

# From Past to Present: Analysis of UDHR & UNDRIP with Reference to the Indigenous Populace of India

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## Abstract

The two most extravagant achievement on human rights law in international perspective are Universal Declaration of Human Rights (UDHR) of 1948 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007. Both of them fall under the soft law category arousing controversies. The much awaited International legal framework for Indigenous Peoples' i.e., UNDRIP and ILO Convention No. 107 alongwith 169 protecting for collective rights of the indigenous peoples are much awaited instruments for the 'self-determination' of Indigenous Peoples' which is de rigueur by member state to rectify. However, certain member states denied to rectify commenting it as instrument of bias or broadening of the pre-existence law.

This article examines the need of the specific law to be rectified for overall development of Indigenous Peoples. It will also investigate on the controversy concerning UNDRIP in the view of contemporary discussion over the legal recognition by the UDHR. These discussions unearth the fictions of divergence and convergence which spotlight on Indigenous Peoples by asserting outreach approaches within the context of human rights in India.

**Keywords:** Indigenous Community, Social Identify, UDHR, UNDRIP, Vulnerable Populace.

## I. INTRODUCTION

On December 10<sup>th</sup>, 1948 a premiere statute was enacted for International framework intended for uniformity while framing a law (UDHR, 1948). Also to act as *vade mecum* to nations while structuring an instrument for Human Rights popularly known to as The United Nation Declaration of Human Rights (UDHR). Later, for protecting and promoting the Indigenous peoples' socio-legal rights, the United Nation General Assembly (UN GA) developed a declaration knowing to be the United Nation Declaration on the Rights of Indigenous People (UNDRIP) which was adopted on September 13, 2007 (UNDRIP, 1948). These are the most recent major accomplishments mostly in post war period on an attempt to maintain international peace also for protecting and promoting the left-over people. The aforementioned, as even the title

indicates, is indeed an explanation of universal human rights, whereas the other bring forth unique safeguards for indigenous peoples' legal protections and has been the zenith of the distinct human rights - based approach for upliftment of indigenous peoples' rights. Each demonstrate substantial development as in advancement and safeguarding of human legal protections. Furthermore, as derivation of multinational law, which is an illustrations of soft law, stimulating a distinction with hard law as such like international conventions. In case of UNDRIP, the said designation as soft law is a bone of contention which has sparked significant debate; a squabble reminiscent of a previous discussion in IHRL adjoining with UDHR and its prestige as Customary International Law.

This paper explains the existing legal framework, which has been largely unexplored

in the UNDRIP with a historical perspective adjoining the legality of UDHR. These conversations reveal perspectives insight on Indigenous Peoples' concerns as well as advocating techniques by figuring things forth of convergence with variance and Customary International Law inside IHRL throughout in 19th and the 20th late and beginning centuries respectively as the dominant normative framework. With thinking of Customary International Law, it contends that beyond the *Palais de Nations* there is broad emancipatory enthusiasm with respect to worldwide attorneys. This has implied probably the most fundamental components of Customary International Law have been either thrown away or so drastically adjusted to the extent of being unrecognized; "altogether things considered, by all accounts, the custom is 'bit by bit' changed into an enormous dance floor were (pretty much) every progression and development is permitted, or, at any rate, tolerated". As respects the cases and backing Indigenous peoples' customs, it contends that although a distinct course for the advancement and assurance of native freedoms is cut out, cases, as well as techniques in getting the space together, duplicate with expanding UDHR narrative. As such, cases and techniques have differing directions. In reproducing the Customary International Law story, native cases and methodologies keep on doing viciousness to Customary International Law with the actual underpinnings attributed to global regulation; while in broadening this account they at last mirror the essentializing affinity of International Human Rights Law. Eventually, notwithstanding, the two stories do close to nothing to get the implementation of native freedoms.

This article continues as follows. In the first place, it establishes the groundworks for such a request by momentarily specifying the advancement of UDHR and UNDRIP as well by way of the ideas vital to the wellsprings of global regulation talk. With the establishment laid, this article then, at that point, uncovers the stories that have been created corresponding to

every one of these assertions in regards to their legitimate position. It examinations this stories in addition to the scrutinizes in the accounts. subsequently, it expands happening crafted by Phillip Alston and Bruno Simma (Simma. 1992)) comparable to the UDHR to uncover points of union and disparity which at last offers knowledge into the job that native cases, native support and Customary International Law play according to one another and inside IHRL as the *lingua franca* of privileges protection.

## II. INTERNATIONAL LAW: ITS SOURCES AND DECLARATIONS

### II.I. The Universal Declaration of Human Rights. (UDHR)

United Nations specialized agency, the Economic and Social Council (ECOSOC) a specialized agency supervising the socio-economic development by promoting a standard of living, etc. launched Commission to tackle and promote Human rights. The founding members comprises 9 members whereas then the First Lady of USA Eleanor Roosevelt at the leadership. It was then on the first session of the meeting, a draft comprising certain recommendations for the upliftment as well as safeguards of human rights was suggested.

Concluding of the meeting, they agreed to begin work on two forms;

Firstly, a draft of the *bill of rights* will be in the declaration form.

Secondly, a draft convention comprising a *bill of rights* will be handover to respective member states for ratification.

The *bill of rights* was adopted by the UNGA on 10 Dec 1948 known to be the Universal Declaration of Human Rights (UDHR).

Today the articles in the Declaration stand to be a guiding principle for a nation while drafting a law in local sphere in order to achieve rule of law and other fundamental rights which complete people's right to life. Even though the UDHR is not really a legal obligatory instrument, while it is neither merely idealistic. This has grace as a criterion for measuring Member Nations' pledges to human and civil

rights, mostly via the various rights and methodologies that regulate Member States' implementation of the provisions of human rights. Most member nations have recognized articles of UDHR as well as other instruments along with treaties that have been implemented to enshrine the principles of the UDHR. This has resulted in reaffirming and reconstructing various universal civil and political rights.

The UDHR comprises 30nos of directive principle in the form of implicitly responsible for a framework while drafting a document by future legislators. This foundational instrument on International human rights is referred as modern nations humanity's *Magna Carta* by then First Lady of US Eleanor Roosevelt who was also a prominent member superintend drafting the instrument (UDHR, 1948). To be precise, the UDHR is an exhaustive highway of privileges and rights of an individual protecting them universally.

### **II.II Universal Declaration on the Rights of Indigenous Peoples. (UNDRIP): International Background**

UDHR along with its *Bill of Rights* inscription of various human rights could not specifically have labeled the concern and affairs of indigenous peoples'. There are 46 articles incorporated in UNDRIP as of 2022 addressing the collective rights to full enjoyment by the indigenous peoples. The Declaration whereupon assures Indigenous peoples rights to benefit, enjoy and practice their customs, culture, religions, and languages, as well as to enhance their economic systems and sociopolitical institutions (University of Minnesota Human Rights Center, 2003). Furthermore, the recognition of the right to 'self-determination' ascertaining social, political-economic as well as cultural development affirms their rights to participate in public institutions for advancement.

### **III. 'INDIGENOUS': DEFINITION AND IDENTITY**

Indigenous Peoples are inhabitants of a territory before it was successfully invaded by immigrant communities and recognize oneself unique as from societies that currently govern those territories. For several decades, the word 'indigenous' has been used as a common term. Those certain terms, such as tribal, first peoples, aboriginals, ethnic communities, Adivasi, and Janajati, may be preferred in some countries (Ghurye, 1963:12)

. Hunter-gatherers, autochthonous, primitive, hill people, and other occupational terms exist and for all theoretical and practical purposes, could be used synonymously with 'indigenous peoples (Virginius Xaxa, 1999).'

*...Some see themselves as unique from those others in society now prevalent in those regions, or sections of the mass, because of a heritage linkage with pre-colonial communities that were established in their regions. Currently, as non-dominant segments in society, determined in safeguarding, improving, as well as transfer upcoming generations their ancestral domains as well as ethnic heritage as the principle of their continued presence being inhabitants, conformance with their very cultural traits, collective structures, as well as judicial frameworks. (Martinez-Cobo 1984).*

### **IV. INDIAN AMBIANCE TO INTERNATIONAL LAW AND NATIONAL LAW CONTRASTING WITH INDIGENOUS PEOPLES'**

The first commission on human rights was attended by British-India representatives, the commission supervising with drafting of '*Bill of Rights*'. When the UNGA adopted UDHR on 10<sup>th</sup> Dec 1948. India automatically became the member state obliging to rectify all its instruments. The ultimatum of UDHR articles can be specifically perceived in Part III of the Indian Constitution and in the forms of various Statutes. the International Labor Organization which is a specialized agency of the United

Nations in its Convention No. 107 (1957) and No. 169 (1989) integrated certain international standards and norms for the indigenous and tribal developments on their rights to freedom, equal opportunity and socio-economic security to be specific it displays the land rights of the indigenous people' (ILO, Cn. No. 107, 1957) and the subsequent convention make an approach to establish their own institutions for their development (NCRB, Ch. 3, 2003) where the former is rectified but not the subsequent Convention. In a country where social inequality in sub-groups and heterogeneous groups exists. The word 'Indigenous' or 'Indigenous Peoples' is not mentioned or defined in any provisions however the British-India's 'The Government of India Act, 1935' defines 'Weaker Sections' terming them as having tribal background with unique social life with customs and traditions aligning backwardness in education and economic sectors to be precise the Schedule Castes and Schedule Tribes (NCRB, Ch. 7, 2003). A theoretical presumption can be concluded by the above sentences that Tribal and Indigenous People are synonymical words designating a particular individual or groups.

## **V. CONCLUSION & RECOMMENDATIONS**

The International legal framework seems to be soft law that affirms the human rights in IHRL. Their implementation on International perspective impact theoretically however practicality of exercising is challenging in nature. Since the legal instrument is effective only once the member state rectifies in its jurisdiction state. The Indigenous Peoples rights guaranteed by the UNDRIP failed to effectively implement the directive and recommendations laid down once the member state fail to rectify them. Despite the various rights guaranteed on Part III and Part IV of Constitution of India as Fundamental Rights and Directive Principle of State Policy the Constitution use the word 'Backward' which itself is discriminative portrayal of Indigenous Peoples'.

Below are certain recommendations:

1. To rectify the International Labor Convention No. 169 (1989).
2. Full analysis of the effects of current local law on the Indigenous Peoples'.
3. Consider enacting an effective mechanism to enforce Indigenous tribal law.
4. To invite UN Special Rapporteur on the Rights of Indigenous Peoples for further inspection in India.
5. Based on the outcome document of the World Conference on Indigenous Peoples, 'to create an Action Plan for the proper implementation of the Indigenous Peoples' Rights.

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