

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## EDITORIALTEAM

### EDITORS

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrish Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpna

Assistant professor of Law

*Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **INDIGENOUS WOMEN- KEY CHALLENGES AND WAY FORWARD- A PERSPECTIVE**

## **Indigenous Women's Rights: Overcoming Gender Discrimination and Empowering Communities**

AUTHORED BY - INAAYAT

BBA LLB (HONS)

SEMESTER-5

NMIMS, CHANDIGARH CAMPUS

### **ABSTRACT**

This essay Indigenous Women- Key Challenges and Way Forward- a Perspective, defines indigenous people as a group of people who have distinct ethnicity or culture and have maintained this distinct identity for a long time. These people have been considered as the original inhabitants of the land. The essay examines the various challenges faced by indigenous people and women globally. Different aspects such as the negative impact of globalisation and economic liberalization on indigenous communities and women have also been probed into. The multiple rights provided to these people by international bodies such as United Nations (UN) and International Labour Organisation (ILO) through charters and declarations have been analyzed as well. The essay concludes by suggesting different plausible solutions that can be adopted for the upliftment and betterment of the indigenous women.

### **INTRODUCTION**

Women are considered as one of the most vulnerable sections of the society, but indigenous women are the most vulnerable, exploited and underprivileged segment amongst women. Their existence, innocence and originality face multiple challenges in the globalized 21<sup>st</sup> century. This essay first defines who the indigenous people are, the distribution of their population, and the various problems faced by these groups globally. The adverse implications of Globalisation and Economic liberalization on the indigenous people and women have also been discussed. Rights that are provided to these groups under different international conventions, multiple initiatives taken by the United Nations in the recent years have also been examined. Further the essay also states about the status, role and the challenges that are faced by indigenous

women across the world. The essay concludes by suggesting various possible solutions that can be adopted for the betterment and upliftment of the indigenous women.

## **INDIGENOUS WOMEN- KEY CHALLENGES AND WAY FORWARD A PERSPECTIVE**

Before we examine about rights and various challenges faced by indigenous women it is essential for us to first know about who exactly indigenous people are and what are the various problems faced by these groups as a whole.

### **Definition of indigenous people**

Although there is no particular definition for indigenous people<sup>1</sup> but they can be described as a group of people who have a distinct ethnicity or culture and have maintained their unique traditions, languages, and culture for generations. They are often considered as the first/original inhabitants of a specific geographic region or landmass. There are many indigenous groups present around the world, for example, the Aborigines of Australia, the Lakota group in USA, Mayas in Guatemala, Bhils in India, Uighur in China and Maasai in Africa. Despite their cultural differences indigenous people from across the world face common issues and problems, mostly related to their rights as distinct people.

### **Indigenous people- Population, distribution and implications**

According to the data provided by International Labour Organisation<sup>2</sup>, indigenous peoples represent 6.2 percent of the world's population, that is 476.6 million people, out of which 238.4 million are women and 238.2 million are men. Of the global indigenous population, 70.5 percent live in Asia and the Pacific, 16.3 percent live in Africa, 11.5 percent live in Latin America and the Caribbean, 1.6 percent live in Northern America, and 0.1 percent live in Europe and Central Asia.<sup>3</sup>

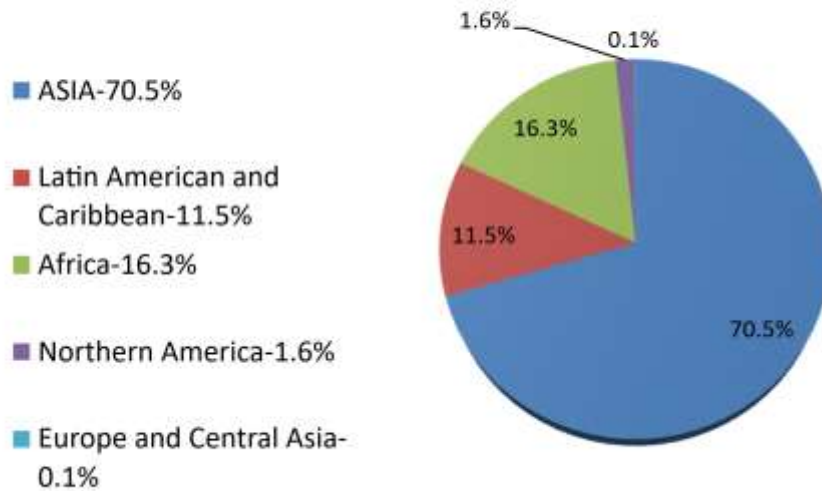
---

<sup>1</sup> Tribal\_Society\_In\_Modernization\_and\_Globalization\_Era.pdf , page no. 106

<sup>2</sup> [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_779265.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_779265.pdf)

<sup>3</sup> [Indigenous Peoples at the United Nations | United Nations For Indigenous Peoples](#)

### Indigenous People-Continent wise



Various researches have highlighted that indigenous groups across the globe suffer from the consequences of historical injustice. This discrimination against them affects the various aspects of their lives and as indicated by researchers globalisation and economic liberalization has only magnified their sets of problems.

#### **Rights of Indigenous people under International Law**

In the 1957 International Labour Organisation (ILO) introduced and passed Convention No. 107, which basically proposed the integration and protection of indigenous people and tribes. In line with the evolving needs and challenges faced by indigenous people ILO replaced convention No. 107 with convention No. 169<sup>4</sup> in the year 1989. United Nations (UN) Declaration on rights of indigenous people<sup>5</sup> was passed in the year 2007. This declaration defined the various rights given to the indigenous people, including their rights of culture, language, identity, etc. UN has further dedicated August 9 as World’s Indigenous Peoples’ Day. While the ILO convention and UN Charter is a step in the right direction positively impacting the lives of indigenous peoples; as is reflected in the laws and legal structure of a few member countries and also in the passage of judgements<sup>6</sup> across different countries in the world, which recognise the existence and rights of these people.

<sup>4</sup>[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169)

<sup>5</sup> <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>

<sup>6</sup> Mataquescuintla v/s Guatemala, Sarayka v/s Ecuador.

### **Challenges and problems of indigenous people**

Their distinct identity and microsystems do not integrate well in the overall global macro picture, which is essentially commercial and profit oriented. Indigenous cultures are often devalued, marginalized or even suppressed. Their cultural practices, and languages at some places are discouraged, which contributes towards depletion of the indigenous identity and heritage. Most indigenous groups belong to economically disadvantageous backgrounds<sup>7</sup>, resulting in **limited economic and political opportunities**. They don't have adequate access to **healthcare**<sup>8</sup> facilities, due to lack of infrastructure and ethnic discrimination. Introduction of **globalization and economic liberalization** in the economy, led to spurt in urbanization which further resulted into the indigenous lands being forcefully taken away by the government/private sector from indigenous people for development of highways, roads, dams, etc. Children from indigenous backgrounds find it difficult to attain **quality education** as the schools are underfunded and the education curriculum doesn't include their native language and traditional studies. To further elaborate on discrimination against the native communities we can take the example of the Aboriginals a native community of Australia, even though them being the first inhabitants of the land they were mal-treated as second and third-class citizens<sup>9</sup>.

### **Indigenous Women- Their role, status and challenges**

Despite efforts being made at international and national levels, indigenous people continue to face challenging scenarios in the 21<sup>st</sup> century and in fact women are worse off than their men counterparts. Traditionally, world over indigenous women were respected and acknowledged by the indigenous men and they had an equal access and right on the ancestral land and resources. Globalisation has also impacted these people culturally with their cultures, value systems almost got bulldozed by the modern cultural influences. While the traditional value system of indigenous people treated women with respect, over a period of time due to loss of identity and resources, adverse circumstances have been created for women. Indigenous women are discriminated on the basis of their ethnicity and gender. These women face and experience discrimination in multiple forms, they often lack access to education, proper healthcare facilities and ancestral land, consequently exposed to immense poverty and subjected to domestic violence, sexual abuse and human trafficking. A recent study showed that Canadian indigenous women are murdered at a rate 7 times higher than non-indigenous

---

<sup>7</sup> [Economic and Social Development | United Nations For Indigenous Peoples](#)

<sup>8</sup> <https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/human-rights.html>

<sup>9</sup> [Cashless welfare card treats Aboriginal people 'as third-class citizens' | Indigenous Australians | The Guardian](#)

women. Similarly, 84% Alaska Native Indian American women have experienced some form of violence in their lifetime ranging from psychological, sexual, emotional and physical violence. Out of this 38% of women are not able to receive any legal aid<sup>10</sup>. In many countries there is a lack of clean drinking water and poor sanitation facilities that makes their life extremely difficult. Access to healthcare facilities and services is restricted because policies and programmes that are introduced by the government take women as a homogenous group. Status of indigenous women differ from one community to another, yet they face common problems because of their common indigenous status<sup>11</sup>.

### **Initiatives by United Nations**

As such there are no legislations passed by countries specifically for the wellbeing and rights of indigenous women but this problem has been recognised by the United Nations (UN). During the 2030 Agenda<sup>12</sup> for sustainable development the theme for which was “leave no one behind”. UN launched a strategy for inclusion and visibility of indigenous women, under this various problems faced by indigenous women on a regular basis have been identified and accordingly on the basis of this report recommendations will be sent to various bodies of UN, such as UN women, UN System-Wide Action Plan on Rights of Indigenous People (UN-SWAP). So that appropriate action can be taken to improve the condition of indigenous women. Another initiative taken by UN is that of Permanent Forum<sup>13</sup>, this forum plays a key role in addressing the situation of indigenous women and thereby making recommendations. Annual sessions are held for the rights of indigenous women’s rights and they try to include the rights and perspectives of them in major intergovernmental frameworks. This forum has become an institutional venue for indigenous women to connect with various non-governmental organizations. In 2017<sup>14</sup> on the commemoration of the tenth anniversary of United Nations Declaration on Rights of Indigenous People, the commission on Status of women held an interactive dialogue on “empowerment of indigenous women”. This was a response to a call made in 2014, in the outcome of the document of World Conference of Indigenous People and a recommendation of the permanent forum. Even though UN is taking some steps to promote welfare of indigenous women. This is simply not enough. To actually help indigenous women

---

<sup>10</sup> <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/indigenous-womens-rights-are-human-rights>

<sup>11</sup> [BriefingNote1\\_GREY.pdf](#)

<sup>12</sup> [Indigenous Women and the UN system | United Nations For Indigenous Peoples](#)

<sup>13</sup> [Recommendations on Indigenous Women | United Nations For Indigenous Peoples](#)

<sup>14</sup> [Recommendations on Indigenous Women | United Nations For Indigenous Peoples](#)

to overcome the hurdle that they face in their day to day lives serious intervention by the respective countries is also needed. We can see that there is lack of initiative from the countries in this regard.

### **The Way Forward**

On a progressive and positive note, an effort has been made to devise a plan of strategic solutions for the upliftment of indigenous women. To elaborate, **first** UN should emphatically evolve its policies and programmes, as no significant policy intervention has been initiated in the last two decades after the creation of Permanent Forum in the year 2000, and it should pragmatically influence the member countries to frame legislations and the appropriate legal structure to identify and protect the rights of indigenous women. **Second**, governments across the world should consider indigenous women as a separate category in the category of indigenous people, and make laws, specifically targeted at them. **Third**, indigenous women should be provided more representation in decision making bodies at national and international level, across different forums, to enable them to put across their perspectives in context of the policy making. **Fourth**, awareness drives with the aid of international and national agencies in consultation with NGOs and informal groups of indigenous women (e.g. Network for Indigenous Women in Asia<sup>15</sup>,etc) should be conducted; it will significantly enhance the awareness levels of indigenous people, including women about their rights. Social media can be instrumental in connecting and integrating indigenous groups with the mainstream society. **Fifth**, to improve the transparency and accountability a barometer on the performance of member countries in context of the efforts made for the betterment of indigenous people, including women will indeed be helpful. **Sixth**, private sector plays a very important role in today's globalised world, these giant MNCs and international trade and commerce bodies should be sensitized about the conditions of indigenous people.

In fact India has strikingly shown the entire world in elevating an indigenous woman, Smt. Droupadi Murmu, to the highest office of the country. She is the current and 15<sup>th</sup> President of Republic of India. A holistic emancipation indeed. It is hoped that many more member countries adopt India's line of thinking and make an effort to ignite a spark of change for the betterment and upliftment of indigenous women and people.

---

<sup>15</sup> [Network of Indigenous Women In Asia \(NIWA\) - Asia Indigenous Peoples Pact \(aippnet.org\)](http://aippnet.org)