

# CULTURAL IDENTITY OF INDIGENOUS PEOPLE VIZ A VIZ ABSOLUTE DEVELOPMENT IN INDIA: A LEGAL ANALYSIS

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## Abstract

*Cultures have been a medium of representing human existence across diversified communities or societies. Every human being survives within a distinct community of people who shares common attributes either geographically or any other reason that makes such communities different from others. Such attributes give rise to a culture, maintaining and preserving of which shall be the right of each individual human being. Further, such cultural practices are also a medium through which human beings adjusted with the nature and survived till the present era for which they are important for human as well as social development. Therefore, protection of the right to maintain and preserve one's culture has been recognized by the jurisprudence of civilized nations and also by the international fraternity at large. This paper will make an attempt to study the status of legal recognition provided to the cultural rights of the indigenous people in India.*

## Keywords:

*Indigenous People; Cultural Rights; Indian Jurisprudence; Traditional Knowledge*

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## INTRODUCTION

Man is a social animal. There are various phenomena by which man continues to be a part of society and culture is one of the most prominent among others. Culture is a result of continuous adaptation and evolution of human beings as a part of the society. The cultural evolution can be analysed through various processes as opined by various experts. One opinion is that culture can evolve very slowly depending upon the reception and reaction of people. Another opinion is that evolution of culture is that it is a gradual process with lot of intricacies and acuteness of human values. The social traits of human beings are enabled by the unprecedented abilities for cultural adaptation.<sup>1</sup> Culture is unique to region, state or a country and its historical traits through time immemorial.

The nature of culture is variable. It is the way people live their day to day lives with the help of various practices, customs and traditions, beliefs, expressions etc. In addition to that, it is a result of flora and fauna, natural environment, habitat etc surrounding the place of living of a particular group of people signifying their identity and originality. It is also composite process accompanied by continuous observance. Culture is not static and it changes with time and developments with society. The prevalence of culture depends

upon its continuous observance, protection and preservation.

## VALUE OF CULTURE IN OUR COUNTRY

Our country is said to be one of the best examples of unity and diversity in terms of culture. The cultures prevalent in our country is of significant value and is a part of a complex socio-economic base accompanied by diverse geographical conditions, demographic variations and social hierarchy. The Constitution of India is one law of the land which guarantees cultural rights to each and every citizen of our country among all diversity in terms of language, religion, sects etc

The evolution of Indian society is evidence of culture being a primary factor of identity, unity and originality of our people. The mention of cultural diversity lies in our scriptures which states that our originality is community based, sharing common traditions and values. This is derived from the greater idea of nation as a culture.

Pandit Jawaharlal Nehru stated that “the deep definition of Indian unity is defined by *“the widest tolerance of belief and custom, every variety acknowledged and even encouraged”*<sup>2</sup>.

Rigveda Samhita said, “May our resolutions be the same, may our hearts be united, may

<sup>1</sup> P.J.Richerson, & R. Boyd, *Not by genes alone: How culture transformed human evolution*( University of Chicago Press ,2005)

<sup>2</sup>Jawahar Lal Nehru, *The Discovery of India*,( Oxford University Press 1946,1997) 62



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our mind think alike, so that we may all live here well and together.”<sup>3</sup>

Indian culture and society have gone through various changes and has been constantly evolving backed by developmental activities. Economic developments such as globalization, liberalization, privatization etc has brought various internal changes as well as influenced the relations with other countries. Cross border changes has put both positive and negative influences on our socio-cultural development. Now-a-days, we are going through a phase of absolute development which has put a question on the protection and preservation of culture. The concept of Absolute development is quite opposite to the concept of sustainable development and acts as a threat to socio-cultural development of the people.

In our country, the emergence of absolute development has brought distress to the indigenous people in terms of preservation and protection of their socio-cultural environment. They are forced to take the brunt of deforestation, construction of big dams, urbanization etc. Culture plays a very important role in the life of the indigenous people in our country. This statement applies more so in the case of indigenous people living in the North Eastern States where a greater percentage of people are indigenous. The indigenous people of the country live

across different parts and their way of life depends upon their specific cultural and traditional practices which are a product of ecology, natural habitat, flora and fauna. But developmental activities are greatly hampering the continuity of their culture and traditions which are very important to maintain their very identity. So it is high time that appropriate steps should be taken to protect the cultural identity of the indigenous people in our country.

## DEFINITION OF CULTURE

United Nations Educational, Scientific and Cultural Organization (UNESCO) has defined culture as “*the distinctive traits, including the total spiritual, material, intellectual and emotional traits that characterize a society or social group, and that include, in addition to arts and literature, their ways of life, the manner in which they live together, their value systems, and their traditions and beliefs*”<sup>4</sup>

Edward B Tylor, “*Culture is a complex whole which includes knowledge, belief, art, morals, law, custom and any other capabilities and habits acquired by man as a member of the society*”<sup>5</sup>

Bronislaw Malinowski, “*Culture is the handwork of man and medium through which he achieves his ends*”<sup>6</sup>

<sup>3</sup> Rigveda, Last sloka of saṅgathan-sūkta' X.191

<sup>4</sup> Preamble to UNESCO's Universal Declaration on Cultural Diversity (2001).

<sup>5</sup> Edward.B. Tylor, *Primitive Culture* ( Vol. 1.) 1871, Chapter I

<sup>6</sup> Bronislaw Malinowski, *A Scientific Theory of Culture and Other Essays*, (University of North Carolina Press 1944)

*The nature of culture as a concept can be explained as under:*

- a. *Culture is a collection of circumstances which are made by the people living in a particular area or region, includes day to day activities performed collectively which is passed through generations of social evolution.*
- b. *The idea of culture can be said to be the basic identity of the individuals in the society by providing recognition in the society.*
- c. *Social acceptance and social identity is based on the observance of culture by a particular individual.*
- d. *Culture is a dynamic concept and it varies regionally, geographically and nationally. Since culture is being passed from generation to generation, its observance and preservation is absolutely necessary to ensure its continuity.*
- e. *The development of culture lies in certain processes which will operate in a local, regional or national context.<sup>7</sup>*

### ***Definition of right to cultural Identity***

*There is no definite explanation of the term cultural identity. In order to look into the concept of cultural identity we have to recognize the plethora of rights which helps*

*an individual or group of people to prove their attachment to a particular way of life. Cultural identity is an abstract concept and can only be realized through various civil, political, economic and cultural rights. Likewise, we also cannot define very accurately what civil, political, economic or social rights are unless we refer to established rules and regulations both nationally and internationally for protection and implementation of those rights. This is the reason why human rights instruments are considered to be living instruments.<sup>8</sup>*

*Cultural identity is a broader term which has developed over time and includes the new societal changes. Cultural identity can also be said as an individual's collective identity.. Cultural Identity is based on emergence of new experiences, demands or foci of oppression.<sup>9</sup> The protection and preservation of cultural identity will be possible if the cultural rights are being protected. Cultural rights can be said to be the actions of a single person or persons towards determining their own culture and to practice, preserve and protect it. The cultural rights are a symbol of cultural reorganization and persistence.*

*Some of the basic features of cultural identity are given as follows:*

- a. *Culture which results in cultural identity of an individual or group of*

<sup>7</sup> Supra Note 4.

<sup>8</sup> First report of the Independent Expert in the field of cultural rights, A/HRC/14/36

<sup>9</sup>Patrick Thornberry, *Cultural Rights and Universality Of Human Rights*, Submission to the Committee on

Economic, Social and Cultural Rights, Day of General Discussion on the Right to take part in cultural life (E/C.12/40/15), p. 6.

persons is never static and it keeps on changing from time to time.<sup>10</sup> So it is very important to give a human rights perspective to preserve the cultural identity to be an important part of day to day activities of people.<sup>11</sup>

- b. Cultural identity cannot be determined on a single culture.<sup>12</sup> This is because of the fact that a society has dominant culture and non-dominant culture or sub cultures.<sup>13</sup> The dominant culture is often reflected in the society but non dominant culture is not reflected much.
- c. The preservation of cultural identity does not distinguish between dominant culture or non-dominant culture but it is about preservation of the culture as a whole.
- d. Cultural identity results in participation of people. Preservation of cultural identity is only possible if there is participation from the people. Participation reflects the interests of the individuals in preserving and protecting their cultural identity.

## CULTURAL IDENTITY AND RIGHT TO CULTURE: A LEGAL ANALYSIS

The International Covenant on Economic, Social and Cultural Rights<sup>14</sup>, 1966, in its preamble states that “the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights”<sup>15</sup>. This means the right of an individual to participate in cultural activities as a part of the society<sup>16</sup>. Further it states the right of self-determination; everyone has the liberty to pursue socio cultural development.<sup>17</sup> Cultural Rights are also recognised in Universal Declaration of Human Rights 1948 which recognises the right of free participation in the cultural life of the community”<sup>18</sup>

In India, according to a study, there are 104 million indigenous people constituting 8.6% of the total national population which are further divided into 705 ethnic groups which are officially recognised, although there are many more ethnic groups which are not recognised yet.<sup>19</sup> The cultural identity

<sup>10</sup> Farida Shaheed, *Cultural Rights: What Are These And Why Are They Important For Women's Right To Development?*, Paper presented at the Asia Pacific Regional Consultation with UN Special Procedures: Women's Right to Development, October 26-27, Phnom Penh <[www.ohchr.org/sites/default/files/Documents/Issues/CulturalRights/Culturalrightsofwomen/ASEANwomenconsultation2011-FSstatement.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/CulturalRights/Culturalrightsofwomen/ASEANwomenconsultation2011-FSstatement.pdf)> accessed on 21 June 2022

<sup>11</sup> Supra note 8

<sup>12</sup> Supra Note 12

<sup>13</sup> Ibid.

<sup>14</sup> United Nations General Assembly (GA) on 16 December 1966 through GA. Resolution 2200A (XXI)

<sup>15</sup> International Covenant on Economic, Social and Cultural Rights, Preamble

<sup>16</sup> International Covenant on Economic, Social and Cultural Rights Article 15.a

<sup>17</sup> International Covenant on Economic, Social and Cultural Rights Article 1.1

<sup>18</sup> Universal Declaration of Human Rights, Article 27(1)

<sup>19</sup> Indigenous Peoples in India, Report by International Work Group for Indigenous





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is the very factor for recognizing the uniqueness of the indigenous people in our country. The Indian Constitution ensures the inclusion of certain cultural rights which applies commonly to all the citizens of India. They are reflected in Part III and Part IV of the Indian Constitution.

Article 29(1) of the Constitution states that any section of citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. Some of the key aspects of this article are given as under:

- a. This article signifies that this right is available to all people and every type of community whether it is majority or minority community.
- b. Any individual, any society or any community can follow any means which is not illegal for the conservation of separate cultural identity.
- c. It is about recognizing the right of various sections of people to conserve the separate identities based on culture or spirit.
- d. Any community, both majority and minority with a distinct culture enjoys the protection under this article.
- e. There are many communities which have their own script and some may not. This article gives right to every community to conserve the script.

- f. Linguistic identity is being protected by giving protection to the distinct language whether or not they have a script or not.

Likewise, Article 43 imposes positive obligation on the state to ensure that all the workers are able to enjoy social and cultural rights. Some of the key aspects of this article are given as under:

- a. It is the duty of the state to ensure a living wage, appropriate conditions of work, descent standard of living and appropriate social and cultural opportunities.
- b. The above duty shall be fulfilled by the state by framing appropriate legislations.
- c. It shall also be fulfilled by appropriate economic reorganization for the benefit of workers.

In addition to that Art 51 A (f) says that it is the fundamental duty of every person residing in our country to preserve the composite culture of our country. Some of the key aspects of this article are given as under:

- a. The uniqueness of our culture is that it is composite.
- b. It is not a single culture and comprises of both dominant and non-dominant cultures.

c. It is the duty of every individual to preserve our rich cultural heritage.

Even the states individually also have a mechanism to preserve and protect the cultural right of its people. For instance, in the state of Assam, Clause 6 of the Assam Accord says that constitutional, legislative and administrative safeguards shall be provided to the people to protect, preserve and promote the cultural, social, linguistic identity and heritage of Assamese people.

In the case of *Amarnath Sehgal vs Union of India*<sup>20</sup>, it was stated that there has to be a better understanding of personal rights viz a viz cultural rights of the nation. The judgement also mentions that India is a signatory to the International Covenant on Civil and Political Rights which requires the state parties to respect and protect and preserve the cultural right of the individuals in the state.

In the case of *Bal Patil and Another vs. Union of India*<sup>21</sup>, it was stated that the Preamble of our Constitution guarantees cultural right to both majority and minority communities. The cultural right is inclusive of the fundamentals of freedom of religion, and faith,

In the case of *CESC Ltd. vs. Subhash Chandra Bose and another*<sup>22</sup> it was stated

that it is the right of everyone to enjoy socio economic and cultural rights. It also said cultural rights are important to draw and realise the basic aspirations of a meaningful life.

In another case of *Madhu Kiswar and Others vs. State of Bihar*,<sup>23</sup> it was stated that Article 21 of the Constitution of India reinforces right to life. Equal dignity of person and right to development are inherent rights of every human being. It further states that life in its horizon includes all that give meaning to a person's life including cultures and tradition and the dignity of a person.

In the case of *Orissa Mining Corporation limited vs. Ministry of Environment and Forests*<sup>24</sup> it was stated that the Forests Rights Act has been enacted which confers powers on the Gram Sabha constituted under the Act to protect the community resources, individual rights and cultural rights.

In the case of *P.K. Koul vs. Estate Officer and Another*<sup>25</sup>, It states that all civil, political, social and cultural right enshrined in the In the Universal Declaration of Human Rights or under the Constitution of India cannot be exercised without inter alia the basic human right to shelter. Right to shelter and right to life include right to culture and right to dignity.

<sup>20</sup> *Amarnath Sehgal vs Union of India* [2005] 117 DLT 717

<sup>21</sup> *Bal Patil and Another vs Union of India* [1999] CA 4730

<sup>22</sup> *CESC Ltd. vs Subhash Chandra Bose and another* [1992] AIR 573

<sup>23</sup> *Madhu Kiswar and Others vs State of Bihar* [1996] AIR 5 SCC 125

<sup>24</sup> *Orissa Mining Corporation limited vs Ministry of Environment and Forests* [2011] WP 180

<sup>25</sup> *P.K. Koul vs Estate Officer and Another* [2004] W.P.(C) 15239

## EVOLUTION OF CULTURAL RIGHTS OF INDIGENOUS PEOPLE IN INDIA

### Pre Independence

The recognition of the term indigenous people can be traced back to the time when the Britishers ruled our country. They had taken initiative to recognize the status of the indigenous people and give special provisions for them in the legal system of the country. Mention of the same can be found in the Government of India Act 1919 and 1935.

The right of self-determination of the tribal people of India was identified for the first time by the Britishers through certain systems such as *Majhi-Parganait*, *Manki-Munda* systems etc. The effort of the Britishers for the upliftment of the indigenous people has been carried forward by the Government of India after independence in the form of identifying the scheduled tribes as special category of persons and giving certain safeguards under the Indian Constitution.

The Constituent Assembly during its formation engaged vast groups of its citizens including various tribal groups for recognizing right to culture in India. It was based on ‘assurance and implementation to live with protection of cultural heritage’. These assurances were very important for the indigenous people. In this context, the researcher limited her research on the legislations which were important for the people living in the present North Eastern

states which were the part of greater Assam at that point of time given as under:

- A. Garo Hills Act 1869: This Act was passed to delegate the administration of significant tribal areas of the North East into certain offices.
- B. The Government of India Act 1870: This Act extended the jurisdiction of the provisions of Garo Hills 1869 to Assam Valley, Hill Districts of Assam and Cachar Region in 1873
- C. Scheduled Districts Act 1874: Though this Act did not cover the North Eastern States, but this Act is also significant as it looked after the development of the districts of the first schedule.
- D. Committee on Fundamental Rights, Minorities and Tribal Areas, 1947: The Constituent Assembly, in order to legitimate the administration of tribal areas and work for the benefit of the people living in those areas, the Committee on Fundamental Rights , Minorities and Tribal Areas, 1947 was set up.
- E. Sub- Committee on Assam: The Sub Committee on Assam was set up with two important objectives which are given as under:
  - i. People should be given control on immigration and allocation of land to the outsiders.
  - ii. It was essential to provide safeguard for the protection of land which was the mainstay of the



Aboriginals, way of economic life, customs and traditions and institutions which apart from being its own contained elements of value.

K.M.Munshi, a member of the Constituent Assembly agreed that “There was a need to protect the tribes from destructive impact of races possessing a higher and more aggressive culture and that the tribes should be encouraged to develop their own autonomous councils.

### Post-Independence

Immediately after independence era, rapid developmental processes started in the country. So little attention was paid towards the upliftment of the cultural rights of the indigenous people. Economic development was rapid at the cost of the interest of the indigenous people. Some of them as discussed as under:

- a. The Constituent Assembly resolutions were not implemented and there has been infringement of right to culture guaranteed under the Constitution of India.
- b. The development processes over took the interests and the rights of the aboriginal people and it had made it difficult for them to lead a proper cultural life.

- c. The diminishing nature of cultural life has led to marginalization of indigenous people in our country.
- d. There have been certain administrative policies which has converted the natural resources including land minerals, forests and water commodities of economic development.
- e. In the name of absolute development, the natural habitat of the indigenous people has been encroached upon and it results into loss of socio-cultural life of the indigenous people.

### Present Position

India had ratified International Labour Organization (ILO) Convention No. 107<sup>26</sup> which recognizes the rights of Indigenous and Other Tribal and Semi-Tribal Populations. But this Convention is considered outdated in the present state of time. Most important is International Labour Organization (ILO) Convention No. 169<sup>27</sup> which provides legal recognition to indigenous people, but it is still not ratified by India.

In our country, there is no differentiation between tribal people, indigenous people and aboriginal people. According to that all the aboriginal people come under the garb of tribal people. In our country, all the tribal people cannot be said not to be indigenous people because it is claimed that they are not

<sup>26</sup> Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, 1959

<sup>27</sup> Indigenous and Tribal Peoples Convention, 1989



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aboriginal but are of tribal origin. On the other hand, there are certain non-tribal people who can be called as indigenous people. Again, there is ambiguity about who are the people of tribal origin. The Indian Constitution has not properly defined who are the tribal people but has given certain criteria under which a category of persons can be called a scheduled tribe. So, a person or a group of persons have to fulfil certain criteria given in a schedule and then they can be called as scheduled tribe.

Under Article 342 of the Indian Constitution, scheduled tribes are “tribes or tribal communities or parts of or groups within the tribal communities which the President may specify by public notification. This means that the President of our country is considered as the custodian and has special responsibility for their protection. But while declaring certain groups as scheduled tribe, their ethnological origin is not considered at all which a specific criterion to identify indigenous people is.

Also, in declaration of a group of people as scheduled tribes, place of residence is the most important criteria in this regard. This is mainly brought so that people belonging to a specific community and in a specific region and locality gets recognition and benefits which they are being deprived in comparison to the people of the mainland. But the true intention of the legislature is not implemented. The residence of a person given in this article has a special significance

and should not be understood in the plain and ordinary sense and it has to be emphasized that belongingness of a person to specific locality has a special significance. Here again, the indigenous origin is not taken into consideration.

In the case of *Marri Chandrasekhar Rao vs. Dean, Seth Medical College*<sup>28</sup> it is necessary to interpret the phrase ‘in relation to that state’ jointly with the expression ‘for the purpose of the Constitution’ in the context of Article 342(1) of the Constitution of India. In relation to the state means that each and every state should be represented in a different way depending upon the geography, culture and the socio-economic status of the people in declaring scheduled caste and scheduled tribes

### RIGHT TO CULTURE OF INDIGENOUS PEOPLE IN INDIA: A JUDICIAL ANALYSIS

The Indian judiciary has taken up various cases and very important decisions have been given which are very important for the protection of the cultural rights of indigenous people in our country. This requires proper implementation for the benefit of the same. Some of the important decisions are given as under:

In the case of *Bombay environmental Action Group vs. The State of Maharashtra*<sup>29</sup>, it was held that the survival of the local communities and the indigenous people and

<sup>28</sup> *Marri Chandrasekhar Rao vs. Dean, Seth Medical College* [1990] 2 SCR 843

<sup>29</sup> *Bombay environmental Action Group vs. The State of Maharashtra* [1997] WP 2773 and 3041



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preservation of their culture depend upon the productivity and health of the ecosystem.

In the case of *In the matter of the Protection of Forest Environment, Ecology, Wild Life etc. from the Forest Fire vs Union of India and Others*<sup>30</sup>, it was held that Indigenous people and other communities have a vital role in environmental management and development because of their knowledge and traditional practices. It further stated that should be adequate support from the state to give recognition and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

In case of *Maharshi Mahesh Jogi vs State of M.P and others*<sup>31</sup>, it was stated that role of international organizations regarding the implementation of right to education is just not limited to the preparation of documents and conducting conferences and conventions but it should also undertake the operational programmes assuring access to education of refugees, migrants, minorities, indigenous people, women and handicaps.

In another case of *Mula Maheshwar Rao vs The State of A.P.*<sup>32</sup>, it was stated that the indigenous people have right to control their land, territories and natural resources and to maintain their traditional way of life. This includes right to security in the enjoyment of

their means of subsistence. The court further held that the indigenous people have right to protection against any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife or other resources.

In another case of *National Aluminium Co. Ltd vs. Deputy Commissioner of Income Tax*<sup>33</sup>, it was stated that establishment of large industries in the backward areas predominantly inhabited by indigenous people causes serious imbalance in the traditional economy and create misery for the same which includes threat to the protection and promotion of cultural rights of the indigenous people.

In another case of *Orissa Mining Corporation Ltd vs. Ministry of Environment and Forests*<sup>34</sup>, the Court held that India is a signatory to the Convention on the Biological Diversity adopted at the Earth Summit (1992) and it is necessary to preserve and maintain knowledge, innovation and practices of the local communities relevant for conservation and sustainable use of biodiversity in India.

In the case of *Shri Bailos Swer vs. State of Meghalaya and Others*<sup>35</sup>, the Court held that the indigenous people are fully aware and they have knowledge as to what constitute

<sup>30</sup>*In the matter of the Protection of Forest Environment, Ecology, Wild Life etc. from the Forest Fire vs Union of India and Others* [2016]WP (PIL) 54

<sup>31</sup>*Maharshi Mahesh Jogi vs State of M.P and others* [2004]CA 6736

<sup>32</sup>*Mula Maheshwar Rao vs The State of A.P* [2021] WP 16274

<sup>33</sup>*National Aluminium Co. Ltd vs Deputy Commissioner of Income Tax* (2006) 101 TTJ CTK 948

<sup>34</sup>*Orissa Mining Corporation Ltd vs Ministry of Environment and Forests* [2011] WP(C) NO. 180

<sup>35</sup>*Shri Bailos Swer vs State of Meghalaya and Others* [2016] WP(C)NO. 3



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conservation of forests and development including the concept of forests degradation and which causes environmental degradation. The court also held that the natives and the indigenous people know the balance between economic and environmental sustainability.

In the case of *The state of Assam and 3 others vs. Sitalakshmi Srinivasan*<sup>36</sup> a portion of the employment should be reserved for the indigenous people of the state as a measure of their upliftment. The court further held that since the employment seats are limited and they are basically for sons and daughters of Indigenous people. Such seats could not be allotted to those who reside in Assam for purpose like services in central government, industries or private sector as this will deprive the genuine and deserving indigenous candidates.

In the case of *Assam Sanmilita Mahasangha & Ors vs. Union Of India & Ors*<sup>37</sup>, as a result of the population influx from Bangladesh, the indigenous people have been reduced to a minority in their home state and as result of that the cultural survival of the same will be in jeopardy, their political control will be weakened and their employment opportunities will be undermined.

## INDIGENOUS PEOPLE AND UNSUSTAINABILITY OF DEVELOPMENT AS A THREAT TO CULTURAL IDENTITY

Article 1 of the United Nations Declaration on the right to Development, 1986<sup>38</sup> states that the right to development is an inalienable right and that everyone is entitled to participate in, contribute to and enjoy socio- cultural and politico-economic rights so that people can realise their rights and freedoms.<sup>39</sup> According to this declaration “development is a continuous process and ‘the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development, fair distribution of the benefits resulting there from’<sup>40</sup>

We cannot deny the fact that development is considered to be in internationally recognised right but development should not be at the cost of the people who participate and want to enjoy the benefits of development. Due to rapid development and modernization, the indigenous people are facing radical transformations, of not total extinction.<sup>41</sup> There has been constant encroachment of their dwelling places and habitat and they are being forced to internally displace themselves. No doubt

<sup>36</sup> *The state of Assam and 3 others vs Sitalakshmi Srinivasan* [2013] WA 291 & 293

<sup>37</sup> *Assam Sanmilita Mahasangha & OR's vs Union Of India & Ors* [2012] WP (C) 562

<sup>38</sup> Adopted by United Nations General Assembly on 4<sup>th</sup> December, 1986

<sup>39</sup> United Nations Declaration on Right to Development 1986, Art.1

<sup>40</sup> United Nations Declaration on the right to Development 1986, Art. 2.3

<sup>41</sup> T.N. Madan, “The Burden of Cultural Identity”, *Cultural Survival Quarterly Magazine*(1994) <[www.culturalsurvival.org/publications/cultural-survival-quarterly/burden-cultural-identity](http://www.culturalsurvival.org/publications/cultural-survival-quarterly/burden-cultural-identity)> accessed 26 February 2022

compensation is being given but the compensation is not proportionate to the loss which they suffer in the name of development.

Sustainable growth states the cultural rights of the indigenous people must be appreciated and embraced.<sup>42</sup> But in present state of society, hardly the concept of sustainability is being followed. This can be analysed from the following points:

- A. Clashing of Interests: Indigenous people share a strong connection with surrounding habitat. Their customs, traditions and day to day practices are shaped in such a way that they have their own methods of preserving the biodiversity and environment.
- B. Policy drawbacks: It is generally that the developmental activities suffer various policy drawbacks due to which affected indigenous people suffer a lot. The basic standards which are essential for the sustainability of a particular project is often being ignored. Non-compliance with the required policies has an adverse effect on the people living in and around any developmental project.
- C. Non-Regard to local expertise: Very often it is seen that the opinion and expertise of the local people who are living in and around any developmental project are not

considered. As a result of that various disasters occur and worst sufferers are the local people and their interests.

- D. Non participation techniques: According to the mandate of environment impact assessment rules, there has to public hearing of the local people and then the decision has to be taken on the basis of those public hearings. But many a times it is seen that the public hearing and the local participation is ignored.

## CONCLUSION

In the present state of art development there are various advantages which the mankind has been enjoying and it's proving to be a boon for them. But there is a section of people who are less benefited by such developments and their very existence is under threat. They are the indigenous people whose life is a product of nature and they share a strong relationship with the conservation of nature. The bare means of survival of these people is being hampered and they are forced to live in such circumstances which are inverse to the type of environment they are used to. Most importantly the developmental activities are constantly hampering their cultural life which is the root of their identity. *There are various conventions, agreements, treaties etc which focus on the concept of preservation of culture, but they need to be*

<sup>42</sup> Usha Dewani, "Identity theft in Northeast India, India Water Portal", (2014) <[www.indiawaterportal.org/articles/developm](http://www.indiawaterportal.org/articles/developm)

ent-identity-indigenous-communities-northeast-india,> accessed 26 February 2022





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*implemented. By the advent modernisation, there are various transitions in ways of living of the individuals in the society but regards have to be paid for those people whose basic identity lies in the preservation of culture and required initiatives should be implemented for the preservation of the same.*