

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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.

AUTOCHTHONOUS EXPLOITATION: THE STOLEN GENERATIONS

AUTHORED BY - JAZTEJVAR SINGH GILL¹

Abstract

Tecumseh, a Shawnee warrior and chief, once said, "Show respect to all people, but grovel to none." And this multi-faceted essay supports the quote by highlighting the socioeconomic problems and violation of rights of indigenous people. This essay examines and investigates the historical injustice and exploitation faced by indigenous people, as well as the consequences of such practices today. Furthermore, raising concerns about the factors causing socioeconomic problems such as health and education, while also highlighting legal reforms and policies proposed by international governments to make the world a safer place for aboriginal people.

Keywords: Indigenous, socioeconomic, aboriginal, historical injustice, exploitation.

Introduction

The essay questions whether the international ruling bodies can provide justice for indigenous peoples for the historical wrongs which they have gone through. And if they can, then how will they go about it? This work depicts the history of marginalized communities by taking instances from domestic as well as global instances and demonstrating the root problem which all worldwide aboriginal communities have faced throughout their generations. Along with shedding light on troubling issues such as human rights violations and economic disparities by accentuating the state of such people in the fields of education and health and how badly affected they are because of the injustice and inequity they have faced for centuries due to colonization and invasion. As well as, promoting the legal reforms and policies introduced by various countries to protect the indigenous lifestyles. Also, taking instances from politics and international real-life case laws that emphasize the significance of the rights of the ethnic community. And lastly, showing how ethnic minorities are finally receiving the equality they have long deserved for centuries.

¹ Student at SVKM's NMIMS, Chandigarh.

Centuries of Resilience: The Struggles and the Rights of the Aboriginals

It's been centuries since the never-ending and continuous exploitation of aboriginal, endemic, and native people throughout the different lands of the world. Who are these people, and why have they been exploited? These people are called "indigenous people". Indigenous people are unique cultural groups that have ancestral ties to the place where they live, occupy, or have been displaced from. The places on which they live and depend are inevitably linked to their identities, cultures, and livelihoods, as well as their overall physical and spiritual well-being. It is estimated that there are around 476 million indigenous people spread across 90 countries worldwide. This equates to fewer than 6% of the total world population. Indigenous people are practitioners of unique and distinct cultures. They have held on to their distinctive social, cultural, and political features for decades, if not centuries, which are very different from the mainstream and dominant societies in which they live. Despite having diverse cultural backgrounds, indigenous people worldwide share one quotidian problem, which is the protection of their rights and socio-economic exploitation.

Indigenous people have fought for their recognition, culture, livelihood and religion for years, this is evident by taking instances from the American Indian Movement in the United States to the Pathalgari Movement for Adivasi Autonomy in India. But despite the resistance, they have continuously faced injustice through the violation of their rights, and they are regarded as one of the most disadvantages and vulnerable groups in today's world. These communities have historical continuity, but after colonization and invasion, they have been degraded and regarded as inferior in many ways in different places, worldwide.

Looking at the international historical background, it is noticeable that the native people have faced a common grassroots problem some of which being lack of access, absence of political representation. Firstly, taking the instance of India, the Adivasis were one of the earliest aboriginal people and inhabitants of the subcontinent. Not much is known about their history, but certain pieces throughout Indian history show that they moved to hilly areas after the invasion of Indo-Aryan tribes thousands of years ago. Even though there were some similarities between the religious beliefs of indigenous people and Hinduism, they were segregated from Hindu caste society. There were also plenty of Adivasi rulers who conquered and commanded not only Adivasis but also many non-Adivasis. But around the late eighteenth century, the British government disturbed societies by making substantial inroads into the indigenous lands.

This brought government officials and moneylenders into Adivasi society, which led to the beginning of the process of encroachment on Adivasis by the British and other outsiders. Soon after, the disturbance created by the outsiders resulted in revolts throughout eastern India, which compelled the administration to pass laws regarding the protection of indigenous lands. However, these laws were disregarded, and the indigenous people still faced violations of their rights, which led them to live a life of never-ending poverty and poor health in India which has impacted them even till the present day.

Taking into account the Canadian scenario, indigenous people are mostly comprised of the First Nations, Metis, and Inuit. They were the original inhabitants of the land that is now called Canada. The Inuit inhabited the northern regions; the Metis who are a mix of European and indigenous ancestry lived mostly in the Prairie provinces and Ontario; and the First Nation peoples were the original inhabitants of Canada. These people formed a well-structured and complex social, political, and cultural system even before the Europeans invaded North America. But as the reign of the Europeans started, their traditional indigenous ways of life completely changed. Indigenous people, like every other aboriginal society, were forced to live in poverty. Not only that, but their lands and people were exploited under duress, and their children were forcefully taken away and committed to residential schools to learn the way of the Whites. These episodes of violence, sexual exploitation, and human trafficking suppressed and tried to eradicate the native people.

There are many other countries, such as the Lakota in the USA, the Mayas in Guatemala, the Aymara in Bolivia, and the Māori of New Zealand, where the endemic people have been suppressed, and this incessant manipulation of these people has made them a poverty-stricken and underprivileged community, which contributes to their current socio-economic problems. These socio-economic factors included basic rights such as education, health and economic disparities.

Delving into the topic of basic education, indigenous people have less access to education than other communities. Many education systems don't acknowledge indigenous peoples' unique culture. There are barely any teachers who speak their native languages and their schools lack basic materials for education. *“Education that is well resourced, culturally sensitive, respectful of heritage and that takes into account history, cultural security and integrity, encompasses human rights, community and individual development”*, is what quality education for

indigenous people means as stated by the Expert Mechanism on the Rights of Indigenous Peoples. Education systems have been used as a means to incorporate indigenous people into mainstream society which put their culture, language, identity and rights at the risk of being destroyed. Education policies and curriculums weren't developed enough with indigenous peoples' participation.² Despite plenty of international policies that proclaim universal rights to education, native people have never fully enjoyed these rights still lack access to traditional language education and face socio-economic disadvantages. The gap between indigenous people and the rest of the population remains critical and unchanged, worldwide. Some contributors to the poor education of these people can be the unregistered birth of indigenous people which limits the child's rights that may go unnoticed when their rights are violated or the ethnic and cultural inequity which hinders equal access to education, leading to poor performance and high dropout rates.³ Also, their extreme poverty, exclusion and isolation negatively affect multicultural indigenous education programs, impacting the success of such programs.

Health is also a major concern for the socioeconomic problems. *“Indigenous peoples' concept of health and survival is both a collective and an individual inter-generational continuum encompassing a holistic perspective incorporating four distinct shared dimensions of life. These dimensions are the spiritual, intellectual, physical, and emotional. Linking these four fundamental dimensions, health and survival manifest themselves on multiple levels where the past, present, and future co-exist simultaneously”*, is the definition proposed by The 1999 Declaration on the Health and Survival of Indigenous Peoples by the World Health Organization. Indigenous peoples share similarities in worldviews, disease patterns, health determinants, and healthcare strategies despite the differences in health standards. They have a lower life expectancy than non-indigenous populations, their usual life expectancy is up to 20 years or lower. The rise in urbanization by the mid-20th century led to the emergence of health risks. The rise in urbanization by the mid-20th century led to the emergence of health risks. Communicable diseases persist and affect large indigenous populations but alcohol and drug abuse, heart diseases, vulnerability to injury, suicide, and cancer have become a growing health hazard. Also, due to poverty, they have a lack of treatment and medical facilities, and it

² Mishra, A., & Nayak, S. (2023). Educational deprivation of the tribes: Insights from the block-level study. *Asian Journal of Education and Social Studies*, 41(2), 1–14.

³ Reddy, P. V., & Kumar, M. (2024). Unequal access to education and employment: Emerging conflicts among tribal communities in Telangana. *Asian Journal of Education and Social Studies*, 51(1), 26–36.

disproportionately affects the ethnic people.⁴ Moreover, poor nutrition and malnutrition are one of the major reasons due to the environmental degradation and contamination of the ecosystem.⁵

The crucial problem for all the socio-economic troubles is the economic disparities and poverty faced by the indigenous population. There are many factors determining poverty, ranging from social isolation to the inter-generational impact of historical injustice.⁶ They account for 19% of the extreme poor. By gathering data, it was seen that there are more indigenous people than non-indigenous who are categorized as poor and their poverty is very critical and severe. Poverty prevails in ways such as insecure land rights, poor health and literacy, heightened vulnerability to risk and climate change, and discrimination. In the past decades, it's seen that the inequality between the indigenous people and non-indigenous is rapidly growing.⁷

And, to control the gap between these two, worldwide governments are urged to redress the problems of indigenous people, especially in Permanent Forums conducted by WHO and the UN. The theme of the forum of 2023 was “*Indigenous Peoples, human health, planetary and territorial Health and climate change: a rights-based Approach*”. Taking the instance of the Asian Regional Dialogue, it emphasized the significance of recognizing Indigenous Peoples’ rights to lands, territories, and resources, addressing the climate crisis and biodiversity loss and encouraged Member States to support these efforts. The Permanent Forum called for Constructive dialogues. Taking another instance of North America, the governments of the US and Canada addressed problems such as treaties, water contamination, violence against ethnic women and missing or murdered ethnic people. Also, tribal leaders from the U.S.A called for a National Action Plan to implement UN Declaration on the Rights of Indigenous Peoples and to facilitate consultation between U.S. and tribal governments. Indigenous people in Canada identified the Indian Act and colonialism as the origin of their current situation.

The social complexity and struggle of endemic people for land, livelihood and cultural

⁴ Nguyen, N. H., Subhan, F. B., Chan, C. B., & Williams, K. (2020). Barriers and mitigating strategies to healthcare access in Indigenous communities of Canada: A narrative review. *Healthcare*, 8(2), 112.

⁵ Hatala, A. R., Morton, D., Njeze, C., Bird-Naytowhow, K., & Pearl, T. (2023). A national-level examination of First Nations Peoples’ mental health data: Evidence from the 2017 Aboriginal Peoples Survey. *Frontiers in Public Health*, 11, 1073817.

⁶ Reading, C. L., & Wien, F. (2013). Creating conditions for Canadian Aboriginal health equity: The promise of healthy public policy. *Public Health Reviews*, 37(1), 2.

⁷ Gracey, M., & King, M. (2009). Indigenous health part 1: Determinants and disease patterns. *The Lancet*, 374(9683), 65–75.

existence has often been fought for not only in the streets and assemblies per se but also in courtrooms. Observing landmark precedents across the world have guided in shaping the interpretation of indigenous rights and laws. In India, considering the case of *Samantha v. State of Andhra Pradesh*,⁸ the court underscored the tension between constitutional responsibility to ensure the protection of tribal land as provided the fifth schedule and the State's authority to take over and exploit natural resources. The Supreme Court held that the expression "person" in Section 3(1)(a) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 did not cover the State, hence, permitting the grant of mining leases over the government land in Scheduled Areas to non-tribals. The Court further reiterated that, in the absence or lack of conclusive evidence, there was no infringement of Section 2 of the Forest Conservation Act, 1980 or the provisions of the Environment Protection Act, 1986. Further, in *Tsilhqot'in Nation v. British Columbia*,⁹ the Supreme Court of Canada determined that the title conferred to Aboriginals extends to lands where the indigenous group can have exclusive occupation. The ruling granted upon the *Tsilhqot'in Nation* full beneficial ownership rights, encompassing resource governance as well as land use. However, the court reaffirmed that the Crown could override these rights, but only through rigorous and complex obligations such as fiduciary adherence and effective consultation. These cases set a significant precedent in the indigenous land rights jurisprudence in India and Canada respectively.

Conclusion

In essence, the plight of indigenous peoples is not just a remnant of the past but a never-ending struggle shaped by historic injustice, marginalization and socioeconomic differences. Even though international forums and precedents mark an significant impact in land and self-determination rights of the people, lasting change demands much more than that. True progress is dependent on policy action, equity in resource and equality between all indigenous communities.

⁸ Supreme Court of India. (1997). *Samatha v. State of Andhra Pradesh*, AIR 1997 SC 3297.

⁹ Supreme Court of Canada. (2014). *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 256.