly mentioned the Baluchis and the Pakhtuns. The Baluchis are tribal pastoralists inhabiting the hostile mountain and desert region of the border areas of Pakistan, Afghanistan and Iran.

The Baluchis are Sunni Muslims of the Hanafi school. They share elements of a common cultural and linguistic heritage despite variations in life-style and environment. Originally a warrior people, they are divided into tribes, clans and sub-clans which fall under the authority of powerful chiefs. Cultivable land is scarce in Baluchistan and most families live by combining subsistence farming with semi-nomadic pastoralism. Among the Baluchis, a sizeable population are speakers of Brahui, a Dravidian language. Conservative estimates place 2.5 million Baluchis and about a million Brahuies in Pakistan.

Baluchistan has economic resources which successive Federal Governments have explored and exploited. Natural gas deposits were found in the Sui areas and have been used to fuel the needs of most provinces. The Baluch nationalists claim that the royalties received are negligible.

Similarly, coal is exploited largely by non-Baluchis. A new port was developed in the 1960s at Gwader. The benefits from these projects to Baluchistan have, however, proved negligible and as Baluchi consciousness has expanded, the people have begun to protest the exploitation.

The Pakhtuns or Pathans are the inhabitants of the mountainous areas straddling the Pakistan-Afghanistan border. They speak Pashtu, an Indo-European language. The main Pakhtun tribes fall into three divisions: the Western Afghans, Persian-influenced and often Persian-speaking and settled mainly in Afghanistan (such as the Durranis and Ghilzaris); the Eastern Afghans, Indian-influenced and mainly settled in the trans-Indus plains of Pakistan (such as the Yusufzais); and, in between these two, the highlanders of the tribal belt, sometimes considered the 'true' Pakhtuns (such as the Waziris, Mahsuds, Afridis, Mohmands, Bangash, Orakzai and others).

Like the Baluchis, the Pakhtuns have an ancient history, culture and tradition often identified with the Pukti kingdom as mentioned in the ancient work of Herodotus. The Pakhtun culture and tradition was firmly established between the 12<sup>th</sup> and 15<sup>th</sup> centuries and Pakhtun nationalism was subsequently reinvigorated by the lyrics of Khushal Khan Khattak. Current Pakhtun nationalism alleges discrimination against the NWFP in the allocation of development expenditure in agriculture and industry. Punjabi civil servants play a dominating role in the provincial administration and Islamabad allegedly resists Pakhtun nationalist efforts to upgrade the Pashtu language in higher education.

The materials provided by Khurshid Kaim Khan cover the tribal and analogous peoples in the Sindh province of Pakistan many of whom have their counterparts in India. They have been living in their present habitats since long before the partition of the sub-continent. Khan classifies these peoples in three groups; namely, nomadic, semi-nomadic and settled. Among these, the semi-nomadic Bhils are most important. They are numerically one of the largest tribes

in India. They are treated as low-caste Hindus but occupy an important place as cultivators and farm labourers in Sindh.

Among the settled tribal peoples, the Shidhis deserve special mention. They are descendants of African slaves brought to the sub-continent by Arab Slave traders during the medieval period. A large number of them still serve as domestics in feudal homes.

Khan mentions that among all these peoples, the Kolhis, Bhils and Meghwars are the worst victims of Sindhi feudalism. Even after the enactment of the Bonded Labour Act, 1992, the Human Rights Commission of Pakistan has had to condemn feudal farm-owners for keeping bonded labour in private jails.

Rehman has also provided some information about the struggles of the tribal and analogous peoples in Pakistan. As mentioned in the fourth session of the CHRI-MRG Workshop, the Baluchis were primarily a pastoral people subject to customary tribal law and enforced by tribal councils under the Frontier Crimes Regulation, 1901. The Brahuis of Kalat had a special position among them. According to an agreement reached between the British Government, the Government of Kalat and Government of Pakistan on August 4, 1947, the Government of Pakistan “recognised the status of Kalat as a free and independent state, which has bilateral relations with the British and whose rank and position is different from that of other Indian States”.

On August 15, 1947, the Khan of Kalat declared the independence of Kalat, which decision was endorsed by the Kalat Assembly. The newly-formed Government of Pakistan immediately repudiated the declaration of independence; but joining Pakistan or dismemberment of Kalat was equally unacceptable to the Khan. As a counter, the Pakistan authorities relied on the decision of Baluch leaders in Quetta to merge with Pakistan, ignoring the fact that these leaders had been

appointed by the British and their Assembly's jurisdiction related only to the small tract of land known as British Baluchistan. The ruling class of the erstwhile Khanate territory remained unhappy and often rebellious. Despite constant threats of coercion and actual use of force, it was not until 1955 that they agreed to formal merger with Pakistan. Rehman observes that a probable move to secede on the part of the Khan of Kalat was used as a major issue which led to the abrogation of Pakistan's Constitution in October 1958, the arrest of the Khan, and the promulgation of martial law.

### *Australia*

Out of a total population of 17.3 million (1991) in Australia, some 250,000 are indigenous. It is uncertain when the pre-invasion indigenous peoples began to inhabit Australia, but anthropologists and archaeologists are of the view that this must have been 50-60,000 years ago.

The first European settlement in Australia in 1789 was a penal colony. The indigenous people claimed that while certain elements forcibly encroached on their lands and claimed it for the British Crown, there was stiff resistance. Historians, however, project the occupation as peaceful in intent though there were several "terrible mistakes". This rationalization presents modern Australia with a dilemma.

In 1991, the Queensland Government passed the Aboriginal Land Bill as a sequel to which approximately 95 per cent of traditional land cannot be reclaimed. The land that may be claimed is decided by the Governor-in-Council and must be gazetted as vacant Crown land, a national park or aboriginal land held under deed or grant. The indigenous peoples' spokesmen referred to this issue at the 9<sup>th</sup> session of the Indigenous meet organised by the UN Working Group in Geneva. They also described the Federal Government's new education policy (AEP) as cultural genocide. AEP strategies and programmes have, by and large, been written by non-aboriginal bureaucrats and academics who have little understanding of aboriginal cultural differences and educational needs.

Juli (1994, pp. 92-97) reports that during 1992 and 1993 there were several positive and negative developments. In June 1992, Australia's highest court found in a case filed by one Mabo (now well known as the Mabo case) that indigenous rights survived unless specifically removed by law or by sale of land or its utilization in a manner precluding indigenous use. The court rejected the legal fiction of *terra nullius*. However, it seems that there is considerable misconception about the implications of this judgement. Not all of Australia has been restored to the indigenous people. It only means that in respect of each claim, if it can be established that the territory in question was under the control of an indigenous organised entity, the claim will be entertained. In India, a similar judicial pronouncement was made by the Judicial Commissioner of Manipur as early as 1960 (Roy Burman, 1961) but has not received the attention it deserves.

Dahl (1990, p. 89) reports that an Aboriginal and Torres Strait Islander Commission (ATSIC) came into existence in March 1990. It consists of 17 elected indigenous persons and 3 Government nominees. The elective members are sent up by 60 Regional Councils. The ATSIC is, however, not an instrument of self-government but a bureaucratic service organisation designated to administer policies drawn up by white politicians or by officers from the Department of Aboriginal Affairs who man the Commission.

### ***New Zealand (Aotearoa)***

Out of a total population of 3.4 million in 1991, as many as 12 per cent are indigenous Maori. It is believed that when James Cook landed in New Zealand in 1769, the indigenous peoples had lived in the island for over 1,000 years. McEwen (1979, p. 212) asserts that at the time of contact with European settlers in the early 19<sup>th</sup> century, there was no part of New Zealand unclaimed by one or other of the many tribes and sub-tribes. Now a Tribunal is examining who owns New Zealand (Hindustan Times, 1988). Spasmodic settlement by European immigrants began early in the 19<sup>th</sup> century and by 1840 considerable numbers, mainly from Britain, had settled in parts of the country. When a British company was formed to promote planned settlements in New Zealand, the British Government sent the Royal Navy to persuade the Maori Chiefs to accept

British rule in return for British citizenship and protection. On February 6, 1840, the Maori Chiefs gathered at Waitangi to sign a treaty with the British.

The Treaty was drawn up in Maori and English and there are serious discrepancies between the two versions. In fact, the Treaty of Waitangi ushered in an era of systematic colonization and, with it, conflict between the Maori and Europeans over land. It is no wonder that in 1990, while white New Zealand celebrated the 150<sup>th</sup> anniversary of the Waitangi Treaty, many Maori went to Waitangi to protest at the failure of successive governments to honour it (Dahl, 1991, p. 93).

In 1865, the New Zealand Parliament decided to create a permanent tribunal, the Native Land Court (later Maori Land Court), to investigate the ownership of Maori lands through public hearings and to issue title to such lands. The statute establishing the Court instructed that ownership be resolved according to Maori custom and usage, and that freehold title be issued to successful claimants (McEwen op. cit, pp. 214-215). A number of developments have taken place since, but the underlying issues are far from resolved. In the federal election in October 1990, Maori communities were urged not to vote but, instead, to sign a register for Maori sovereignty. Unofficial figures suggest that a large majority of Maoris refused to vote and signed the sovereignty register instead (Dahl, op. cit, p. 94).

### ***South Asia***

Until 1947, India, Bangladesh and Pakistan shared a largely common history. Hence, facts of general relevance for the three countries can be put together.

There is an almost continuous belt of tribal and other forest dwellers from the north-west of the sub-continent to the north-east. If one looks beyond, mountain and forest-dwellers with interlinked social ties reach up to the Pacific Ocean in the east and through the Pamir, Hindukush and Elburz to the Caucasus to the west, with a lateral northern extension along the Tien-Shah and Altai to Central Asia. While interlinked social ties are not visible, the mountain dwellers of the

Carpathians, Transylvanian Alps, Balkan Mountains, Dinaric Alps, Alps, and Pyrenees constitute continuity of another order. The tribal situation in the Indian sub-continent and the concomitant human rights issues are to be perceived as part and parcel of the ferment taking place in the mega-indigenous and tribal habitat joining the two oceanic regimes.

Within the sub-continent, the tribal habitats are generally at the meeting points of dominant linguistic-political groups or along international borders. For more than three decades, I have been highlighting their bridge and buffer roles. It is in the interest of the dominant politico-cultural entities to ensure that the concerned peoples maintain the core traits distinctive of their identity so that they can continue to play this bridge and buffer role effectively.

### *India*

The advent of colonial rule, with its military might and expanding communications in the interest of trade and commerce and resource exploitation of the sub-continent rendered the historical bridge and buffer role of the tribal peoples largely dysfunctional. There was natural turmoil and restlessness among them. As mentioned by Sharad Kulkarni in his paper, the rulers enacted special laws to cope with the situation. Regulation XIII of 1833 declared Chhota Nagpur a non-regulated area. The Scheduled Districts Act of 1874 (14 of 1874) had an exhaustive list of scheduled districts including regions in present-day Bangladesh and Pakistan. Local governments were empowered with the prior permission of the Governor-General to exclude these districts from the operation of provincial legislation.

The Government of India Act, 1919, empowered the Governor-General-in-Council to declare any territory in British India a “backward tract” and to direct that any Act or part thereof shall not apply to such territories except with specified exceptions or modifications. The Government of India Act, 1935 made special provision for the administration of areas “excluded” or “partially excluded” by the Governor-General-in-Council.

Thus, by and large, laws were linked to areas and not to tribes. But several Acts were also related to specific tribes. For instance, the Criminal Tribes Act, 1874, empowered the Governor to declare the entire population or part of a tribe as criminal. The Act was used by the administration against people who turned against the Raj mainly because of the loss of their traditional roles. The Criminal Tribes Act was repealed by independent India in 1950.

Specific constitutional safeguards protect customary tribal laws, language and culture, and various provisions provide that the Hindu Marriage Act, 1955, Hindu Succession Act, 1956, and similar social laws shall not apply to Scheduled Tribes unless extended to them by a specific notification of the Union Government. This follows age-old tradition rooted in pragmatic prudence. In fact, during the four decades since the promulgation of these Acts, not a single Scheduled Tribe has been brought within their purview. Thus, the tribal peoples have been left free to follow their own customary laws. Similarly, the census practice of recording and publishing the language and religion returned by tribal persons in minute detail is in continuation of the same tradition.

In recent censuses, the proportion of tribal persons speaking distinct languages and professing their own religions with distinct names is going up in many parts of India. There is also an explosion of creative literature among the tribal peoples of India. In 1992, the Museum of Man, an autonomous body attached to the Ministry of Human Resource Development, collected about 4,000 books published in more than 50 tribal languages. These do not include text books at the primary level and religious tracts. About a dozen tribal languages are now taught in several universities up to the postgraduate level.

Notwithstanding the foregoing, it is difficult to say that there is much authentic concern for tribal peoples in India. Their exploitation and marginalization not only continues unabated but has gained momentum in the post-Independence period.

In 1961, the Committee on Special Multi-Purpose Tribal (SMPT) Blocks appointed by the Government of India reported that (i) throughout vast areas of tribal India, the last hundred years present a melancholy picture of encroachments, alienation and exploitation; (ii) it is doubtful how far legislative measures have been effective; (iii) forest rules, which continue as a legacy of the colonial period, are creating hurdles for development; (iv) the expansion of communications has brought in new diseases and caused moral decline and cultural decadence; (v) a majority of the schools in tribal areas are alien to the local culture and tradition; (vi) the fact that housing reflects a social philosophy and artistic and cultural values has too often been ignored; (vii) indebtedness among the tribal peoples cannot be effectively tackled without concerted efforts through legislative measures, administrative enforcement and an informed public opinion; and (viii) how to bring about a complementarity of traditional *panchayats* (councils) and state-sponsored statutory *panchayats* has not received enough attention.

The situation has not improved greatly since the publication of this Report. On the other hand, in the name of development through mega-hydel projects, mining and industrial enterprises with eco-damaging technology, acquisition of land, and reservation of forests under legal regimes which carry within their ambit colonial legacies of *res nullius* and *terra nullius*, the tribal peoples have to a considerable extent been divested by the state of their rights of access to and management and control of traditional life-supporting resources. The special provision of the Constitution to protect the interest of the tribal peoples has hardly been invoked by the Union Government and in some cases the State Governments have invoked it in a manner which harms their interest. Similarly, the Sixth Schedule of the Constitution, with its autonomy-thrust for the tribal peoples, has been rendered a political toy. Much of the massive investment for the development of the tribal peoples is either no more than accounting jugglery or is not central to their needs.

Tribal discontent is mounting. In some parts of the country, tribals have taken to arms. Rather than find democratic solutions to problems through a paradigm shift in approach, the ruling class has indulged in administrative embroidery on the one hand and repressive measures on the other.

This sorry picture also holds good for Bangladesh and Pakistan. Even so, there is a sense of complacency among the elites of the sub-continent about what is being done for the tribal peoples. But a large proportion of the 70 million tribal population in India, 0.5 million in Bangladesh and approximately 0.3 million in Pakistan do not share this perception.

### ***Bangladesh***

Rehman mentions that in Bangladesh, the Chittagong Hill Tracts Regulation of 1900 confirmed the internal autonomy of the hill people. It delineated categories of land, notably *khas* (government) land, and specifically excluded non-indigenous peoples from settling in tribal areas. This special status was abolished in 1964. This has brought suffering to hill people in the Hill Tracts.

### ***Pakistan***

Bangash, in his paper contributed to the Workshop, has discussed in detail the administrative history of the tribal areas in Pakistan. These areas popularly known as FATA (Federally Administered Tribal Areas) comprise seven political agencies. The notorious Frontier Crimes Regulations, 1901, which served as the instrument of colonial rule, continues to reign supreme. Universal adult franchise is denied to FATA people.

Theoretically, the tribal areas enjoy certain rights of self-government. However, under the 1973 Constitution, the President of Pakistan is also chief executive of these areas. He is empowered to make, repeal or amend any regulations or amend any central or provincial law for the whole or any part of the area. He may at any time direct that the whole or any part of a tribal area shall cease to be a tribal area. However, the President shall ascertain the views of the people of the area concerned, as represented in their tribal *jirgas* (councils).

There are tribal peoples in the south and along the south-west borders of Pakistan with Rajasthan and Gujarat in India. They are mostly regarded as low-caste Hindus. Human rights activists in Pakistan have pointed out that, though not subject to political victimisation, they suffer feudal oppression as bonded and slave labour.

### ***Sri Lanka***

The hunting and gathering Wanniya-Laeto (Veddah) of Sri Lanka are original inhabitants but successive constitutions of the country do not make any mention of them. Official development policy has devalued the traditional Wanniya-Laeto mode of life. Stegeborn in his paper observes that Sri Lanka's constitutional ideology has all through been to undermine the suggestion of an aboriginal nationality.

## **OVERVIEW OF OTHER TRIBAL, INDIGENOUS AND ANALOGOUS PEOPLES**

### ***Africa***

Thornberry quotes Mariamba (Indigenous Affairs, 1/94) to the effect that “the indigenous ‘movement’ in Africa grows from the policy adopted by independent post-colonial states. The transition to settled agriculture from hunting, gathering and nomadic cattle-herding has been instrumental in turning some communities into indigenous groups. The cultural domination of the new states by Bantu or Arabic-speaking groups marginalised others. Outright discrimination and violence in some states has also had its impact.

### ***The Americas***

“The Indigenous World 1993-94” gives country-wise profiles of the indigenous peoples of North and South America.

### ***Canada***

After 20 years of negotiation, the Inuit of the North West Territories entered into an agreement with the federal government which will set up a new territorial government before the turn of the century. The new self-governing territory, Nunavut, meaning “Our Land” will be dominated by the Inuit, who make up the majority of the population. The agreement also includes a land claims settlement. Under this, 18,000 Inuit will have ownership rights to 353,610 sq. kms. or 18 per cent of the land within the Nunavut settlement area. Within this region, the Inuit will have sub-surface rights (ownership of gas, oil and minerals) in 36,257 sq. km. Finally, the Inuit will get royalties from oil and mineral development” (Dahl, 1995, p. 30).

Despite this, “The Indigenous World 1993-94” reported that native peoples in Canada continue to suffer from extraction of resources on their territories. A large delegation of 45 Cree, Salteaux and Dene people visited London in November 1993 to express their disgust at how their Treaty rights have been violated since the British Crown repatriated the Constitution of Canada in 1982.

In India there are four full-fledged States and two Union Territories where the tribal peoples are in a majority. An exchange of information about the rights enjoyed by the tribal states in India and the rights proposed to be conferred on the Nunavut will be useful.

In statements to the United Nations, Canada has explained that it refuses to recognise indigenous common tribes as ‘peoples’ because under international law ‘peoples’ possess the right of self-determination leading to independence (Moses, 1994, p. 41). Until recently the position of the Government of India was the same. But on October 17, 1995, the External Affairs Minister stated at a press conference that the Government of India does not accept self-determination as including any right of secession (Hindustan Times, 1995).

*The United States*

“The Indigenous World 1993-94” shows that native American languages and culture remain under threat. Financial desperation facing many native American nations has forced some tribal governments into making agreements which could cause native Americans long-term problems. A particularly pertinent example concerns the Mescalero Apache Tribal Council, which in February 1994 agreed to negotiate with Northern States Power (NSP) so that the company can store high-level nuclear waste on their territory.

*Mexico*

During 1993, six school teachers were assassinated in Quaxa for trying to encourage land recuperation by indigenous peoples. In case of the Chapas, there are Caciques (indigenous leaders) who have thrown indigenous peoples out of their communities because of their membership of a particular Protestant sect and, in a few cases, for becoming members of the Catholic Church (Ibid).

*Brazil*

The tribulations of the Yanomami date back to 1987, when the first invasion of gold prospectors took place. Since then, Yanomami population has been reduced by 20 per cent. Though there is an agreement to demarcate indigenous territories, demarcation has been suspended for lack of funds and on account of pressure from landowners and mining companies.

The eclipse of the state of human rights of tribals and indigenous peoples is clearly not confined to any particular part of the globe. There is also a brighter side, which again is global. “The Indigenous World 1993-94” recounts that in Peru, the Inter-Ethnic Association for the Development of Peruvian Rainforests is implementing an extensive programme of demarcation and titling of communal territories. The project, financed by the Danish Ministry of External Relations via IWGIA, has placed in position more than 100 native communities, covering an area

of almost two million hectares in the Ulayati region. The Bolivian Government has moved towards educational reform, which includes intercultural and bilingual education.

In Ecuador under the banner of the Confederation of Indigenous Nationalities of the Ecuadorian Amazon (CONFENIAE), the indigenous peoples have been working towards the creation of an indigenous parliament. This is not to form a parallel state but to emphasise that “we belong to a pluri-cultural country”.

### *Europe*

Under the Greenland Home Rule, adopted by the Danish Parliament, there is an elected Parliament with 31 members and a seven-member Cabinet headed by the Premier. Rasmussen, a former Greenland Minister of Social Affairs observes (1995, pp. 48-50). “The Premier is responsible for the administration of Home Rule, which has complete legislative power over internal affairs, with the exceptions of judicial and external and security affairs.” “The Greenland Home Rule defines indigenous peoples as the first inhabitants of part or all of the country. The Greenlanders have collective ownership of their land and resources.” At the same time, he mentions that “Greenlandic politicians in the Parliament and the government have recently promoted slogans such as self-government to the roots, self-government to the villages, and greater respect for the Greenlandic language in both the political and administrative instances.” This shows that there are or have been problems concerning the implementation of home rule.

With the recent disclosure about the presence of nuclear weapons in the United States Air Force Base at Thule, the capital of Greenland, the opportunity has come to test how real Home Rule is in Greenland. Orescov (1995, pp. 51-59) states that the procedure by which the suit for compensation was processed in the Greenland Ministry is not known; nor can it be ascertained whether the case was ever put before the Danish Government or the relevant minister, owing to

the fact that the Ministry's dossier No. 0440-01, "The Thule Council's Claim for Compensation for Lost Hunting Grounds", has vanished.

### ***Nordic Saami Parliaments***

The Swedish Saami Parliament was established in December 1992. But it was not followed by legal recognition of the Saami as an indigenous people. The same law that recognised the Saami Parliament also reduced Saami hunting rights. The latter action was based on the assumption that the mountains are state-owned. The Saami, on the other hand, dispute this and assert that the state has encroached on their right.

The Saami Parliament in Norway is also facing problems. The State lays claim to non-private lands in northernmost Norway which the Saami say is their territory. In 1994, the State transferred the land to a new public company called Finmark State Forest. It is mentioned that computerized procedures of recording titles is at the root of the dispute, but it seems that more basic questions are involved. As the case of the Saamis illustrate, the basic question is that of differentiation between state rights and community rights. As Stegeborn observes in his paper, the concept of separate state-rights is a dimension of non-indigenous thinking. But then the problem of synthesis of community and state rights remains to be resolved everywhere.

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