



PROBLEM OF LAND AND INDIGENOUS PEOPLES IN THE NORTHEASTERN STATES OF INDIA

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Abstract:

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and International Human Rights Law. According to the United Nation Declaration on the Rights of Indigenous Peoples Article 26, states that "Indigenous peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired," and it directs states to give legal recognition to these territories. The real problems are that the National governments continue to deny Indigenous Peoples the right to live in and manage their traditional lands; often implementing policies to exploit the lands that have sustained them for centuries. Sacred lands and objects are plundered from them through unjust treaties. As a witness in some cases, governments have even enforced policies of forced assimilation in efforts to eradicate Indigenous Peoples, cultures, and traditions. Over and over, governments around the world have displayed an utter lack of respect for Indigenous values, traditions, and human rights. It is a human right that it should be protected and promoted to all individuals human beings and why it is not possible for the Indigenous peoples of the world. In the case of India, especially in the Northeastern States most conflict and violence also relating to the land problems in the region. What people are clarification about Northeast India it doesn't matter, but the land is an identity for them and the land rights definitely become their lifeblood to survive.

Key Words: Indigenous Peoples, Land, Human Rights, India & North-East States

1. Introduction:

In India, the description 'indigenous people' is usually applied to the 'Scheduled Tribes' who constitute nearly eight percent of the population of the country, they have enjoyed constitutional protection in political representation, they have not got much of the benefits of development in the country. India has the largest concentration of tribal people anywhere in the world except perhaps in Africa. The prominent tribal areas constitute approximately about 15 percent of the total geographical area of the Country. But, the term 'indigenous' has prevailed as a generic term for many years in India. In some countries, there may be a preference for other terms including tribes, first peoples/nations, aboriginals, ethnic groups, adivasi, and janajati. Occupational and geographical terms like hunter-gathers, nomads, peasants, hill people, etc., also exist and for all practical purposes can be used interchangeably with indigenous people. India has the largest population of tribal people in the world. The largest tribes are found in central India, although the tribal population accounts for only around 10 percent of the region's total population. Major concentrations of tribal people live in Maharashtra, Orissa, and West Bengal. In the south of the country, about 1 percent of the populations of Kerala and Tamil Nadu are tribal, whereas about 6 percent of the people living in Andhra Pradesh and Karnataka are members of tribes. In the northeastern states of Arunachal Pradesh, Meghalaya, Mizoram, and Nagaland, up to 90 percent of the population is tribal and almost they are living in rural areas. However, in the remaining northeast states of Assam, Manipur, Sikkim, and Tripura, tribal peoples make up between 20 percent and 30 percent of the population. There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but which are not officially recognized. The main concentration of tribal people is the central tribal belt stretching from Rajasthan to West Bengal in the middle part of India and found in the seven the north-east Indian states. However, they have their presence in all states and union territories, where the STs are usually referred to as Adivasis, which literally means indigenous peoples.

The STs inhabit about 15-20 percent of the land area of the Indian sub-continent in largely contiguous areas. In the mid-Indian region, the Gond who number over 5 million, are the descendants of the dark-skinned Kolarian or Dravidian tribes and speak dialects of the Austric language family, as are the Santhal who number 4 million. The Negrito and Australoid people belong to the Mundari family of Munda, Santhal, Ho, Ashur, Kharia, Paniya, Saora, etc. The Dravidian groups include the Gond, Oraon, Khond, Malto, Bhil, Mina, Garasia, Pradhan, etc. and speak Austric or the Dravidian family of languages. The Gujjar and Bakarwal descend from

the Greco Indians and are interrelated with the Gujjar of Gujarat and the tribes settled around Gujranwala in Pakistan.

Interestingly, the Sixth Scheduled Area in the Northeastern States there is some 200 indigenous peoples in the northeast. The Boro, Khasi, Jaintia, Naga, Garo, Tripuri, Mikir, Apatani, Khasi, Kuki, Karbi, etc. belong to the Mongoloid stock and speak languages of the Tibeto-Burman language groups and the Mon Khmer. The Adi, Aka, Apatani, Dafla, Gallong, Khamti, Monpa, Nocte, Sherdukpen, Singpho, Tangsa, Wancho, etc. of Arunachal Pradesh and the Garo of Meghalaya are of Tibeto-Burman stock while the Khasi of Meghalaya belongs to the Mon Khmer group. In the southern region, the Irula, Paniya, Adiya, Sholaga, Kurumba, etc. belong to the proto-Australoid racial stock speaking dialects of the Dravidian family. There are also STs in Uttar Pradesh, Himachal Pradesh, West Bengal, Arunachal Pradesh, Sikkim, Nagaland, Manipur, and Mizoram, whose communities extend across the international border in China (including Tibet), Bhutan, Myanmar, and Bangladesh.

2. Statement of the Problem:

Different states of the North East have different laws that are peculiar to it. In most of the tribal majority states such as Nagaland, Arunachal, and Mizoram, only local tribals can purchase land. It is true that India has the administrative authorities the government wings of Department of Tribal Welfare both the Central and the State levels and inter-state council, India has several independent bodies such as National Commission for Women, Minorities Commission, National Human Right Commission, State Human Right Commission, National Commission for SCs, National Commission for STs, etc. to safeguards the rights of people who claim to be treated as Indigenous peoples in the Country. But the Loss of land remains the single biggest cause of deprivation of the livelihoods, lives, and homelands of STs across India. The mechanisms for such expropriation of land vary, but included are the forest laws and major development projects that result in the displacement of people. Indian law provides very few institutional or statutory protections for common resources and homelands. The protection accorded to private property was also weakened by an amendment to the Constitution in 1951, which removed the right to property from the list of fundamental rights in order to ease land reform. Ironically, this is now being used by the state to ease takeovers of lands of marginal communities. The resulting devastation wreaked on Adivasi communities has also been acknowledged in official documents. According to the Eleventh Five Year Plan, 'Ancestral land, villages, habitations, and environs belonging to the tribal people have been made available for various development projects as tribal areas possess 60–70 percent of the natural resources of the country. In such cases, though primary displacement appears small due to low population density, secondary displacement has been extensive, encompassing common property resources that provided supplemental livelihoods, particularly to those with low or no dependence on farming. Estimates of STs displaced on account of acquisition over the past six decades vary between 8.5 and 10 million (roughly about 40 percent of all ousters) from 1951 to 1990. Of them, only 21.20 lakh ST persons have been rehabilitated during the period. The widespread secondary displacement in the zone of influence has neither been measured nor was provided for'.

3. Literature Review:

UN Declaration on the Rights of Indigenous Peoples (2007), The Declaration constitutes a major step towards addressing the widespread and persistent human rights violations against Indigenous peoples worldwide. It is the most comprehensive and universal international human rights instrument explicitly addressing the rights of Indigenous peoples.

C. R. Bijoy, Shankar Gopalakrishnan and Shomona Khanna (2010), in India and the Rights of Indigenous Peoples, examines India is home to the largest population of indigenous peoples of any country in the world. They include not only communities who live under conditions of extreme destitution, but also communities with social indicators well above the national average. But across circumstances and areas, like other indigenous communities around the world, India's indigenous peoples do share one characteristic – social, political and economic marginalisation. Study focused on the extent to which the Indian political and legal situation conforms to the principles of equity, self-governance and justice that underlie the international instruments. India falls far short of international standards on indigenous peoples' rights.

B. N. Bordoloi (1986), "Alienation of Tribal Land and Indebtedness" containing the proceedings, recommendations and papers presented in the National Seminar on Alienation of Tribal Land and Indebtedness held at Guwahati. Alienation of land and indebtedness are two major causes of poverty among the Scheduled Tribe communities in India. These two are interrelated so much so that we can hardly think of one without the other. Infact it is indebtedness which ultimately leads to alienation of land. The magnitudes of the problem of land alienation and indebtedness among tribal communities differ from state to state, region to region and tribe to tribe. Similarly land system and land management policies throughout the country are not uniform because of the fact land in a state subject. The tribal people themselves have some customary laws in respect of land management. To prevent alienation of tribal land and to curb the money-lending activities in the tribal areas, different states have been adopting legal measures since independence. But in spite of these legal measures

alienation of tribal land is going on in different states undated. Similarly the legal and other measures have failed to curb the money-lending business in tribal areas.

B.N. Bordoloi & G.C. Sharma Thakur (1988), "Tribes of Assam, Part-II- Popular Series", a book containing ethnographic write-ups on six scheduled tribes of Assam covering hills and plains with sufficient number of plates representing their life and culture. They were the four from the hills and two from the plains namely, Barmans of Cachar, Hmars, Kukis, Rengma Nagas, Sonowals and Zeme Gagas of N.C. Hills.

Report on the survey of Alienation of Tribal land in Assam (1999), Alienation of tribal land in the country is one of the major problems and it has been identified as one of the causes of tribal unrest in India.

4. Objectives of the Study:

The objectives for the research work are planned under-

- ✓ To conceptualized the rights of Indigenous Peoples
- ✓ To examine the situations of land rights in India
- ✓ To examine the status and importance of land rights in the Northeastern Indian States

5. Research Methodology:

For the purpose of the study of 'Land rights of Indigenous Peoples in India with reference to the Northeastern States', an analytical study follows the descriptive method. In this study data have been collected by using secondary sources. Secondary data and information have been collected from different published books, journals, internet sources, published research papers and articles.

6. A Brief Profile of North-East India:

The North Eastern region of India is one of the less developed regions of the country. The North Eastern region is commonly known as "Seven Sisters" that comprises states are - Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Tripura and Assam. Nowadays, Sikkim is also considered as the member of the North East India and these States can be called as "Seven Sisters and One Little Brother". The Northeast is the home to 4 percent of the national population, while Assam accounts for 68 percent of the population, occupies about 8 percent of India's total geographical area.

6.1 Location: The North- Eastern region of India is located between 275°7' N and 28°23' N latitude, 89 °46' E and 97°25' E longitude and situated to the south of Himalaya. The total area of the Northeastern Region is 26.22 million hectares where total area of India is 329 million hectares.

6.2 Physiographic Features: The Northeast region can be physiographically categorized into the Eastern Himalayas, Northeast Hills- Patkai-Naga Hills and Lushai Hills, Plateau of Meghalaya and the Brahmaputra-Barak Valley Plains.

6.3 Geological Features: Geologically, the Northeast and the adjoining region constitute a complex geological province with convergence of two Tertiary mobile belts, the east-west Eastern Himalaya and the North South Patkai, Naga, Manipur, Chin, Arakan, and Yoma Hill ranges, are developed as a consequences of the collision and subsequent subduction between the land masses of India and Eurasia.

6.4 Climate Features: The Hilly Tract specially Sikkim and Arunachal experience cold teammate to alpine climate where January is the coldest month, temperature remains well below of frizzling temperature., July is hottest month with mild temperature. Heavy fog is a common feature all over the mountain area throughout the year. These hill states receive the greatest rainfall in the country, with mean annual rainfall varying from 1,400 millimeters to as high as 3,000 millimeters. Cherrapunjee (Meghalaya) is one of the wettest places in the world, the average annual rainfall at Cherrapunjee from 1973-2012 (40 years) was 11,859.4 mm (38.90 feet/466.90 inches). In 1974 it had rained 24,555.3 mm (80.56 feet/ 966.74 inches) the highest annual rainfall in any one place in a year. On 16th June 1995, it had rained 1563 mm in 24 hours (5.12 feet) - the highest recorded rainfall received in one place in one day.

6.5 International Boarder: India has over 5,300 km of international borders has 96 percent of its boundaries surrounded by – China, Nepal, and Bhutan in the North, Bangladesh in the South-West and Myanmar in the East. The North- East State of India share International borders which the State-wise length of International Border of the North Eastern Region they share total – Arunachal Pradesh 1,817km, Assam 530km, Manipur 398, Meghalaya 443, Mizoram 828, Nagaland 215, Sikkim 350 and Tripura 856. Among them the Arunachal Pradesh longest International border share with China total 1,080km, second position Tripura share 856km with Bangladesh and in third position Mizoram has 510 international border lines with Myanmar.

7. Who are Indigenous Peoples?

Indigenous peoples or aboriginal peoples are those who were living on their lands before settlers came from elsewhere. They are the descendants of those who inhabited a country or a geographical region at the time where peoples of different cultures or ethnic origin arrived, the new arrivals later becoming dominant through conquest, occupation, settlement or other means. Thus, they are the people who belong to pre-invasion and pre-colonial societies and they consider themselves distinct from other sections of the societies prevailing in those territories or part of them. Indigenous peoples are also called "First People," "Tribal Peoples," "Aboriginals", and "Autochthons". Indigenous people, aboriginal people, or native people, are groups protected in international or

national legislation as having a set of specific rights based on their linguistic and historical ties to a particular territory, their cultural and historical distinctiveness from other populations.

8. Definition of Indigenous Peoples:

No formal definition is given to the term “indigenous people” or “indigenous population” by the United Nation. According to Baogang He, indigenous people are often seen as a minority who suffered injustice and oppression in the past and are still disadvantaged in the present. They are still facing discrimination in every aspect of their lives. Most of the experts in the field are of the view that, internationally, it is not necessary to strictly define who the indigenous populations really are legally.

However, we should note that there is also “the need to define who the right holders of the emerging human rights regime for indigenous peoples are”. As Jeremie Gilbert, Anna Meijknecht, Byung Sook de Vries, M. Lundberg, Y. Zhou and others rightly pointed out; there is no globally accepted lawful definition of indigenous populations or tribal peoples. James Anaya, former Special Rapporteur on the Rights of Indigenous Peoples, has defined indigenous peoples as “living descendants of pre-invasion inhabitants of lands now dominated by others. They are culturally distinct groups that find themselves engulfed by other settler societies born of forces of empire and conquest”. The Merriam Webster Dictionary defines the indigenous peoples as, “a body of persons that are united by a common culture, tradition, or sense of kinship, which typically have common language, institutions, and beliefs, and often constitute a politically organised group.”

In 1982 the United Nations Working Group on Indigenous Populations (WGIP) accepted as a preliminary definition a formulation put forward by Mr. Jose R. Martinez-Cobo, Special Rapporteur on Discrimination against Indigenous Populations. This definition has some limitations, because the definition applies mainly to pre-colonial populations, and would likely exclude other isolated or marginal societies. “Indigenous communities, peoples, and nations are those that, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”

The Imperial Gazetteer of India, 1911, defines a tribe as a ‘collection of families bearing a common name, speaking a common dialect, occupying or professing to occupy a common territory and is not usually endogamous through originally it might have been so’. By D.N. Majumdar is that “a tribe is a collection of families or group of families bearing a common name, members of which occupy the same territory, speak the same language and observe certain taboos regarding marriage, profession or occupation and have developed a well-assessed system of reciprocity and mutuality of obligations. And some eminent scholar defines their own ways like- Gillin and Gillin: any pre-literate local group may be termed as tribe, whose members reside in a common area, speak a common language and have common culture. Dr. W.H.R. Rivers: Tribe is a simple type of social group whose members speak a common dialect and work together at the time of war. R.N. Mukherjee: a tribe is that human group, whose members have common interest, territory, language, social law and economic occupation.

From the above definition it is clear that the indigenous Peoples who inhabited a land before it was conquered by colonial societies and who consider themselves distinct from the societies currently governing those territories are called Indigenous Peoples. The Indigenous Peoples of the world are very diverse. They live in nearly all the countries on all the continents of the world and form a spectrum of humanity, ranging from traditional hunter-gatherers and subsistence farmers to legal scholars. In some countries, Indigenous Peoples form the majority of the population; others comprise small minorities. Indigenous Peoples are concerned with preserving land, protecting language and promoting culture. Some Indigenous Peoples strive to preserve traditional ways of life, while others seek greater participation in the current state structures. Like all cultures and civilizations, Indigenous Peoples are always adjusting and adapting to changes in the world. Indigenous Peoples recognize their common plight and work for their Self-determination; based on their respect for the earth.

9. Characteristics of Indigenous Peoples:

In other words, Indigenous peoples are the population as comprising the descendants of people who inhabited the present territory of a country at the time when persons of a different culture or ethnic origin arrived there from other parts of the world and overcame them. Indigenous and tribal peoples in many parts of the world do not enjoy their fundamental rights in the states in which they live to the same degree as the rest of the populations. Presently, they are non-dominant sections of the society because of their poverty and illiteracy.

The World Bank suggested identifying indigenous peoples on the basis of the following characteristics:

- ✓ Close attachment to ancestral territories and the natural resources in those areas
- ✓ Self-identification and identification by others as members of a distinct cultural group
- ✓ An indigenous language, often different from the national language
- ✓ The presence of customary social and political institutions; and

- ✓ Primarily subsistence-oriented production

From the above descriptions, one can make out certain attributes or requirements necessary to claim indigenous status. The distinguishing characteristics of indigenous peoples are the following:

- ✓ They are the descendants of the original inhabitants of the land before colonial conquest.
- ✓ They are usually tribal or communitarian in their status and outlook
- ✓ They have a subsistence economy, engaging primarily in hunting, food gathering, and shifting cultivation.
- ✓ They are united on the basis of real or imaginary common blood ties.
- ✓ They are guided by customary laws.
- ✓ They live in close association with nature.
- ✓ They have been marginalised, and made subordinate to communities that migrated and colonised the land.
- ✓ They continue to follow old customs and traditions despite being a part of nation states with different values and ethos.

Characteristics of Tribes in India, with understanding of the concept of tribes, it becomes easy or us now to understand and appreciate the characteristics of tribes. T. B. Naik has given the following features of tribes in Indian context.

- ✓ A tribe should have least functional interdependence within the community.
- ✓ It should be economically backward (i.e. primitive means of exploiting natural resources, tribal economy should be at an underdeveloped stage and it should have multifarious economic pursuits).
- ✓ There should be a comparative geographical isolation of its people.
- ✓ They should have a common dialect.
- ✓ Tribes should be politically organized and community Panchayat should be influential.
- ✓ A tribe should have customary laws.

Naik argues that for a community to be a tribe it should possess all the above mentioned characteristics and a very high level of acculturation with outside society debar it from being a tribe. Thus, term usually denotes a social group bound together by kin and duty and associated with a particular territory. But, in reality it may not be possible for any community to meet all these attributes or requirements.

The Characteristics of the Tribal Peoples are not still universally accepted in all over the World. In India, according to some eminent Scholars noted the characteristics can be following:

- ✓ Tribe is a group of families.
- ✓ Each tribe has a name.
- ✓ Members of a tribe speak common language or dialect.
- ✓ Member of the tribe resides in a common territory.
- ✓ Members of the tribe observe taboos related to marriage.
- ✓ Members of a tribe have a common occupation.
- ✓ Members of the tribe have well developed system of reciprocal exchange.
- ✓ A tribe has a common culture.
- ✓ Members of the tribe work together of the time of war.

It is commonly understood that the tribal societies across the globe like other societies is also not static, rather is quite dynamic. The rate of change in tribal society is very slow. That is why they have been backward and poor in comparison to other people. Since they have been materially backward and economically poor, attempts have been made by the Government to develop them. Today the governments of all places of the world are paying special attentions towards the developments of the tribal, i.e., one finds the existence of induced or planned change in the tribal society. India it has various tribal welfare schemes and the development programme, policies and Constitutional safeguards have been made for the tribal societies.

10. UN Declaration on the Rights of Indigenous Peoples:

The UN Declaration on the Rights of Indigenous Peoples constitutes a major step towards addressing the persistent human rights violations against Indigenous peoples worldwide. It is the most comprehensive universal international human rights instrument explicitly addressing the rights of Indigenous peoples. The Declaration provides a principled and normative legal framework for achieving reconciliation between Indigenous and non-Indigenous peoples around the world.

On 13 September 2007, the United Nations General Assembly held a historic vote to adopt the United Nations Declaration on the Rights of Indigenous Peoples declared that “the 13th of September 2007 will be remembered as a day when the United Nations and its Member States, together with Indigenous Peoples, reconciled with past painful histories and decided to march into the future on the path of human rights.” The Declaration does not create any new rights. It responds to the “urgent need to respect and promote the inherent rights of indigenous peoples”. The rights of Indigenous peoples include, inter alia: enjoyment of all human rights under international law; equality with all other peoples; self-determination, including self-government; recognition and enforcement of treaties; identity and membership; maintenance and strengthening of their

distinct institutions; live in freedom, peace and security; traditions, customs, cultural heritage and intellectual property; traditional medicines and health practices; subsistence and development; lands, territories and resources; education; conservation and protection of environment; labour and cross-border contacts and co-operation. Throughout the Declaration, harmonious and co-operative relations between Indigenous peoples and States are promoted in diverse ways.

States are required to establish effective mechanisms, in conjunction with Indigenous peoples, to resolve issues relating to lands, territories and resources or other property of which Indigenous peoples have been dispossessed. The United Nations, its bodies and specialized agencies “shall promote respect for and full application of the provisions of this Declaration and follow up its effectiveness”. The Declaration elaborates international human rights standards for the “survival, dignity and well-being of the world’s Indigenous peoples”. In 1985, the Working Group on Indigenous Populations (WGIP) began to formulate articles for inclusion in a Declaration.

Increasing international concern was generated as a result of widespread human rights violations against Indigenous peoples. As a result; over 370 million Indigenous people in over 70 countries now have a universal instrument and framework for addressing ongoing human rights transgressions. Indigenous peoples are affirmed as “members of the human family”, reinforcing the international human rights system and its universality.

11. Land and Resource Rights in the Declaration and the Convention:

The close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.

UNDRIP was adopted in 2007 by an overwhelming majority within the UN General Assembly and thus represents a global consensus. Convention No. 169 was adopted in 1989. It becomes legally binding upon ratification and has thus far been ratified by 22 countries (15 in Latin America and the Caribbean, four in Europe, two in Asia-Pacific, and one in Africa). A previous ILO Convention No. 107 adopted in 1957 is still in force for 17 countries (six in Africa, four in Asia, and five in Latin America and the Caribbean). Although ILO Convention No. 107 is partly regarded as outdated due to its assimilationist approach, its provisions on land rights are relatively progressive and recognise indigenous peoples’ right to collective or individual ownership over the lands they traditionally occupy. The Declaration and Convention No 169 are based on the recognition of the particular significance and cultural and spiritual values that indigenous peoples attach to their lands and territories, which go far beyond their simple monetary or productive value. As indicated in the preamble of UNDRIP, “control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs”.

Further, both instruments stipulate that indigenous peoples have the right to determine their priorities and strategies for development and use of their lands, territories, and resources (UNDRIP art. 32.1; C169 art. 7.1). In general, indigenous peoples’ rights to land, territories, and resources must be understood in the broader context of these peoples’ right to self-determination (UNDRIP art. 3), as well the rights to property, non-discrimination, cultural integrity, and development. The Declaration and the Convention both contain detailed provisions on indigenous peoples’ rights to land, territories, and resources that are described in the following sub-sections.

The key international instruments that define indigenous peoples’ rights are UNDRIP and ILO Convention No. 169. These two instruments are compatible and mutually reinforcing and define indigenous peoples’ rights to lands, territories, and resources under international law. Article 13- this Convention respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories; Articles 15 and 16- use of the term lands and include the concept of territories, which covers the total environments of the areas which the peoples concerned occupy or otherwise use; Article 14- the peoples concerned over the lands which they traditionally occupy shall be recognised; Governments identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession; Adequate procedures shall be established within the national legal system to resolve land claims by the people concerned; Article 15- the natural resources pertaining to peoples lands shall be specially safeguarded; In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands; Article 16- the peoples concerned shall not be removed from the lands which they occupy; where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent; have the right to return to their traditional

lands; through appropriate procedures, peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands; Persons thus relocated shall be fully compensated for any resulting loss or injury; Article 17- transmission of land rights; whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community; to secure the ownership, possession or use of land belonging to them; Article 18-Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences; Article 19- provision of more land; to promote the development of the lands.

Indigenous peoples' rights are not "special" rights, and UNDRIP and Convention No. 169 does not extend or invent any "new rights". On the contrary, the two instruments are articulations of universal human rights, as they apply to indigenous peoples. This means that they contextualize universal rights, which states are bound to respect, protect, and fulfil, to the situation of indigenous peoples by taking the collective aspects of these rights into account in order to overcome the historical injustices and current patterns of discrimination that indigenous people's face.

12. Land Rights and Protection of Indigenous Peoples through International Instruments:

Each Indigenous group is unique. We speak thousands of different languages, and our traditions are as diverse as our lands. However, there are basic principles that all Indigenous communities share. These principles are the foundation of all Indigenous practices, and it is because of them that our economies and our societies are equitable, balanced, and sustainable. Indigenous peoples live in all regions of the world and own, occupy or use some 22% of global land area. Numbering at least 370-500 million, indigenous peoples represent the greater part of the world's cultural diversity, and have created and speak the major share of the world's almost 7000 languages. Many indigenous peoples continue to be confronted with marginalization, extreme poverty and other human rights violations. International legal instruments take the form of a treaty; that is, also called agreement, convention, covenant, protocol, which may be binding, on the Contracting States. When a state ratifies or accedes to a treaty, that state may make reservations to one or more articles of the treaty, unless reservations are prohibited by the treaty. Reservations may normally be withdrawn at any time. In some countries, international treaties take precedence over national law; in others, a specific law may be required to give an international treaty, although ratified or acceded to, the force of a national law. Practically all states that have ratified or acceded to an international treaty must issue decrees, amend existing laws or introduce new legislation in order for the treaty to be fully effective on the national territory. Not all international instruments are legally binding treaties. For example, some of the most important human rights instruments are declarations. A declaration does not have any legal power to enforce compliance, but rely purely on the moral weight it carries. Indigenous Peoples' rights overlap with many other human rights. Many important Indigenous Peoples' rights are not framed in specific Indigenous Peoples' rights treaties, but are part of more general treaties, like the Universal Declaration of Human Rights or the Convention on the Prevention and Punishment of the Crime of Genocide. It is important the land problems of indigenous peoples across the globe strongly needed to be seriously knob.

Draft Declaration on the Rights of Indigenous Peoples establishes the rights of Indigenous Peoples to the protection of their cultural property and identity as well as the rights to education, employment, health, religion, language and more. It also protects the right of Indigenous Peoples to own land collectively.

Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. The Universal Declaration of Human Rights is the first international document that states that all human beings are: Article 1- Equal in dignity and rights; Article 2- Everybody is entitled to the rights in the Declaration, "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; Article 3- Everyone has the right to life, liberty and security of person.

The United Nations International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights state that all peoples have the right of self-determination by virtue of which they "freely determine their political status and freely pursue their economic, social and cultural development".

The ILO Indigenous and Tribal Peoples Convention was the first international convention to address the specific needs for Indigenous Peoples' human rights. The Convention outlines the responsibilities of governments in promoting and protecting the human rights of Indigenous Peoples. Article 7- the peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.

Rio Declaration of Environment and Development and Agenda 21 documents are connected to the Earth Summit in Rio de Janeiro. In them, the special relationship between Indigenous Peoples and their lands is acknowledged. Indigenous Peoples have a vital role in environmental management and development because of their traditional knowledge and practices. In the Chapter 26.1 of Agenda 21 it mentions that "Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities", and Chapter 26.4 of Agenda 21- Some Indigenous Peoples might need greater control over their land, self-management of their resources and participation in development decisions affecting them.

The Organization for Security and Co-operation in Europe (OSCE) is the world's largest security-oriented intergovernmental organization. Its mandate includes issues such as arms control, promotion of human rights, freedom of the press, and fair elections. It is mentioned that the participating states cover much of the land area of the Northern Hemisphere. It was created during the Cold War era as an East-West forum.

The indigenous peoples of the Americas are culturally distinct groups who maintain an ancestral bond to the lands where they live or wish to live. Indigenous topics have been the subject of numerous OAS General Assembly resolutions, which in recent years have called for the adoption of the Draft American Declaration on the Rights of Indigenous Peoples. Different areas of the Organization carry out specific projects aimed at promoting the protection, well-being, and development of indigenous peoples and communities in our hemisphere.

Indigenous Peoples are culturally distinct societies and communities. The land on which they live and the natural resources on which they depend are inextricably linked to their identities, cultures, livelihoods, as well as their physical and spiritual well-being. The World Bank's policy towards indigenous peoples dates back to 1982 and was designed initially to consider the needs of relatively isolated and unacculturated tribal groups affected by development projects. It focussed mainly on the protection of land rights and the provision of health services, particularly in relation to forest-dwelling indigenous peoples in lowland South America. In 1991, the World Bank approved a new Indigenous Peoples Policy, highlighted the fact that most Indigenous Peoples have close attachments to their ancestral lands and, if their lands are not recognized and adequately protected, they often remain disadvantaged in the developmental processes.

In the Second International Decade of the World's Indigenous Peoples 2005, it promotes to promote full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent.

Millennium Development Goals (MDGs)-related programmes and policies should be culturally sensitive and include the active participation and free, prior and informed consent of indigenous peoples so as to avoid loss of land and natural resources for indigenous peoples and the accelerated assimilation and erosion of their cultures.

At its 1996 session, the Working Group decided to consider specific themes. In past sessions the Working Group on Indigenous Populations has examined the themes of: health and indigenous people; indigenous peoples: environment, land and sustainable development; education and language; indigenous peoples and their relationship to land; and indigenous children and youth. From 23-27 July 2001 the Working Group examined the theme "Indigenous peoples and their right to development, including their right to participate in development affecting them."

13. Indigenous peoples in Northeastern states of India:

World Bank on its own classified in 1991 the Scheduled Tribes as indigenous people in India for various developmental programmes. Such Scheduled Tribes are spread over the entire nation. However, the condition in the Tribal Areas of the North-Eastern region consisting of Assam, Meghalaya, Tripura and Mizoram are very different from those in the tribal area of other parts of India. As the struggle for gaining recognition as "indigenous peoples" gains momentum, more and more tribal communities in north-east India have begun identifying or projecting themselves as such. Although no community is officially declared indigenous, the central and state governments grant constitutional and political concessions to certain tribal communities in the north-east, recognising their claims to indigeneity. But in the region, the question of who is

indigenous remains contentious. The Government of India officially does not consider any specific section of its population as 'indigenous people as generally understood and implied in its usage in the UN. Rather, the government claims all its peoples as indigenous. However, operationally in many of its dealings, those sections of people declared as falling within the administrative category of 'Scheduled Tribes' (STs) are considered as indigenous peoples. Though STs are not coterminous with either the socially and historically accepted term 'Adivasi' (meaning indigenous or original people) or 'tribal', by and large it is accepted that the STs include mostly 'indigenous peoples' in the Indian context. This 'indigenoussness' is also recognized as distinct and different from 'regionalism' and finds clear and distinct expression in the constitution and laws. While recognizing that all indigenous peoples are not STs People and vice versa. In the context of the northeastern states the STs are identify as the Indigenous peoples in the region or in the Country.

The first argument usually advanced by claimants of the status of indigenous peoples is that their community was the first to settle in a given territory, and hence it is entitled to special status and treatment. Beteille says is true of the north-east inhabited by different ethnic communities. Even before the British, India's north-eastern region was inhabited by several Mongoloid communities, who had migrated in waves from east and south-east Asia at different points of time and settled both in the plains and hill areas of the north-east. In the plains, the communities looked for space for settlement either in forests or near the banks of rivers where there was fertile cultivable land. However, hill communities faced harsh physical conditions and were compelled to move from one place to another in search of cultivable land and better living conditions. The process of migration and settlement was not smooth. There were frequent wars between communities that had migrated and settled earlier and communities that sought an entry a little later. It was only during colonial rule that the movements of hill communities in the north-east were contained through enactment of the inner line regulations and the creation of separate hill districts to accommodate the major hill communities.

Since all Mongoloid communities settled in the region had migrated to the region at some point in history and many were moving from one place to another in the region, it does not make much sense to argue who among them were the first to settle in the territory that they now occupy. Most communities went through a process of conflict, displacement and accommodation. During the pre-colonial period, it was not possible to make a clear distinction between the plains people and the hill communities on the basis of development, or tribal and non-tribal characteristics.

13.1 Constitutional Provisions Relating to the Northeast:

The Northeastern region has certain special arrangements relating to autonomy and self-management, of which the two main ones are Schedule VI for the Tribal Areas at the district and regional levels through autonomous councils and Articles 371A and 371G for the States of Nagaland and Mizoram. Two important Schedules the Fifth and Sixth Schedules - to the Constitution of India provide special arrangements for areas inhabited by STs. A large number of areas predominantly inhabited by Adivasis had been declared to be Excluded or Partially Excluded Areas during the British period. These areas came under the purview of the Scheduled Districts Act of 1874 and the Government of India Order 1936. Following Independence of India in 1947, these areas were brought under the Fifth and Sixth Schedules under the Constitution of India, respectively. They are now referred to as Scheduled Areas. Subsequently, some other predominantly Adivasi areas were declared to be Scheduled Areas by the President.

Article 244(2), The Sixth Schedule to the Constitution applies to the administration of certain 'tribal areas' in the states of Assam, Meghalaya, Tripura and Mizoram. These areas are governed by Autonomous Districts and Autonomous Regions and also have District Councils, Autonomous Councils and Regional Councils. These councils have wide ranging legislative, judicial and executive powers. They are empowered to make rules, with the approval of the Governor, with regard to matters like primary schools, dispensaries, markets, cattle ponds, ferries, fisheries, roads, road transport and water-ways etc. The Autonomous Councils of the north Cachar Hills and Karbi Anglong in Assam have been granted additional powers to make laws with respect to other matters like secondary education, agriculture, social security and social insurance, public health and sanitation, minor irrigation etc. The Councils except in Bodoland and Tripura have also been conferred powers under the Civil Procedure Code and Criminal Procedure Code to try certain suits and offences, the powers of a revenue authority to collect revenue and taxes in their area, as well as other powers to regulate and manage the natural resources. However, the Sixth Schedule specifically excludes certain issues from the jurisdiction of the District Councils, such as reserved forests (a particular kind of government forest) and acquisition of land by the State Government. The Supreme Court has also held that these Councils do not have 'plenary' legislative powers; i.e. their powers are strictly limited to the subjects specified in the Sixth Schedule, and do not, for instance, include powers over transfer of lands or levying of royalty on non-timber forest produce.

13.2 North- East and Land Problems of Indigenous Peoples:

The world views of indigenous societies, irrespective of their geographical location, are strikingly similar with respect to land and the variety of life system supported by it. The loss of land, which also means the loss of an economic resources base, is the most obvious threat to the survival of indigenous people. Indigenous

people are increasingly faced with threats to their sovereignty, environment and access to natural resources. Indigenous Peoples around the world strive to be in synergy with nature. They depend immensely on the available natural resources, yet at the same time comprehend the value of these resources for the survival of their future generations. In the 21st century, Indigenous Peoples have succumbed to the pressures of dwindling natural resources of the planet and the greed of mankind. States where these peoples live all too often do not recognize the diversity of their cultures and traditions and consider them secondary citizens. In the case of Northeast India, it can be argued that a natural resource rich land is at the center of a prolonged armed conflict which is intensified due to the influx of small arms, drugs and weapons in the region.

It is believed that relationship to the land is the basis of tribal or indigenous identity and that the culture and identity of indigenous people cannot be preserved without maintaining control over land and natural resources, as these factors to a large extent determine the lifestyle and culture of the indigenous people. Generally, tribals or indigenous cultural practices community land ownership, while some other tribes practice individual with clan ownership; however, modern land relations and formal law recognize only individual ownership of land. It was under the colonial rule that the process of turning land into commodity began for their own interest, thus through the Permanent Settlement Act of 1793 and Land Acquisition Act of 1894 the process began. The then Assam Land and Revenue Regulations 1886 (AL&RR) that was an extension of the Settlement Rules of 1870 and 1883 made tribal land alienation an easy process. Hence, in the name of development post-independence large tracts of lands were given away to the immigrants and other settlers. By the late 1960's this resulted in a loss of over 60 percent of tribal land to Hindu Bengali migrants from Bangladesh who encroached on Community owned resources and land. As a consequence of this, the tribal proportion in Tripura has declined from 58 percent in 1951 to 31 percent in 2001. Similar is the case in Assam, where the Bodo territorial region has paid heavily as the consequence of such phenomena. It is because of the attacks on tribal land in most States there has been growing insecurity among the people of the region who now view the rising number of immigrants as a threat to their socio-economic and cultural identity. This is also the prime. Thus, in terms of land alienation, restoration of alienated lands to the tribal population will act as a measure in prohibiting ethnic violence and well as preserving the cultural identity of the indigenous people. Strict measures which prohibit the transfer of tribal land to outsiders should be taken. Lack of efficient monitoring system and dynamics of power politics has given way to such phenomena of alienation of lands. Strong measures of evaluation and monitoring by the ADC under the purview of the Sixth Schedule is much necessary at this moment in order to prevent further damage of the regions and its indigenous people thereby promoting harmony and development in the region.

India has several laws and constitutional provisions, such as the Fifth Schedule for mainland India and the Sixth Schedule for certain areas of north-east India which recognize indigenous peoples' rights to land and self-governance. The laws aimed at protecting indigenous peoples have numerous shortcomings and their implementation is far from satisfactory. As per the report, the Ministries of External Affairs, Home Affairs and the Tribal Affairs objected to the need for ratification of the ILO Convention, saying that the concept of 'indigenous peoples' is not relevant to India and that the Convention violates State ownership of sub-surface resources in existing laws of the country that provides fair compensation for lands and that there was no need for external cooperation or evaluation, including from the UN, for tribal development programmes in India. In India, the description 'indigenous people' is usually applied to the 'Scheduled Tribes' who constitute nearly eight percent of the population of the country. For centuries they had free access to as much land as they could cultivate. But it was only after the establishment of the British Colonial rule that areas, which had previously been inhabited by the Scheduled tribe Communities, were subjected to outside forces. Though they have enjoyed a constitutional protection in political representation, they have not got much of the benefits of development in the country.

The Northeast spreads over a vast expanse of 255,000 sq. km with a relatively small population of less than 40 million. The situation in the seven Northeastern states, that is, Assam, Tripura, Meghalaya, Nagaland, Mizoram, Manipur and Arunachal Pradesh, as well as the nearby state of Sikkim, is markedly different from that of the rest of the country. Assam is perhaps the only state where the conditions of indigenous peoples are even partially similar to the mainland. Except for Assam and, now, Tripura, the Northeastern states have a very high proportion of STs as compared to the other states. In addition, there is little dispute that most of their territory, with the exception of Assam, was once the ancestral territory of indigenous peoples, though it may not all be under their control now. Today, the indigenous peoples mostly reside in the 'hill areas', with some exceptions such as the Bodos, the Tiwas and some other communities in Assam. At present, the Northeastern states present a number of distinct features. First, the indigenous peoples of these states enjoy a much higher degree of both de jure and de facto control over their resources, territories and governance than the indigenous peoples of the rest of India. This in turn means that the indigenous peoples of these states tend to have much higher health and social indices than those of the mainland, and in fact their inclusion in national statistics obscures the degree of deprivation suffered by the indigenous peoples of central India. For instance, Mizoram is the state with the

second highest literacy rate in India. The kind of intense destitution and super-exploitation of indigenous peoples (such as bonded labour) found in central India is rare among indigenous people in the northeast.

13.3 Land Alienation and Acquisition:

Loss of land remains the single biggest cause of deprivation of the livelihoods, lives and homelands of STs across India. The mechanisms for such expropriation of land vary, but included are the forest laws and major development projects that result in displacement of people. The power of the Indian state to forcibly acquire private property has been used with particular ferocity against Adivasi communities, who have suffered disproportionate displacement and loss of livelihoods as a result of repeated seizure of their resources in this manner. Indian law provides very few institutional or statutory protections for common resources and homelands. The protection accorded to private property was also weakened by an amendment to the Constitution in 1951, which removed the right to property from the list of fundamental rights in order to ease land reform. Ironically, this is now being used by the state to ease takeovers of lands of marginal communities. The resulting devastation wreaked on Adivasi communities has also been acknowledged in official documents. According to the Eleventh Five Year Plan, 'Ancestral land, villages, habitations and environs belonging to the tribal people have been made available for various development projects as tribal areas possess 60–70 percent of the natural resources of the country. In such cases, though primary displacement appears small due to low population density, secondary displacement has been extensive, encompassing common property resources that provided supplemental livelihoods, particularly to those with low or no dependence on farming. Estimates of STs displaced on account of acquisition over the past six decades vary between 8.5 and 10 million (roughly about 40 percent of all ousters) from 1951 to 1990. Of them, only 21.20 lakh ST persons have been rehabilitated during the period. The widespread secondary displacement in the zone of influence has neither been measured nor was provided for'.

The courts have also largely failed to provide any relief in this regard. Ironically, in a judgment relating to displacement of tribals in large numbers in the State of Gujarat as a result of submergence in the Sardar Sarovar project, as well as more recently in a case relating to the restoration of illegally alienated lands to their original tribal owners in the State of Kerala, the Supreme Court has chosen to rely upon a provision¹ in the ILO C169 to arrive at a finding that displacement of tribals for the purpose of 'development' is unavoidable and therefore cannot be held to be in violation of the obligations of the Indian State under the said Convention. Moreover, as noted above, STs have, by and large, enjoyed traditional and customary rights over vast swathes of land. However, the process of recognition of traditional rights of STs to land is significantly uneven and incomplete (the process of recording their rights in the forest areas has just commenced). Over time, the state and non-tribals have deprived them of their access to their lands by appropriating these lands. Of the recorded land rights, despite the constitutional and legislative safeguards at the central and state levels, land alienation has been widespread. In compliance of Paragraph 5(2) (a) of the Fifth Schedule, most states have enacted legislations restricting or prohibiting the transfer of land from tribals to non-tribals. The restrictions/prohibitions are intensified in their application to Scheduled Areas.

However, the extent to which these legislations have been able to fulfill the constitutional objective of ensuring that tribals retain control over their homelands, is a matter of debate. The excessive dependence of these statutes on the existing judicial system, bound as it is by procedural rules such as that of limitation and locus stands, has been detrimental. Indeed, the majority of land alienation cases do not reach courts of law due to reasons as ignorance of the law and procedures, inaccessibility to the court, non-affordability of the cost of litigation, and enormous delays. The actual restoration and physical possession, even in the cases in favor of STs, is yet another problem. A Report of the Ministry of Rural Development reveals that in March 2005, 3.75 lakh cases of tribal land alienation were registered covering 8.55 lakh acres of land; Out of the above, 1.62 lakh cases (43.2percent) were disposed off in favour of tribals covering a total area of 4.47 lakh acres (58.28 percent); 1.55 lakh cases covering an area of 3.63 lakh acres were rejected by the courts on various grounds; and 57,521 cases involving 0.44 lakh acres of land are pending in various courts of the country.

Thus, the small proportion approaches the legal system for restoration of their lands, but find, after many years of litigation, that they are unable to secure possession despite a court victory simply because of the superior socio-economic status of the person in possession. While Courts have been fairly consistent in ensuring that tribals who approach them for restoration of their alienated lands do find relief, they are unable to ensure that possession is restored in the face of entrenched marginalisation and disempowerment of tribal communities.

In 2013, India's government constituted a high level committee headed by Virginius Xaxa to examine the socio-economic, health and educational status of STs and suggest policy initiatives as well as effective outcome-oriented measures to improve development indicators and strengthen public service delivery to STs". The committee made several major recommendations in its report in 2014. One of its recommendations was that delivery of social justice to STs must be monitored by the National Commission for Scheduled Tribes, both at the national and state levels. Following a transparent policy with regard to employment opportunities for STs in the public sector, with special attention to particularly vulnerable tribal groups; strict implementation of Free and Compulsory Education Act, 2009 in tribal areas; adoption and implementation of annual "Tribal Health

Plans” at all levels; and generation of segregated data on STs such as tribe-specific health indicators at all levels and composite tribal development index were other recommendations for welfare of the STs.

On land rights of the STs, the Xaxa committee recommended recognition of the right of the STs to say “no” to acquisition of their land, and their right to access and manage forests and other resources and limiting exercise of “*eminent domain*” or “*public purpose*” projects in tribal areas. It also recommended for an inquiry into the quality of resettlement and rehabilitation in development projects in the last 50 years in scheduled and other tribal dominated areas given the widespread discontent of among displaced tribals.

In September 2013, the Government of India had notified the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement (LARR) Act, 2013. The Act replaces the draconian Land Acquisition Act 1894 from January 2014 and lays down various provisions for acquisition of land in the country and for rehabilitation and resettlement. It has special provisions for the STs and states that acquisition of land shall not be made in the Scheduled Areas as far as possible and where such acquisition takes place only as a demonstrable last resort, the prior consent of the concerned local governments shall be obtained in all cases. Nonetheless, despite the new law, there have been continuing and additional cases of land rights violations of STs.

On legal and administrative framework, the Xaxa committee recommended that India’s Parliament and State laws should be applied in the Fifth Schedule Areas (tribal areas in mainland India) only after decision by the Governor with the advice of the Tribes Advisory Council, the mandatory advisory bodies on “tribal welfare and advancement” in states with such areas (as is the case in Sixth Schedule areas). Extending the model of autonomous councils and local bodies at district levels with limited autonomy in Sixth Schedule areas to the Fifth Schedule areas (as provided in the Provisions of Panchayat (Extension to Scheduled Areas) (PESA) Act, 1996) and broadening the mandate of the Council to include protection and development functions are other major recommendations of the committee.

Meanwhile, there are numerous villages in the ten states where the PESA Act apply or which have the Sixth Schedule areas, which are yet to be notified as scheduled/tribal areas. Some states¹⁹ are yet to notify scheduled areas or have proposed schedule areas awaiting Presidential notification. Further, various Autonomous District Councils created through state laws in northeast Indian states are yet to be included under the Sixth Schedule. On the other hand, scheduled areas are being upgraded to municipal areas despite tribal opposition, taking them out of legal protection of the PESA Act while the laws for municipal areas in scheduled areas are yet to be enacted. As a result, number of tribal communities has not been able to effectively participate in public life or exercise autonomy. At the same time, there have been reports that state governments passed laws inconsistent with the constitutional safeguards of scheduled tribes.

13.4 Land Rights in Tribal Areas of Northeastern States:

The right to autonomy or self-determination is a universal right as well as a moral right of all human beings. Indigenous self-determination begins with individual self-determination. “There has been great change on the validity of self-determination on the eve of the World War II and after. The swelling addition of members of the United Nations since its inception in 1945 is an indication of this trend”. The right to self-rule or self-determination for the aboriginal and tribals has become a subject of intense debate in India which is direct fallout of the International Year of the Indigenous Peoples. Erica-Irene A. Daes states that “indigenous people view self-determination as a complex bundle of rights, balancing dialectically greater freedom from the nation-state with greater collective participation in state institutions and more security of individual equality with other citizens”. Daes further writes, “In my understanding, what indigenous people themselves mean when they speak of self-determination, is freedom to live the way the Creator made them and taught them. The emphasis is upon freedom, not the reproduction of new centres of state power”. As Colchester says, decisions taken by the United Nations Human Rights Committee recently say yes to the principle that indigenous and tribal populations do have the right to autonomy or self-determination. Thus, “Indigenous peoples are now recognized as ‘major groups’ that must meaningfully participate in the project of ‘sustainable development’”. As the concept of ‘indigenous peoples’ has become established, several powerless groups of people in the society, who are struggling to affirm their rights to land as well as to identity, and to reclaim control over their lives, are redefining themselves as indigenous so as to resume control over their lives. Self-determination, therefore, is the most important principle and focal mark of indigenous and tribal peoples’ movement everywhere in the world today.

Alienation of tribal land, like in the other states of India where tribal population constitutes a significant percentage, is one of the major problems faced by the tribal communities of Assam and as whole of Northeastern states and it has been continuing from pre-independence days till today. However, that the then leaders of Assam were quite alive to the situations arising out of this problem would be known from that facts stated in the subsequent paras. Just after independence, the Congress Minister in Assam headed by the Gopinath Bordoloi, had taken steps for the creation of Belts and Blocks for the tribals and backward class by amending the Assam Land and revenue Regulation Act 1886 by adding chapter X in 1947. Sub-Section (II) of Section 160 of this Amendment Act empowers the State Government of Assam to adopt such measures as it deems fit for

protection of those classes who on account of their primitive conditions and lack of education or material advantage are incapable of looking after their welfare in so far as such welfare depends upon their having sufficient land for their maintenance. In accordance with the above section, Belts and Blocks numbering 37 for the protection of land of the tribals and other down-trodden classes were created in the State of Assam excluding the Sixth Schedule Areas.

Land is collectively owned and governed by the community among the Scheduled Tribe in the Northeastern region. As a result, households without land were less prominent among the ST households, than all-social groups, particularly in the ST population dominated states. Private land ownership has also evolved in recent times. Land is the basic resources and agriculture, especially shifting cultivation, is the primary means of livelihood for majority of them. ST households mostly cultivated a small and medium size of land rendering to a subsistence economy. Recently, a gradual relinquish from the dependence of agriculture for employment and livelihood is evident. Concurrently, agricultural income has significantly declined. Ironically, the region continues to produce inadequate food grains production that is insufficient to cater the rapidly growing population.

The Inner Line Regulations, commonly referred to as the Inner Line Permit system (ILP), first gained legal effect through the Bengal Eastern Frontier Regulation, 1873. This law applied to the districts of Kamrup, Darrang, Nowgong (Naogaon), Sibsagar, Lakhimpur, Garo Hills, Khasi and Jaintia Hills, Naga Hills, and Cachar. The Regulation was further extended to the Eastern Dooars in Goalpara district, the Mokokchung subdivision in the Naga Hills, the Sadiya Frontier Tract, the Balipara Frontier Tract, and the Lakhimpur Frontier Tract along the then NEFA. The effect of this Regulation was to restrict the entry of persons who were non-native to the areas covered under it. The purpose of these Regulations has been contested at various points in time. Colonial administrative writers saw the regulations as a paternalistic protection towards the 'backward' people who lived in these areas, the 'tribes'. The Foreigners (Protected Areas) Order, 1958 is the modern embodiment of the ILP. This Order was passed in furtherance of the Foreigners Act, 1946. The Order defined the 'inner line' throughout present-day India starting from Jammu and Kashmir and ending at Mizoram. This inner line is different from the one envisioned in the Bengal Frontier Regulations. This line represents the furthest point up to the international border where a foreigner can visit on the strength of a visa alone. Beyond this point the foreigner is required to obtain a pass or a permit, hence ILP. In the Northeast under this Order, the inner line runs along the southern boundary of Sikkim. In Arunachal Pradesh it follows the southern and western boundaries up to the trijunction between Arunachal Pradesh, Assam and Nagaland; from there it follows the western border of Nagaland up to the trijunction with Assam, Nagaland and Manipur with Dimapur Railway station being exempted. It follows the western boundary of Manipur till the trijunction with Assam, Manipur and Mizoram. In Mizoram, it follows the western boundary till the international border. This Order was later supplemented by the Foreigners (Restricted Areas) Order, 1963 which bars Chinese nationals from entering the restricted areas. At present the Bengal Eastern Frontier Regulation, 1873 continues to apply, but only in present-day Arunachal Pradesh, Nagaland and Mizoram. It had been lifted in the whole of Assam, as well as the entirety of present-day Meghalaya. While the purpose of the Regulation was to protect the interests of the colonial capitalists, the ILP was regarded very differently by the people residing in these places. For one, the many local arguments in favour of the ILP are precisely those articulated by the British and Indian administrators, before and after Indian independence. The arguments being of protecting the 'tribes' from exploitation by 'outsiders' as well as protecting their culture and language.

The Panchayats (Extension to Scheduled Areas) Act, 1996 contains several key provisions which give statutory recognition to some of the key rights elucidated in the international conventions, as well as the Constitution of India, with regard to rights of indigenous people to their traditional homelands and resources, and to decision-making processes regarding developmental activities. This statute has been discussed in detail elsewhere in this report. Suffice to say that the enforcement of this statute, dependent as it is on amendments to state level Panchayati raj legislations by State Legislatures, has been considerably hampered in its implementation, both in letter and spirit.

In 1874, British introduced the Demarcation of Scheduled Areas which continued even after Independence that sought for special protection of the Tribals of India. One of the foremost policies of the State was the Protection of Land Alienation of the Tribals from the non Tribals. The two annexes which deal with the protection of Tribal Land Rights are the Fifth Scheduled and the Sixth Schedule of the Constitution. The Fifth Schedule gives special protection to the Tribals who reside under the Fifth Scheduled Area demarcated by the President. The main reason behind demarcating these areas as 'Scheduled Area' is to give special protection to the Tribals from the alienation and development of their Land.

Yet the Tribals in India have been continuously deprived of their property predicated on the thresholds of recommendations and consultations. Some States have individually sought to protect the Tribals of their State with their separate legislations and law pertaining to the protection of the tribal land and natural resources which prohibit the private purchase of tribal land by the non Tribal, but there is no legislation which prohibit the state's right to acquire the land of the Tribals in the name of 'Public Interest'. In fact these acquisitions are moreover

backed by the appropriation legislation of land acquisition act which justifies the taking of Private property for public use and these appropriations are exercised through the 'Authority of Law'. Section 4 (I) of the PESA authorizes the expropriation of Tribal land in the Scheduled area, explicitly through the establishment of 'Authority of Law'. This in turn makes the Tribal unable to prove that the acquisition henceforth made by the State is illegal without having proper consultation. Thus, even though some Property Rights are being given by the states to the tribals for the protection of their Land, like Chotanagpur Tenancy Act, Santhal Pargana Tenancy Act, and PESA etc., has failed to protect the Tribal Land from forced acquisition by the State.

Numerous tribal movements demanded the protection of tribal land and property rights. The Jharkhand movement in Bihar and Bodo movements in Assam reflects deep economic and social grievances among indigenous peoples. As a result of complaints, tribal population states were created in 2000 from the Jharkhand area of Bihar and the Chhattisgarh region of Madhya Pradesh and authorities provided local autonomy to some tribal peoples in the north-east. Indigenous people of Northeastern States have a distinctive spiritual and material relationship with their lands, with the air and water, flora, fauna and other resources. So the promotion and protection of the rights over lands and resources of indigenous people are vital. These tribal communities have traditionally controlled vast tracts of land and its resources. But the indigenous people of Northeastern States has face the problem of access of land, water and other natural resources found on their traditional territories. In India, human rights are not equally enjoyed by all. Perceptions of rights vary with socio-economic realities. Responses of people coming from different backgrounds differ. Inevitably the poor and marginalized people are compelled to toil for the basic necessities of life. Under these circumstances speaking of sustainable development and the protection of rights of marginalized people, such as the indigenous peoples, remains elusive. Society has so far failed to provide adequate conditions to these groups of people to enjoy their rightful entitlements. The land rights of the indigenous peoples in the northeastern states it is like a life blood of everyone in the region.

Tribals have considered Land as their Heritage Assam, as we understand is the most resource-rich and most productive State in the Northeast India. As a result of which, it ought to have by now been a power-house of growth. But what has prevented the State from becoming so, is its plethora of intractable decades-old issues afflicting it and one such issue affecting the State for a prolonged spell of time is no other than the problem of illegal encroachment of all kinds of land available in the State like revenue lands, forestlands, satra lands, lands of tribal blocks and belts, by suspected immigrant from Bangladesh and non-tribal people including industrialists. Candidly, the issue of illegal encroachment by them has long been a hackneyed one in both the print and electronic media decidedly, following social unrest stemming from periodic movements by different homegrown organizations in protest against the encroachment of land in the State by the illegal immigrants from Bangladesh and non-tribal people including industrialists, disturbing peaceful condition in the State. Even then, the problem still remains unresolved, with the successive State governments having failed over the years to evolve out a well-thought-out, effective mechanism to prevent encroachment of fast-shrinking agricultural, non-agricultural and tribal lands.

On March 12, the Arunachal Pradesh (Land Settlement and Records) (Amendment) Bill, 2018, was passed by the state Assembly. The Bill confers ownership of land for the first time on the state's citizens. Previously, under the Arunachal Pradesh (Land Settlement and Records) Act of 2000, residents of the state did not have land titles. The only document the indigenous population received to stake claim to a piece of land was a "land possession certificate" issued by the deputy commissioner of a district, subject to approval by the forest department and the village council. Actual ownership continued to rest with the state. The amendment will make people with valid land possession certificates owners of their land and allow them to lease it for up to 33 years. At end of this period, the lease can be extended for another 33 years. A press note issued by the state government announcing the amendment stated that it would go a long way in bringing development to the hill state, which is largely dependent on Central largesse. "With this legislation, huge investments from outside is expected, which will augment the economy of the state," it said. Courtesy the amendment, "land can now be mortgaged for obtaining loans from banks as the formal channels of credit has been opened", the press note added. The land tenure system in Arunachal Pradesh, so far, has often been marked by contradictions. Like most other states of the North East, Arunachal Pradesh is home to several Scheduled Tribes: they account for 65 percent of the state's population. Each tribe has its own customary laws, according to which it generally manages daily affairs, including land transactions.

In Manipur, violent clashes erupted three years ago when the state introduced laws that indigenous people said infringed on their land ownership rights. However, unlike other tribal states and tribal majority areas in the North East, the Constitution does not provide legal sanctity to this system of local governance by customary laws in Arunachal Pradesh. Still, the state's tribes continue to give primacy to customary laws. In most cases, the state government refrains from interfering. As social scientist Walter Fernandes put it: "In theory the formal law applies but in practice the customary law holds sway." This paradox, however, has often led to confusion in land acquisition exercises for development projects in the state, which has seen hectic infrastructural expansion in the last couple of years. For instance, an important component of tribal life in the

North East is community land – shared spaces controlled by tribal administrations. But India's land acquisition law recognises only individual ownership.

In states like Nagaland and Mizoram, which enjoy special status under Articles 371A and 371G of the Constitution, land acquisitions take into account customary laws and are done in consultation with tribal bodies. In Arunachal Pradesh, where no such special provision exists but customary laws hold sway anyway, land acquisition exercises have often run into troubled waters. Fernandes explained, "In Arunachal Pradesh, the fact of de facto community ownership has been making acquisition difficult because the state and the Centre are not ready to recognise the reality of the customary law and the people want their rights to be recognised."

Different states of the North East have different laws that are peculiar to it. In most of the tribal majority states such as Nagaland, Arunachal and Mizoram, only local tribals can purchase land. In Meghalaya, a small part of Shillong known as the European Ward is open for sale to all. In the states of Manipur, Tripura, and Assam, people from other parts of India can buy land except in the Tribal blocks and belts. In Sikkim, land sale to non-indigenous people is not allowed and certain parts of the state are considered reserved exclusively for the tribal Bhutias and Lepchas. In Assam and Tripura also in some regions an outsider or even natives of the state not having domicile in these region cannot buy land, these areas come under the 6th schedule of Indian constitution and are self governed, run by an elected autonomous council under the governor of the state. The various Literary and social organisations representing the different indigenous communities of Assam have requested the Hari Sankar Brahma Committee to recommend enacting a new land law to protect the land rights of the indigenous people of the state. On February 6, the Assam government constituted the Hari Sankar Brahma committee to suggest ways to protect the land rights of the indigenous people. Brahma, who is the chairman of the committee, is a former chief election commissioner. The committee took charge on February 28 and is supposed to submit its report within three months from the date of taking charge. It has been given the responsibility to suggest measures - including modifications of the Assam Land and Revenue (Regulation) Act, 1886, and other land and government policies - for the protection of land rights.

The Indigenous Tribal Sahitya Sabhas of Assam, an umbrella organisation of the apex literary bodies of the Bodo, Tiwa, Dimasa, Karbi, Mising, Deori, Rabha and Garo communities, has told the committee that indigenous people of Assam are "continuously losing the right over their own land" despite having the Assam Land and Revenue (Regulation) Act. A delegation of the organisation met Brahma last evening. They urged him to recommend repealing the Assam Land and Revenue (Regulation) Act and replacing it with a new land law keeping intact Chapter X of the old act. The Assam government created 17 belts and 30 blocks according to Chapter X of the Assam Land and Revenue (Regulation) Act for welfare and protection of six classes of people: plains tribals, hills tribals, tea garden communities, Santhals, Scheduled Castes and Nepali cultivator-graziers. The organisation informed Brahma that large areas of these belts and blocks have been occupied by encroachers from non-protected classes. Aditya Khakhlyar, the convener of the Coordination Committee of the Tribal Organisations of Assam, said they have also urged the committee to replace the "century-old colonial regulation" (Assam Land and Revenue (Regulation) Act) with a "modern, progressive and pro-people land Act". The coordination committee yesterday submitted a memorandum to Brahma. In the memorandum, the organisation requested that the provisions of Chapter X should be expanded to the maximum possible extent. The Indigenous Tribal Sahitya Sabhas of Assam requested Brahma to conduct a survey of the land occupied by the indigenous people of the state. They said the indigenous people have been deprived of land occupancy certificates despite having lived on that land for generations.

Bodoland Territorial Area District (BTAD) in Assam, conflict over land has become an enduring and seems to be an unresolved issue in the said territory that administered under the provision of Sixth Schedule of the Indian Constitution. As a result of this formation, the claim to an exclusive homeland for an indigenous community became a reality, which again endorses a kind of self assertion of exclusive land rights and control over land. Such assertion is the root for which we have witnessed many incidents in the recent times where a number of communities have been experiencing systematic discrimination in acquiring land rights in their native homeland. Such exclusiveness is emanating from two specific legal provisions. The first one is from the chapter X of the Assam Land and Revenue Regulation Act, 1886 which provides the constitution of tribal Belt and Blocks and declares certain classes of people as protected classes within the jurisdiction of Belts and Blocks. For protecting land alienation in the tribal belt and block the said act laid down numbers of special procedures for settlement of government land in the protected belts and blocks. The second legal instrument is the Constitutional Amendment Act 2003 (44 of 2003) by which the provisions of sixth schedule of the Constitution is applicable to BTAD areas. This amendment inserted a new section 3-B to the main schedule by which certain additional powers were given to Bodoland Territorial Council to make laws. Under this provision, the Bodoland Territorial Council has been empowered to make laws in many areas including in land and revenues.

A major objective behind the creation of TTAADC under the Sixth schedule of the Indian constitution is to focus on the issue of land alienation of the tribals of Tripura. The influx of immigrants into the tribal belts of Tripura has brought about disturbing changes in the demographic structure of the state. However, the State Government has not granted adequate legal authority to the TTAADC to monitor and purview cases associated

to land under its jurisdiction. The aim behind Tripura Land Revenue and Land Reforms Act, 1960 was management of land affairs which would also include bringing in Land reforms. Section 187 of the Act assigns power to the Collector of the District for the restoration of tribal land which has been alienated to the non-tribals in order to protect tribal identity, as their identity, means of livelihood and customary practices are largely associated with land rights. Accordingly clause (b) of Sub-section 1 of Section 187 of the Act, it is the duty of the Collector to make an enquiry before granting permission to a member of Scheduled Tribes for the transfer of any land belonging. In this case it has been observed that the Constitution has ensured strong Legislations in order to prevent alienation of tribal land. However such legislations can be made far more effective if the TTAADC had the same legal powers. Thus amendment to the Tripura Land Revenue and Reforms Act, 1960, in terms of vesting powers to the TTAADC instead of the District Collector in allotment of Government Khas land and permission to transfer land from tribals to non-tribals has the scope yielding positive outcomes and can act as strong monitoring mechanism.

14. Summary of Findings of the Study:

The following points are the precise findings of the Study-

- ✓ The tribal population or indigenous peoples in India covers approximately 15 percent of the country and it stretches from the villages tucked in the Indian Himalayan region to Southern-most tip of India and from the Far East corner of the seven North-East India to the dunes of Rajasthan.
- ✓ The indigenous peoples are still one of the most excluded and deprived groups in the country.
- ✓ The unique lifestyle of indigenous peoples is completely different from the rest of the world. The livelihood of Indian indigenous peoples is mainly dependent on agriculture and the handicrafts.
- ✓ It is true that India has the administrative authorities the government wings of Department of Tribal Welfare both the Central and the State levels and inter-state council, India has several independent bodies such as National Commission for Women, Minorities Commission, National Human Right Commission, State Human Right Commission, National Commission for SCs, National Commission for STs, etc. to safeguards the rights of people who claim to be treated as Indigenous peoples in the Country.
- ✓ Unlike many other countries in Asia, India has a highly developed legal and policy frameworks in place for its indigenous and tribal communities, known as 'Scheduled Tribes'.
- ✓ The experience of colonial rule in the north-east was quite different from what Native Indians or other natives experienced in the Americas and Oceania. Unlike in the US or Australia, the north-east, or for that matter India as a whole, did not witness large-scale migration and settlement of white people. To the British, India was a colony, not a second home. Although white people did no flood the region, the colonial rule did contribute to the voluntary or forced migration of different communities from the rest of India to the north-east. It was not that all migrant communities were economically and culturally superior to the locals. The Adivasis who were forcibly brought to work in tea and other plantations and Bengali Muslim peasants who were forced to migrate because of poverty were no exploiters in any sense. Further, the negative effects of large-scale immigration of people from other parts of British India to the north-eastern region were confined mostly to the plain areas. By and large, the hill communities retained their traditions and continued to exercise control over their land and resources.
- ✓ It is believed that relationship to the land is the basis of tribal or indigenous identity and that the culture and identity of indigenous people cannot be preserved without maintaining control over land and natural resources, as these factors to a large extent determine the lifestyle and culture of the indigenous people.
- ✓ Generally, tribals or indigenous cultural practices community land ownership, while some other tribes practice individual with clan ownership; however, modern land relations and formal law recognize only individual ownership of land.
- ✓ It was under the colonial rule that the process of turning land into commodity began for their own interest, thus through the Permanent Settlement Act of 1793 and Land Acquisition Act of 1894 the process began.
- ✓ The then Assam Land and Revenue Regulations 1886 (AL&RR) that was an extension of the Settlement Rules of 1870 and 1883 made tribal land alienation an easy process. Hence, in the name of development post-independence large tracts of lands were given away to the immigrants and other settlers. By the late 1960's this resulted in a loss of over 60 percent of tribal land to Hindu Bengali migrants from Bangladesh who encroached on Community owned resources and land. As a consequence of this, the tribal proportion in Tripura has declined from 58 percent in 1951 to 31 percent in 2001. Similar is the case in Assam, where the Bodo territorial region has paid heavily as the consequence of such phenomena. It is because of the attacks on tribal land in most States there has been growing insecurity among the people of the region who now view the rising number of immigrants as a threat to their socio-economic and cultural identity. This is also the prime. Thus, in terms of land alienation, restoration of alienated lands to the tribal population will act as a measure in

prohibiting ethnic violence and well as preserving the cultural identity of the indigenous people. Strict measures which prohibit the transfer of tribal land to outsiders should be taken. Lack of efficient monitoring system and dynamics of power politics has given way to such phenomena of alienation of lands. Strong measures of evaluation and monitoring by the ADC under the purview of the Sixth Schedule is much necessary at this moment in order to prevent further damage of the regions and its indigenous people thereby promoting harmony and development in the region.

- ✓ In 1874, British introduced the Demarcation of Scheduled Areas which continued even after Independence that sought for special protection of the Tribals of India. One of the foremost policies of the State was the Protection of Land Alienation of the Tribals from the non Tribals. The two annexes which deal with the protection of Tribal Land Rights are the Fifth Scheduled and the Sixth Schedule of the Constitution. The Fifth Schedule gives special protection to the Tribals who reside under the Fifth Scheduled Area demarcated by the President. The main reason behind demarcating these areas as 'Scheduled Area' is to give special protection to the Tribals from the alienation and development of their Land.
- ✓ The Panchayats (Extension to Scheduled Areas) Act, 1996 contains several key provisions which give statutory recognition to some of the key rights elucidated in the international conventions, as well as the Constitution of India, with regard to rights of indigenous people to their traditional homelands and resources, and to decision-making processes regarding developmental activities.
- ✓ The Panchayats (Extension to Scheduled Areas) Act, 1996 contains several key provisions which give statutory recognition to some of the key rights elucidated in the international conventions, as well as the Constitution of India, with regard to rights of indigenous people to their traditional homelands and resources, and to decision-making processes regarding developmental activities.
- ✓ Different states of the Northeast India have different laws that are peculiar on the Land rights matter of concern.

15. Conclusion:

Most of the countries in which indigenous peoples live are relatively poor and less developed. Government officials, and the executives of development banks, and other financial institutions and transnational corporations, often have a limited knowledge of indigenous societies and their culture. As a result, the projects these executives conceive, authorize, and fund—dams, roads, and the utilization of natural resources sometimes involving the large-scale relocation of populations—irrevocably affect the peoples who lie in their paths. The land and natural resource issues of indigenous peoples remain critical and unsolved in many states. In North America, Great Britain and later the United States signed over three hundred treaties with Indian nations that were subsequently broken.

Indigenous Peoples are a significant and important portion of humanity. Their heritage, their ways of life, their stewardship of this planet, and their cosmological insights are an invaluable treasure house for us all. The word Indigenous has many meanings. In every region of the world, many different cultural groups live together and interact, but not all of these groups are considered indigenous or inherent to their particular geographic area. In fact, it is only in the face of a collective or shared sense of identity that the term indigenous peoples have been internationally recognized. Indigenous Peoples live in every region of the world. They live in climate ranging from Arctic cold to Amazon heat, and often claim a deep connection to their lands and natural environments. For many indigenous peoples, the natural world is a valued source of food, health, spirituality and identity. Land is both a critical resource that sustains life and a major cause of struggle and even death.

Tribals have considered Land as their Heritage Assam, as we understand is the most resource-rich and most productive State in the Northeast India. As a result of which, it ought to have by now been a power-house of growth. But what has prevented the State from becoming so, is its plethora of intractable decades-old issues afflicting it and one such issue affecting the State for a prolonged spell of time is no other than the problem of illegal encroachment of all kinds of land available in the State like revenue lands, forestlands, satra lands, lands of tribal blocks and belts, by suspected immigrant from Bangladesh and non-tribal people including industrialists.

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