

INDIGENEITY AND SELF-DETERMINATION: THE CASE OF TRIPURA

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ABSTRACT

Indigeneity is often established with the help of the “principle of first occupation” and is related to the concept of colonization. Nevertheless, the operational aspects of the principle of first occupation require an initial timeline. As there is no universally accepted timeline, the open-endedness of time has not only made the principle inoperative but also made the discourse on indigeneity quite complex. Besides the complexity of the definition of the term, the issue of inter-linkages between indigeneity and self-determination is also not easy to fathom out. Does self-determination mean only autonomy or does it mean independence? In a multi-cultural state, issue of identity crisis and political violence are often evident as a failure of feeble regiments and conflicts of interests. Today tribal rights and their issues are well recognized in the international scenario. The present paper seeks to address these issues in the light of the claims and aspirations of Indigenous People of Tripura. The paper shall also endeavour to elucidate certain interlinked issues that are often hot topics of discourses in the periphery of tribal recognitions and rights, with special reference to the state of Tripura. The thematic areas observed by the present Paper includes interlink between indigeneity and self-determination; immigration and Competition; indigeneity and insurgency (the federal solution in Tripura); and for power and resources in Tripura.

I. INTRODUCTION

The word ‘indigeneity’ is derived from the word indigenous which means born or produced naturally in a land or region native or belonging naturally in a land or region; native or belonging naturally to the soil or region etc.¹ The origin of the word “indigenous” can be found in the old Latin word, ‘indu’, which means in or within, and, ‘gignere’ to beget. The meaning given to the word indigenous is in the sense that it has originated in and produced, growing, living or occurring naturally in a particular region or environment.² Furthermore, the

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¹ Waldron, J., “Who was here first? Two Essays On Indigeneity And Settlement”, 1 (2002) *New Zealand Journal Of Public Law*, pp. 1-59, at p. 1, See also Waldron, J., “Indigeneity? First Peoples and Last Occupancy” 1:1 (2003), *New Zealand Journal of Public and International Law*, pp 55-82, at p. 56

² Saha, T. K., “Traditional knowledge and cultural expressions of Indigenous peoples: Their protection, promotion, preservation and commercialisation” in Rajkhowa, S. and

rationale behind is that indigenous people (hereinafter Indigenous People) ought not to be separated from their original habitat, else it would have an adverse effect on their life individually as well as collectively. For the same reason it becomes really hard in raising plants and species in an alien soil with a varied climatic condition. According to Oxford Dictionary, Indigenous means native or the people who are the original inhabitants of an area.³ Thus Indigenous People are generally so called because they were living on their lands before settlers came from elsewhere; they are the descendants of those who inhabited a country or a geographic region at the time when people of different cultures of ethnic origins arrived.

The concept of Indigenous People is often more properly understood than defined comprehensively and in a universally accepted manner.⁴ What is understood in the common parlance have been much broader than is applied or considered in law or in linguistic sense or considered in a way of restrictive interpretation by academics. These people are also known as aborigines or aboriginal people and at times are referred to by terms like first people and autochthonous.⁵

Professor Jeremy Waldron⁶, in his extensive work on Indigenous People⁷ deployed two principles to explain the connotation of Indigenous People namely the First Occupancy Principle and the Principle of Prior Occupancy. He described the principle of first occupancy to identify Indigenous People as descendent of people who came to a particular piece of land or territory and enjoyed the resources there off prior to anyone else possession over the said. This means that such entitlement so established over such land or territory and resources thereof is in no way the consequence of any forced dispossession and

Chakroborty, M. (ed.), *Indigenous Peoples and Human Rights: The Quest for Justice*, Calcutta, 2009, pp. 22-37, at p. 25

³ Hornby, A.S., *Oxford Advanced Learners Dictionary of Current English*. Oxford University Press, 1998, at p. 606

⁴ Realising that there are several communities in the world claiming indigenous status on one ground or the other, Erica-Irene Daes, who was chairperson of the United Nations Working Group on Indigenous Populations (UNWGIP), avoided a precise definition of the term. See also Daes, E. I. A., "An overview of the history of indigenous peoples: self-determination and the United Nations", 21:1 (2008) *Cambridge Review of International Affairs*, pp. 8-26, at p. 9

⁵ Rajkhowa, S. and Deka S., "Indigenous Peoples Struggle for Identity and Legal Recognition", *Indian Human Rights Law Review*, 1: 1 (2010), pp. 1-16, at p. 2

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⁷ *supra* note 1.

thus can claim for restoration of all such entitlements which were subsequently ceased either by force or otherwise. Waldron however prefers his second deployed principle, i.e. the principle of prior occupancy as more appropriate in the contemporary context of promotion protection of rights of Indigenous People. The said principle advocates that the Indigenous People shall be the descendant of the people who established their own social order in a said land or territory and resources thereof prior to the settlers or immediately before colonising the said land or territory and resources thereof. The rationale for preference is the respect of the principle of prior occupancy for an established social order leading to an option of peaceful co-existence of the present established social order and prior established social order, unlike the principle of first occupancy that posits the problem of restoration of the international principle of reversion.

The United Nations Declaration on the Rights of Indigenous Peoples, 2007 is the first concrete international document recognising rights of indigenous people. However, international level lacks a comprehensive definition of, 'Indigenous People'. The Draft U.N. Declaration of the Rights of Indigenous Peoples at present contains no definition at all, and that is the most sensible course.⁸ However, there have been several endeavours to come up with more comprehensive definition to encapsulate the criteria of being a member of an indigenous community. The International Labour Organisation (ILO) has been the first international body to stand for indigenous issues. The ILO in its Convention No 169⁹ (hereinafter the Convention) of 1989, used the term "Indigenous People"¹⁰ to refer to tribal people whose social, economic, cultural, and political conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs and traditions, by special laws, regulations. Moreover, the convention encapsulates people as indigenous because of their decadence from populations that inhabited the country prior to conquest or colonisation.

Next to this stand, the effort of Erica-Irene A Daes, chairperson of the United Nations Working Group on Indigenous Populations (UNWGIP) in broadening the definition of Indigenous People includes: (1) descendants of groups that were in the territory of the country at the time when other groups

⁸ Anaya, S. J., *Indigenous Peoples in International Law*, New York, 2004, at p. 185. See also *supra* note: 1, "Who Was Here First?", at p. 10

⁹ U.N. General Assembly, International Convention concerning indigenous and tribal peoples in Independent countries, International Labour Organisation Convention 169 of June 27, 1989, 28 ILM 1382 (1989). At <http://www.ilo.org/global/topics/indigenous-tribal/lang-en/index.htm> (Last visited on February 12, 2016)

¹⁰ *ibid.*, Article 1 (1) (b).