

## **Indigenous People – Experience in Indian Constitution**

by

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The indigenous people are known variously as aboriginals, natives, ethnic or tribals. Some of them are even nomads. These indigenous people confront us with an interesting dilemma. There is a challenge to preserve their socio-cultural identity and distinct way of life. At the same time a globalized world seeks to assimilate them for altruistic motives like benefits of development, education, health, housing and modern living. There are other baser motives to exploit minerals and natural resources, land acquisition and domination. There are also mixed bag motives to proselyte, tourism and integration with ever expanding urban areas. This dilemma has produced extreme views. On the one hand, there are exclusionists who would keep these indigenous people absolutely away from civilization for a life style in pristine form. On the other hand are ever expanding efforts to assimilate these indigenous people in mainstream for the sake of education, healthcare, housing and all that a modern life offers. They say that these indigenous people cannot be reduced to showpieces of antiquity and live life of hardship. Each society has devised own unique ways to deal with indigenous people within general framework of governance and mainstream society.

Does India have indigenous people? Yes and No. It depends upon perspective with which you see vast population of tribals in remote areas, distant hills and deep forests. An interesting example of indigenous people in India is of tribes in Andamans and Nicobar Islands living in complete isolation.

The whole area is a no-go for outsiders, whether Indian or foreigner, enforced both ways by Authorities as well as tribals. An American evangelist recently lost life without trace in effort to teach some Christian virtues to these tribals.

However, beyond this binary of isolation and complete assimilation is middle path to preserve ethnic identity and way of life while allowing external influences and benefits of modern civilization. In India the indigenous people are broadly categorized as Schedule Tribes by Presidential Order of 1950 issued under Article 342 of the constitution of India. These Scheduled Tribes are spread all over India in South, North, East and West. The abiding concern for framers of constitution, Indian State and civil society has been to address their backwardness and integrate them in mainstream society by creation of opportunities through reservations and other affirmative action. For these scheduled Tribes there are reservations of seats in parliament (Articles 330), state assemblies (Article 332), elected municipal bodies (Article 243-T) and even village panchayats (Article 240-D). There are several steps in affirmative action like earmarked seats for higher education (Article 15). There are reservations for them in employment by state from top bureaucracy to lowest cadre (Art 16). Any section of citizens is conferred fundamental right to “conserve” own “language, script or culture” (Article 29). To preserve identity, there are some autonomous scheduled areas created with special laws and/or exemption from application of general laws (e.g. Articles 244, 244-A). Almost every state prohibits transfer of lands owned by tribals to non-tribals. There are laws to prohibit conversion of religion by force or inducement. Similarly by law and judicial verdicts, the tribals are made part of decision making process before minerals and other natural resources of their areas are exploited. In

several states outsiders are not allowed to acquire land to preserve land-holding by local people. The state of Jammu & Kashmir, otherwise biggest of challenge for political assimilation within union, has special status (Art.370) and own Constitution and laws.

An interesting aspect about a diverse society like India is that two ethnic groups otherwise mainstream in own respective areas can collide and seek protection of language, culture and identity of one against the other(s). A lot of Indian states were originally formed on linguistic lines outside the Hindi heartland. So we have states for people speaking Bangla, Kannada, Tamil, Marathi, Telugu, Malyalam, Gujrati, Assames, Orria, Punjabi so on and so forth. Each state has population ranging from 20 million to 50-60 million or more. So a Maratha in Maharashtra may feel being swarmed by migrant settlers from other states that appear to avail benefits of employment and development in Maharashtra at the cost of locals. This has led to so many conflicts between local residents and 'outsiders'. Politics and man-made conflicts apart, the Constitution of India guarantees as fundamental right "to move freely throughout the territory of India" (Article 19(1) (d)) and declares that inter-state "trade, commerce and intercourse" shall be free (Article301). In fact the sheer volume of inter-state movement of people, goods and services within country is just mind boggling with highways, trains and airports always full beyond capacity. Notwithstanding cross-country migration of enormous proportion which is constitutionally guaranteed, a resident of one state may call himself an indigenous ethnic native of own state and seek to shut door for migrants from other state. However, this same indigenous ethnic native may seek employment or other opportunities of trade and commerce in other state

and resent being treated as an outsider by indigenous ethnic native of that other state. This duality leads to localized conflicts from time to time and create law order problems. Like in a happy argumentative family, the question remains unresolved as to who can exclude who in which state because none can live without other.

A very unique conflict of high proportion arose in North-East State of Assam where the indigenous *Ahoms* and other ethnic groups protested against being surrounded by migrants who came over a long period from within undivided India i.e., Bangla speaking Hindus. They resent more the Muslim refugees from neighboring Bangladesh, erstwhile East Pakistan who came like a flood during 1971 conflict between East and West Pakistan which led to creation of Bangladesh. This controversy reached Supreme Court of India (See *Assam Sanmilita Mahasangh v. UOI 2015 (3) SCC 1*) where the grievance of Assamese people is that massive influx of illegal migrants tantamount to “external aggression”. There is assault on their “way of life” and their culture is “being eroded in such a way that they will be ultimately swamped”. This matter is referred to a constitution bench of five judges with questions amongst others ;

(A) Whether the massive influx of illegal migrants in a state constitute “external aggression” and/or “internal disturbance”?

(B) What is the meaning of “culture” and fundamental right to “conserve” it in Article 29 of Constitution of India?

(C) Whether “state” refers only to a territorial region or it also includes people living there with their culture and identity?

After about 50 years of political agitation, legal battles and massive exercise of enumeration this flow of illegal migrants and their descendants are stated to be about four million people. These people are completely disowned by friendly neighbor Bangladesh. After these weighty questions are answered, the fate of these human beings can be left only to imagination. A massive problem begs much more massive solution, if at all it is there, to test a political system, law enforcement and humanity within us.

For a vast country like India, recognition of small or big ethnic identities to preserve their socio-cultural identity leads to celebration of diversity with lots of festivals. However, these identities can also become political plank leading to conflicts, power struggle and violence. It may take form of Naxal movement to separatist violence like Punjab, North-East and Tamilnadu in past and Kashmir in present. The varying local aspiration has also led to multi-party coalition governments in centre and states. So far India has been able to accommodate all kinds of indigenous people with several modules and methods to assimilate and at the same time preserve their unique ways of life, culture and identity. Despite tumults of past and present, the political map of democratic India has so far only grown bigger in territory after independence by addition of states of Sikkim, Goa and Pondicherry. All these states came to be part of union of India with wonderful set of unique indigenous people.

