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# International Discussions on Indigenous People and India

**T. C. James**

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Discussion Paper # 272



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विकासशील देशों की अनुसंधान एवं सूचना प्रणाली

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RIS-DP # 272

January 2022



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# International Discussions on Indigenous People and India

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T. C. James\*

**Abstract:** Tribal people have an important role in the sustainable development of biological resources and this has been basic to India's stand in various international fora on issues relating to access and benefit-sharing to biological resources and traditional knowledge as well as tribal rights. But when issues extraneous to the same are brought in India has to take a very cautious approach. India's reservations on the United Nations Declaration on the Rights of Indigenous Peoples, 2007 and its non-ratification of the Indigenous and Tribal Populations Convention, 1989 of the International Labour Organization have led to considerable discussions in academic and policy circles. This paper examines the use of the term 'indigenous' in international agreements and India's stand on the same both in international and domestic discussions. It also traces the history of the term through India's census documents, the Constituent Assembly debates, and other official records. Aspects of the development of the scheduled tribes in India are also briefly covered in the paper.

**Keywords:** Adivasi, Constitution, Rights, Scheduled Tribe, Traditional Knowledge.

## Introduction

The International Work Group for Indigenous Affairs (IWGIA) in a comment on its website observes:

“India voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples on the condition that after independence all Indians are indigenous.”<sup>1</sup>

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This paper would not have been possible but for the initiative of Professor Sachin Chaturvedi, Director General, RIS. It has benefitted much from discussions with him and his comments on an early draft. It has also benefitted immensely from discussions with many other people, prominent of whom is Shri Harsh Chauhan, Chairman, National Commission for Scheduled Tribes, who had a detailed discussion on the subject and gave many new insights. The author is grateful to all of them. Views are personal.

The stand of India has come up for denunciation from certain corners on being not supportive of the rights of marginalised people. The criticism is based on an inadequate understanding of the background of India's stance. This paper proposes to explore the larger context of the caveat by India.

India has always played an active and positive role in international fora on issues relating to the protection of biological diversity, traditional knowledge, traditional medicine systems and linkages of intellectual property rights with these subjects. It also contributed significantly to the drafting of international legal instruments for protecting the rights of the people and communities involved. It is one of the few countries that had developed indigenous access and benefit-sharing mechanism for genetic resources and associated traditional knowledge even before the Convention on Biological Diversity entered into force and pushed for prior informed consent (Chaturvedi:2007). Indian academia, including institutions like the Research and Information System for Developing Countries (RIS), were also quite active in studies relating to conservation and protection of biological resources and traditional knowledge and safeguarding the rights of the traditional knowledge holders<sup>2</sup>. India is also a signatory of the Universal Declaration on Human Rights (1957). Indian stance on issues internationally has always been based on its culture and ethos and is nuanced to the interests of the large South.

Discussions on human rights have thrown up questions on appropriate terms to refer to differently positioned people, be it historically, socially or economically. One such term is 'indigenous.' The United Nations (UN) used officially the term for the first time in its political declaration of the World Summit on Sustainable Development, 2002,<sup>3</sup> although a United Nations Working Group on Indigenous People had been set up in 1982 itself. According to Peters and Mika (2017), prior to that, the term was regarded as 'still under debate' for use in UN official documents.<sup>4</sup> In the above summit documents, as published by the UN, the term appears 173 times, though not all qualifying the word 'people'.<sup>5</sup> The phrase 'indigenous people' evokes many connotations

as different from a verbal meaning of the expression ‘indigenous.’ The dictionary meaning of the word is “originating or occurring naturally in a particular place; native” and its origin is traced to the mid-17<sup>th</sup> century.<sup>6</sup> Etymologically it is derived from the Latin word *indigena* which means “born within” (Pillai:2014). The related word ‘indigene’ goes back to the late 16<sup>th</sup> century.<sup>7</sup> Sir Thomas Browne used it in his work, *Pseudodoxia Epidemica*, published in 1646, in the context of natives of America in the sentence, “And although in many parts thereof there be at present swarms of Negroes serving under the Spaniard, yet were they all transported from Africa, since the discovery of Columbus; and are not **indigenous** or proper natives of America”<sup>8</sup> (emphasis added).

The term seems to have got into wide academic discussions in the early 20<sup>th</sup> century, particularly after the Mexican Revolution (1910—1920). This led to the beginning of a change in colonial perceptions of the people whom they had subjugated and whose land they had encroached upon, with massive migrations, mostly armed and violent. This had happened in the Americas, both North and South, Australia and New Zealand, where the native populations were totally side-lined, some in special enclosures as in the North and some effectively kept out of any political or economic power as in the South, though there had been a sizable number of mestizos. These were the areas where ‘history’ was of the colonial powers only<sup>9</sup>.

In the early 20<sup>th</sup> century, scholars started expressing the view, rather belatedly admitting, that there were people living and having their own culture and systems before the Europeans migrated. The early inhabitants of those regions were the ‘indigenous’ people (Beteille: 1998). This total erasure of history did not happen on such massive scales in India and other Asian countries like Indonesia, Sri Lanka, etc., which were also subjected to colonialism. The basic complexion of the people did not change, as observed by the representative of Indonesia at the UN General Assembly that “Indonesia’s entire population at the time of colonisation remained unchanged.”<sup>10</sup> There were no mass murders or large-scale immigration, which made the natives minority. Consequently,

there was no division of population into indigenous and non-indigenous. However, as it often happens in international discussions, the terms, which the industrialised West uses, were pasted on to the histories of Asian and African countries also. The fact that in countries like India the power was transferred finally to the 'natives' were ignored by the West in these discourses, since in the Americas and Australia where the settlers far outnumbered the natives and they (the settlers) had obtained the political power from the colonial masters. In fact, it was a transfer of power from European hands to local hands, but the local hands belonged to the same race who had colonised the land. The political power was not shared with the people who had lived in those geographical areas before the occupations. In certain African countries like South Africa where the colonists also got settled down, there was the subjugation of the natives but not the kind of mass eradication as had been witnessed in North America. In the case of South Africa after the British allowed self-governance by the white settlers, from 1934 onwards, who practised apartheid, the Black African (original native) people who comprised 80 per cent of the population had to fight a long battle to get the political power in 1994. What comes out clearly is that the 'indigenous problem' originally is one related to political power; it is a genuine problem only where the power was not really shared with the group of people who had been inhabitants of the land at the time of colonial encroachment. In countries like India, the case is different. Therefore, the division of people into indigenous and settlers is not valid in such cases. Clubbing the tribal people of the country as 'indigenous' implies that others are non-natives or foreigners is not appropriate in the case of a country like India. It, therefore, quite early in the discussions in the United Nations took the view that all people of India are indigenous to the country.

## **India at the UN and other International Fora**

The 107<sup>th</sup> plenary meeting of the United Nations General Assembly held on 13<sup>th</sup> September 2007 adopted the United Nations Declaration on the Rights of Indigenous Peoples through a Resolution<sup>11</sup>. This is a non-binding resolution. While 143 countries voted in favour and 4 (United

States, Canada, Australia and New Zealand) voted against it there were 11 abstentions<sup>12</sup>. India's neighbours, Bangladesh and Bhutan belonged to the absentees.

Although India voted in favour of the resolution, Shri Ajay Malhotra, India's representative to the UN made a qualifying statement on India's position on who all form 'indigenous people' in India. He said:

*While the Declaration did not define what constituted indigenous peoples, the issue of indigenous rights pertained to peoples in independent countries who were regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region which the country belonged, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retained some or all of their socio-economic, cultural and political institutions.*<sup>13</sup>

India was also concerned with the clause relating to self-determination in the Resolution. On that issue, the representative said:

*Regarding references to the right to self-determination, it was his understanding that the right to self-determination applied only to peoples under foreign domination and that the concept did not apply to sovereign independent States or to a section of people or a nation, which was the essence of national integrity. The Declaration clarified that the right to self-determination would be exercised by indigenous peoples in terms of their right to autonomy or self-government in matters relating to their internal and local affairs, as well as means and ways for financing their autonomous functions. In addition, article 46 stated clearly that nothing in the Declaration might be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter. It was on that basis that India had voted in favour of the adoption of the Declaration.*<sup>14</sup>

The term, 'indigenous' was used in the deliberations and instruments of an international organisation for the first time in 1957 (Xaxa:3590) in the discussions of the International Labour Organisation (ILO) on

the Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (Convention No 107). However, India seems not to have raised any objection or put any caveat on the term 'indigenous' at that time since the term had not linked issues such as rights and empowerment and the focus then was on integrating indigenous and tribal people into the larger social system. But when issues of focus shifted, India felt the need for clarification of the relevance of the term in the Indian context (Xaxa: 3591). India has not yet ratified the updated 1989 Convention and remains with the 1957 Convention, which it had ratified on 29 September 1958. In fact, from Asia, only Nepal and from Africa, only the Central African Republic ratified the 1989 Convention. During the deliberations, the Indian representative reiterated that:

*(T)he tribal peoples in India were not comparable in terms of their problems, interest and rights, to the indigenous populations of certain other countries. For this reason, attempts to set international standards on some of the complex and sensitive issues involved might prove to be counter-productive.<sup>15</sup>*

Other Asian countries like China, Bangladesh, Myanmar and Indonesia also raised objections to the term 'indigenous' on account of the conceptual approach to the term. Their general view was that the concept of 'indigenous peoples' "is so integrally a product of the common experience of European colonial settlement as to be fundamentally inapplicable to those parts of Asia that did not experience substantial European settlement"<sup>16</sup>. From this perspective, either all the people in their countries are indigenous or there are no indigenous people as made out in the Convention. The African countries took the view that all African people be technically considered indigenous insofar as they are descendants of populations that inhabited the continent before the European colonization.<sup>17</sup> In their opinion, the use of such terms to segregate people who had been living in the continent for millennia would create discord and stand in the way of integration of the newly independent countries.

## **Definition of ‘Indigenous People’ in UN and Other International Bodies**

There are many international conventions and agreements<sup>18</sup> that deal with the rights and development issues of ‘indigenous people’ but a universally acceptable definition of the expression is still eluding. The UN Department of Economic and Social Affairs, on its website, describes indigenous peoples as “inheritors and practitioners of unique cultures and ways of relating to people and the environment” and that they “have retained social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live.”<sup>19</sup> But this cannot be considered as a formal definition of indigenous people besides it lacking specificity from a historical angle; it may apply to any community that has a distinct culture or social, economic and political characteristic.

The UN Resolution No. 61/295 of 2007 did not contain any definition of ‘indigenous people’, but in a report (*Study on the Problem of Discrimination against Indigenous Population* by Jose R. Martinez Cobo, the Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 1981) that had formed the basis of UN discussions, the concept of indigenous people was explained as below:

Indigenous communities, peoples and nations are those which, 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 on 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.<sup>20</sup>

The report went on to explain what factors are to be considered in deciding the historical continuity. These are:

- “Occupation of ancestral lands, or at least of part of them
- Common ancestry with the original occupants of these lands.
- Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.)
- Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language)
- Residence in certain parts of the country, or in certain regions of the world
- Other relevant factors.”<sup>21</sup>

Apart from the pre-colonial continuous existence in the territory, it also brings in two important additional factors, namely, non-dominance and distinctiveness in the society. These elements make it possible to include within the ambit of ‘indigenous people’ those who are partialized or deprived of political power. These components are important and necessary in the context of human rights, but not perhaps in other situations. While this statement attempted to bring clarity into the discussions on indigenous peoples in the international fora, in the case of India, it raises complexities. This extends from the first factor of occupation of ancestral lands to residence in certain parts. India is a microcosm of the world. We have people speaking different languages, practising different religions, different customs, different trades, and tracing different ancestries. The issues of human rights have distinctive dimensions in India than a mere question of ‘indigenous’ and ‘foreign’.

Language is certainly an important marker for any society, but in the case of languages, different families of languages, such as Indo-European (24 languages spoken by 76.89 %), Dravidian (17 languages spoken by 20.82 %), Austro-Asiatic (14 spoken by 1.11 %), Tibeto-Burmese (66 languages spoken by 01.00 %), and Semito-Hamitic (1 language spoken by 0.01 %) are spoken in the country. There are also speakers of Tai-Kadai and Great Andamanese language families though in small numbers.<sup>22</sup> The Eighth Schedule of the Constitution includes a list of 22 languages.

This diversity of language is also observed among the scheduled tribe population with languages belonging to Austro-Asiatic (Monkmer, Mundari, Santali, etc.), Dravidian (Gondi and Kurukh languages) and Indo-European (Bhil language) families being spoken by different tribes. That being so on a classification purely based on language, one cannot come to a conclusion on the ethnicity of the tribal and non-tribal people of India. There are also many ancient languages, which are described as ‘classical languages’ of India, like Sanskrit<sup>23</sup>. There are also other old languages like Pali and Prakrit which are not in use in ordinary discourse now but remain as languages of scholarship and religious rituals. Many of them have given birth to the languages currently spoken in the country, but they all are generally referred to as Indian languages. These languages developed indigenously over many centuries. In India, the languages that are labelled ‘foreign’ are those like the European languages of English, French, and Portuguese which made their entries mostly during the colonial times, and languages like Arabic, Russian, Chinese, Japanese, etc. which are clearly identifiable with other countries and which have developed in those countries.<sup>24</sup> The issue of suppression of any language is not there. When a person’s mother tongue is a language that was born and developed in India, i.e., an indigenous language, can that person be considered ‘non-indigenous’?

The International Labour Organisation (ILO) has used the combined phrase ‘indigenous and tribal populations’ when it adopted the Indigenous and Tribal Populations Convention in 1957 (No. 107). The current Convention in use is of the year 1989 (No. 169)<sup>25</sup>. These Conventions do not offer any formal definition of the term ‘indigenous people’. Article 1 of the 1989 convention, however, states that the convention applies to

- “(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited

the country, or a geographical region to which the country belongs, **at the time of conquest or colonisation or the establishment of present state boundaries** and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.” (Emphasis added).<sup>26</sup>

This description contains most of the components in Cobo’s definition. The definition imparts a time qualification for people to be called ‘indigenous’, that is, “at the time of conquest or colonialism or the establishment of the present state boundaries”. While the period marker being that of the colonisation or formation of the present country has certain merits, but separating certain groups as ‘indigenous’ to the exclusion of others from the ancestry who also satisfy the period marker may raise issues.

The World Intellectual Property Organisation (WIPO) has been discussing for more than two decades possible international legal instrument(s) for the protection of traditional knowledge through the agency of an Inter-Governmental Committee. In the meetings of this committee indigenous peoples’ representatives participate as observers. However, the organisation has not formally defined the term. But in a draft text of a legal instrument on the protection of traditional knowledge, under consideration by the Committee, the word ‘indigenous’ is used while defining ‘traditional knowledge’:

*Traditional Knowledge refers to knowledge originating from indigenous [peoples], local communities and/or [other beneficiaries] that may be dynamic and evolving and is the result of intellectual activity, experiences, spiritual means, or insights in or from a traditional context, which may be connected to land and environment, including know-how, skills, innovations, practices, teaching, or learning.*<sup>27</sup>

The square bracketed expressions have not yet received consensus. ‘Peoples’ in the phrase ‘indigenous peoples’ is one such contentious term when it is qualified by ‘indigenous’.

The World Health Organization (WHO) also defined the phrase ‘indigenous populations’ in the context of the provision of healthcare

services in the following terms: “communities that live within, or are attached to, geographically distinct traditional habitats or ancestral territories, and who identify themselves as being part of a distinct cultural group, descended from groups present in the area before modern states were created and current borders defined. They generally maintain cultural and social identities, and social, economic, cultural and political institutions, separate from the mainstream or dominant society or culture”.<sup>28</sup>

One of the simple definitions of ‘*Indigenous Peoples*’ is that they “are people who have inhabited all continents since time immemorial.”<sup>29</sup> They have lived on their lands, maintained their cultural values, maintained and cultivated their environment and kept their traditions alive over centuries.<sup>30</sup> This one is without any political ramifications and eschew terms like ‘tribe’ ‘group’ ‘community’, etc. and does not prescribe a cut off year or period for inclusion, except that they should have been living in those areas for very long times.

## **Indian Population: Historical Migrations**

India has not seen any large-scale immigration of people<sup>31</sup> in recent centuries. The last major migration into India, as per the latest studies using DNA for dating, was before 1000 BCE<sup>32</sup>. Prior to that, different waves of immigration took place at different times. A Government of India paper describes the waves of migrations to India thus:

“The expansions of Europeoid peoples (probably Tocharians) possibly started around 3800 years ago. And, perhaps 1000 years (or more) earlier, Indo-European speakers from the oases south of the Urals, north of the Black Sea and in western Kazakhstan moved in western and in eastern directions, and finally moved to the south, mixing with (presumably) Dravidian or the other original inhabitants of the South Asian region.”<sup>33</sup>

After this, there has not been any great influx of people into India. Ruling regimes changed a number of times since then in many parts of the country. The only rulers who left the country at the end of their regime were the English. The others got subsumed in the Indian society

and culture. People of different faiths and ethnicities including tribal have held sway in smaller or larger parts of the country. The plurality of faith is a common phenomenon of both tribals and non-tribals. Over the course of the centuries, a unique composite culture emerged in India. It is a culture that reflects diversity in unity.

Recent studies based on archaeological excavations, anthropology, linguistics and genetic sequencing have identified more than one wave of major migrations of *homo sapiens* into India.<sup>34</sup> The first wave was of those who belonged to the earliest groups who came out of Africa *circa* 70,000 years ago and moved to West Asia, India, South East Asia and on to Australia. They might have entered India around 65,000 years ago. The people of the Onge tribe in Little Andaman, whose total number is now less than 100, are considered as the descendants of this group. Their physiological profile is comparable to that of Australian aborigines. David Reich (2018) observed that these people “had been separated for tens of thousands of years from people of the Eurasian mainland.”<sup>35</sup> However, genetically, the foundation of the present Indian population is the first group that came out of Africa since between half and two-thirds of our genome-wide ancestry today comes from this group (Joseph:2018); “almost all regions, all linguistic groups and all castes and tribes of the country carry the genetic imprint of the First Indians, as scientific studies have shown repeatedly”<sup>36</sup>. The second wave of migration was that from the Zagros region of Iran, who were mostly agriculturists. The West Eurasian people’s major migration to India was in the Bronze Age (9000 – 7000 years ago) or afterwards. The Eurasian people who subsequently mixed with the earlier settlers in India were the people who had stayed on the steppes for longer periods before migrating to India at different points. The third wave of migration happened from South East Asia around who brought Austro-Asiatic languages such as Mundari and Khasi. The last major wave of migration into India was by the Indo-European language-speaking pastoralists from the Steppes between 2000 and 1000 BCE (Joseph: 2018).

As per Narasimhan, *et al* (2018), “essentially all the ancestry of the present-day eastern and southern Asians (prior to West Eurasian-

related admixture in southern Asians) derives from a hypothetical single eastward spread, which gave rise in a short span of time to the lineages leading to AASI (Ancient Ancestral South Indian), East Asians, Onge, and Australians”<sup>37</sup>. In their 2019 paper Narasimhan, *et al* shows that the primary source of ancestry in modern South Asians is a prehistoric genetic gradient between people related to early hunter-gatherers of Iran and southeast Asia.<sup>38</sup> David Reich (2018) who did a detailed study of the Indian population based on DNA have found two streams, namely, Ancestral South Indians (ASI) and Ancestral North Indians (ANI)<sup>39</sup> from whom the present population have derived. The result of his study is “that everyone in mainland India today is a mix, albeit in different proportions, of ancestry related to West Eurasians, and ancestry more closely related to diverse East Asian and South Asian populations. **No group in India can claim genetic purity.**” (Emphasis added).<sup>40</sup> This mixture ranges from 20 to 80 per cent. Reich observes that among the mainland people, “No group is unaffected by mixing, neither the highest not the lowest caste, including non-Hindu tribal populations living outside the caste system”.<sup>41</sup> As observed earlier by Tripathi, et al, (2008) the caste system in India is only 3,000 – 5,000 years old and considering that period is quite recent compared to human evolutionary time, the caste system may not have had a strong impact on the genetic architecture of Indian populations and that there is a considerable amount of gene flow across caste and sociocultural boundaries. As per their study, geographic distance has a more powerful effect on the phylogenetic relationship than sociocultural background does. Tripathi *et al*, based on other studies, however, proposed the Dravidian-speaking people as the oldest inhabitants of India who had entered India about 10,000 – 15,000 years ago. According to them, a further migration was the arrival of pastoral nomads from the Central Asian steppes about 4,000 years ago bringing with them the Indo-European languages. The crucial point that all these geneticists bring out is that the Indian population is an admixture of different genes but across castes and tribes.

With the second-largest population in the world, India entertains diverse groups with degrees of variations among them. Such variations

may be in languages and dialects, in rituals and social practices, and so on. The geographical features of the country also contributed to this diversity. Over time, these groups got settled in different parts of the country and made themselves distinctive. Even within a defined geographical area also, many a time, one can find different cultural and social groups. Their economic and social developments also varied. At the time of the Independence of the country, the development of the socially and economically backward groups attracted attention and the Constitution of India made special provisions for their socio-economic development.

## **Census Documents**

Long before Independence, classification of the people of India has posed problems for the government, especially for the decadal census initiated by the British administrators since people at “all stages of civilisation are found in India”<sup>42</sup>. The 1872 Census House Register used the terms ‘caste or class’ and was also required to indicate ‘race’. That Census also used labels like ‘Aboriginal Tribes’ to refer to groups of people who lived separately from the major communities and mostly followed a nomadic or semi-nomadic lifestyle and had cultural and religious practices and rituals different from the mainstreams. The 1881 census, however, had only ‘caste’ and not ‘class’ and that too if Hindu; in the case of other religions, people were required to indicate ‘sect’ as per the Census Schedule. The 1891 Census Schedule used classifications of caste and race and also sect for religion.

The tribe was not well defined initially. Das Gupta, Sanjukta (2019) states that the colonial administration after the experience of three censuses, by the beginning of the twentieth century, ventured to define a tribe as “a collection of families or groups of families bearing a common name which as a rule does not denote any specific occupation; generally claiming common descent from a mythical or historical ancestor and occasionally from an animal, but in some parts of the country held together by the obligations of the blood-feud than by the tradition of kinship; usually speaking the same language, and occupying, professing, or claiming to occupy a definite tract of country.”<sup>43</sup> It goes on to say

that “a tribe is not necessarily endogamous”. The British seem to have included within tribes, the forest-dwellers, the barbarous and the “semi-barbarous” people reflecting a world-view of white racial superiority.

In the 1901 census, the term ‘tribe’ makes its entry in the following classification, “Caste of Hindus & Jains, Tribe, or race of others” at number 8 of the Census Schedule. This classification continued in the 1911 census. In 1921, 1931 and 1941 censuses the classification ‘race, tribe or caste’ was used without any religious connotation. In the first post-Independence census of 1951, the term ‘special groups’ was used and also for the state of Assam, a question to be asked to people by the enumerator was “Are you an indigenous person of Assam?”. In this case, the term indigenous was specific to the state of Assam and not in general for India. At that time, the entire North East was part of the Assam state and there were a large number of tribes who dominated different parts of the state and subsequently formed the basis of the reconstitution of the North East states. From 1961 to 2011, in the census, SC and ST status was to be indicated.<sup>44</sup> What this suggests is that tribe as such is not considered as distinguishing indigenous people from settlers. In fact, the report on religion of the Census of India 2001 used the expression ‘indigenous’ to refer to faiths and rituals of tribal people, which did not form part of any major religion.

## Constituent Assembly Debates

During the Constituent Assembly debates (1946-1949), the issue of the tribes had come up. Mr Jaipal Singh<sup>45</sup> from the then Bihar (now Jharkhand) was the spokesperson of the *Adivasis*, who had variously been known as backward tribes, primitive tribes, criminal tribes and *Jungli*. He argued that these were the people of the Indus valley and others are intruders.<sup>46</sup> He also referred to an observation by Dr Rajendra Prasad (President of the Constituent Assembly) as Chairman of the Organising Committee of the 53<sup>rd</sup> All India Congress at Ramgarh in the present-day Jharkhand that the people there are regarded as the original inhabitants of India.<sup>47</sup> Jaipal Singh preferred the term ‘Adibasi’ or Adivasi. He said to the President of the Assembly:

“I wish that you would issue instruction to your Translation Committee that the translation of scheduled Tribes should be Adivasi (meaning original inhabitants or indigenous peoples). The word Adivasi has a grace ... Why this old abusive epithet Banjati (forest dwellers) being used ...”<sup>48</sup>

However, his proposal was not accepted. Biswanath Das, another member of the Assembly, loudly protested against the use of the term ‘Adivasi’ on the ground that it encourages separatist tendencies. He said:

*I have pleaded with Shri Thakkar Bapa, to save the country from this unfortunate expression ‘Adibasis’. As long as you recognise such terms you keep on fanning differences and find very many people like the Aranyas or Jungli Brahmins seeking to come under this category. I am therefore pleading ... not to perpetuate these distinctions tending to encourage separatist tendencies in our land. It is this curse that has kept India divided so long.*<sup>49</sup>

K M Munshi also objected to the use of the term ‘Adibasis’ and said that the problems of Scheduled Tribes differ from one province to another, “sometimes even from district to district”<sup>50</sup>. He said:

*Each province has many scheduled tribes of its own. Each of these tribes is different from the other ethnically as well as from the point of view of language, from the point of social and religious customs. There is nothing in common between one tribe and another. In my own province, there are five tribes, who are scheduled tribes under this Constitution. Dublas, Bhils, Kolis, Bardas and Gonds. ... They are completely different from one another. I am sure no one would agree with the view that the Santals of Bihar, the Gonds or Bhils of Bombay and the Nagas of Assam are members of the same ethnic, religious or social group. They belong to different types of civilisations and different geological periods and it is necessary that different considerations should be applied for bringing them to the level of the rest of the country. To call them all Adibasis and group them together as one community will not only be an untruth in itself but would be absolutely ruinous, for the tribes themselves. ... The Adibasis are not one conscious corporate, collective whole in this country....”*

Dr B R Ambedkar supported the stance of K M Munshi and said when the President asked him whether he wished to say anything: “Mr. Munshi has said everything that was needed to be said and I do not think I can usefully add anything.”<sup>51</sup>

At the end of the discussion, the expression *Adivasi* to denote scheduled tribe was rejected and the Constitution nowhere uses the term *Adivasi*. The translation of tribe used in the Hindi version of the Constitution is *Janjati* and not *Adivasi*.<sup>52</sup>

The Assembly, however, extensively debated the issue of the development of the tribes. It had formed a special sub-committee to study and make recommendations on this. The Constitution of India which has the right of equality as a fundamental right<sup>53</sup> available to all people also provides for certain special treatment for the socially and economically disadvantaged groups, which it categorises as Scheduled Castes and Scheduled Tribes. As per specific orders issued from time to time, currently, there are 1,108 castes across 28 States and 8 UTs and 705 tribes across 22 States figure in the Scheduled Castes (SCs) and Scheduled Tribes (STs). The government has taken several affirmative and development programmes for their development. Initially, the Constitution had provided for a 10-year reservation for SCs and STs, by which it had been thought by the Assembly that they would reach the same level of economic and social development as others, but the reservation has been extended from time to time. As time progressed, other groups like Other Backward Castes also came up with requests for reservations in government jobs, etc. since they felt they were lagging in the same. Social and economic backwardness is the main criterion for such reservations and not ethnicity.

Article 366 (24) and 366 (25) [Article 303(1) of the Draft Constitution] are the definitional clauses of SCs and STs respectively in the Constitution. Article 366 (24) says that SCs are “such castes, races or tribes or parts of groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes”. Similarly, Article 366 (25) says that STs are “such tribes or tribal communities, or parts of or groups

within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes.” Articles 341 and 342 are the provisions that entitle the President to notify such castes and tribes. Nowhere ethnicity has been made a criterion for such castes and tribes. Shri Jaipal Singh, the Member who vociferously argued for *Adibasis*, however, finally gave his unstinted support to the Constitution. He said:

*I know there are many things regarding Adibasis that are not written in the Constitution. For example, we do not know yet, Sir, how the President is going to treat the question of scheduling of the areas. We do not know, for example, what kind of inventory of the various Scheduled Tribes will be made. We do not know yet as to whether there will be coordinated administration from the Centre so that the work in the various provinces where we have Scheduled Tribes, will be regulated and directed. None of these things are mentioned and yet I have faith enough to say that I am looking forward to a great future for the Scheduled Tribes, as well as for others, because it would be for us to make or mar the future of our country, to make or mar the Constitution. Sir, it is in that great faith I give my unqualified support to the Constitution.*<sup>54</sup>

The qualification ‘indigenous people’ for either the SCs or the STs as different from other castes and tribes is without any basis in the Constitution of India and is a later development. However, they were given, apart from the fundamental rights applicable to all Indians, several special rights in the Constitution itself, which was not the case with similarly placed people in most Western countries at that time.

The Constituent Assembly also debated extensively on tribes in the North East (on 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> September 1949), but these discussions dealt with the administration of tribal areas in the North East (Sixth Schedule of the Constitution) and did not focus on the term ‘*adivasi*’. The Constitution did not define ‘tribe’.<sup>55</sup>

While Scheduled Castes belong only to Hindu or Buddhist or Jain or Sikh religion, Scheduled Tribes may belong to any religion. Both SCs and STs are the most backward socially and economically, among the

people of India. The caste parameters are strict and are determined by birth. A person cannot change his/her caste. This is also the case with the tribes. Some writers use the term '*Adivasis*' for all tribal people of India based on the understanding that they were the original inhabitants of the country and the others are later colonisers. This is foisting particular realities in certain countries on India and is not based on any documented historical facts, since the period in question was much before recorded history began and most possibly before even writing was developed by humans. For that, it would not be easy for any group or community of persons to claim authentically that they were the first settlers even in any significant part of present India, leaving aside the whole of India, and that they were driven out by a group of new community. The establishment of claims of being the first settlers in a land has to be based on reliable evidence or facts. In the arena of ancient history, pertaining to pre-historic times, such evidences are mostly "fossils, archaeological excavations of ancient human settlements, various objects made by humans, like tools" (Tony Joseph:2018. P.6). It is such an excavation in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries that led to the discovery that there was a civilisation in the Indus valley between 2600 BCE and 1900 BCE. However, the actual identity of the people who had developed that civilisation has still not been conclusively established. Historians treat it (Indus Valley or Harappan civilisation) as an urban one and not a tribal one. Tribes in India are different from the tribes in North America or South America or Australia who had been driven out of the lands they had been living in by people who conquered their lands during the 15<sup>th</sup> century onwards.

The list of STs may vary from state to state, i.e., a community that is an ST in one state may not be so in another state. It is based on the notified state lists which take into account the local conditions. In fact, the notification of the lists of STs is a continuous process. Some of the norms being taken care of in making the lists are the following, which have been laid down by the Lokur Committee (1965)<sup>56</sup>:

- Indication of primitive traits
- Distinctive culture

- Shyness of contact with the community at large
- Geographical isolation, and
- Backwardness.

The total number of communities notified as STs in all states and UTs at present is 705.<sup>57</sup> These are state-specific and, therefore, the benefits are available in the original state and not in other states.<sup>58</sup>

The proportion of the ST population has increased since Independence. It was 5.6 per cent as per the 1951 census whereas it was 8.6 per cent in 2011. The gross number of STs in 2011 was 10,42,81,034. In four states and two Union Territories, they form the overwhelming majority. In 7 other states they constitute more than 20 per cent of the population as may be seen from Table 1 below:

**Table 1: States and Union Territories with Sizable ST Population**

| State/UT                 | Percentage of ST population in the State population |
|--------------------------|---|
| <b>States</b>            |   |
| Mizoram                  | 94.5  |
| Nagaland                 | 86.5  |
| Meghalaya                | 86.1  |
| Arunachal Pradesh        | 68.8  |
| Manipur                  | 40.9  |
| Sikkim                   | 33.8  |
| Tripura                  | 31.8  |
| Chhattisgarh             | 30.6  |
| Jharkhand                | 26.2  |
| Orissa                   | 22.8  |
| Madhya Pradesh           | 21.1  |
| <b>Union Territories</b> |   |
| Lakshadweep (UT)         | 94.8  |
| Dadra & Nagar Haveli     | 52.00   |

*Source:* Office of the Registrar General of India. Census 2011.

This means that STs have a presumably decisive stay in the administration of a number of states and UTs.

While in ancient times the STs might have predominantly occupied in and around hilly and forest areas, in modern times, they “live in various ecological and geo-climatic conditions ranging from plains and forest to hills and inaccessible areas.”<sup>59</sup> They are to be found both in rural and urban settings; as per the 2011 Census, they form 8.13 per cent of the rural population and 2.8 per cent of the urban population. Out of the total ST population, 89.97 per cent live in rural areas and 10.03 per cent live in urban areas.<sup>60</sup> Many of these communities have adopted the mainstream way of life in language, religion, dress and so on.<sup>61</sup>

## Supreme Court of India

In an appeal case relating to a woman belonging to the Bhil community of Maharashtra, who was beaten, abused and paraded naked by four persons belonging to other communities, but the conviction of the accused under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was set aside by the Aurangabad bench of the Bombay High Court, the Hon’ble Supreme Court, which was rightly shocked and outraged at the shameful parade of a tribal woman on the village road in broad daylight, has put forth a thesis that India is a land of migrants with more than 92 per cent people being immigrants and that the pre-Dravidians are the original inhabitants of India. According to this thesis, “India is broadly a country of immigrants like North America.” The court has taken much pain to prove that the scheduled tribes preceded the Dravidians. It quotes approvingly from Thurston, author of *Castes and Tribes of Southern India* (1909) that “(I)t is the Pre-Dravidian aborigines, and not the later and more cultured Dravidians, who must be regarded as the primitive existing race ... (*The Madras Presidency*, pp. 124-5)”<sup>62</sup>. The Court goes on to conclude, based on the existence of Munda languages belonging to the Austric family in North India, that “according to the evidence now available, ... the Austric element is the oldest and it has been over laid in different regions by successive waves of Dravidian and Indo-European on the one hand, and by Tibeto-Chinese on the other”. The thesis appears to

base itself on a premise that except for the first entrants to a land all others are immigrants, irrespective of the period of entry. The court's direction was to extend benefits for the social and economic development of the Bhils, they being socially and economically backwards and have been pushed out in the developmental progress by later entrants. The court used strong words to highlight the injustice done to the tribal people of India, which is a shameful chapter in our country's history and it is now time to undo the historical injustice to them.<sup>63</sup>

While the court in the above case of 2011 was positive about the tribal people being the indigenous or original people of India, His Lordship Mr Y K Sabharwal, then Chief Justice of India while addressing the plenary session on 'Rights of Indigenous People' at the 72<sup>nd</sup> International Law Association (ILA) Biennial Conference that concluded in Toronto on 8 June 2006, had said that the term 'indigenous peoples' was still being debated in India, that there are several difficulties in recognising certain groups as indigenous, and that the general perception of India according to which the term 'indigenous people' is a misnomer in India.<sup>64</sup> Referring to the topic of the session 'rights of indigenous people', he said that the Indian experience in protecting the rights of indigenous people was worth trying in other parts of the world. He pointed out that the international law concerned regarding indigenous people could be meaningfully addressed in terms of seeking solutions only when the existing legal framework of countries like India was taken up for the study as models.<sup>65</sup>

## **Domestic Discourse**

While India had taken a nuanced stand on the issue of the nomenclature 'indigenous' in the UN, of late there has been an increasing trend in the official documents to use the term 'indigenous.' "The Scheduled Castes and Scheduled Tribes Commission, in its 1961 Report stated that scheduled tribes are known as indigenous peoples under international law".<sup>66</sup>

Ms Meira Kumar, the then Speaker of the Lok Sabha while speaking on the occasion of International Indigenous Peoples Day on 9<sup>th</sup> August

2012 told the House that the Indigenous People are referred to as Tribals in the country (Faizi and Nair:2017). The Ministry of Home Affairs used the term in an office order dated 27<sup>th</sup> September 2018 which set up a High-Level Committee to look into the “social, economic, cultural and linguistic issues of the indigenous population in the State of Tripura.”<sup>67</sup> In this case, the context has been a divider between the people who had been living in Tripura before Independence and those who migrated to Tripura from present Bangladesh at the time of the country’s partition and later.

In the Statement of Objects and Reasons of the Citizenship (Amendment) Bill 2019, the term ‘indigenous’ has been used in the context that “the Bill further seeks to protect the constitutional guarantee given to the indigenous population of North Eastern States covered under the Sixth Schedule to the Constitution and the statutory protection given to areas covered under “The Inner Line” system of the Bengal Eastern Frontier Regulations, 1873”,<sup>68</sup> although in the operative part of the Bill or the text of the Act, there is no such reference. The Sixth Schedule of the Constitution contains provisions as the administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram. It does not use the term ‘indigenous.’

However, other legislations have not used the expression, indigenous. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, (Forest Rights Act) which was a major step towards addressing the long-standing insecurity of tenurial and access rights of forest dwellers, nowhere mentions the Scheduled Tribes as ‘indigenous.’ It specified a new category, forest-dwelling Scheduled Tribes and defined it as “the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities.”<sup>69</sup>

K S Singh, former Director-General of Anthropological Survey of India, who had headed the People of India Project was of the view that the tribal and non-tribal division is a recent one. He said in an interview (1996)”

“All-India surveys of tribal movements, customary laws and tribal economy had been organized by me. It was obvious from these surveys that the distinction between tribe and non-tribe was a rather recent one and primarily academic. Tribals and non-tribals are so closely integrated with each other that it is difficult to isolate the former.”<sup>70</sup>

At the same time, he admits that it is not possible to do away with the expression tribes as the same has been in use for more than two centuries in the country.

## **Current Administrative Status of STs**

The Constitution has detailed provisions for STs.<sup>71</sup> These provisions enable the ST people to have adequate representation in Parliament, legislatures and government services. These along with the fifth and sixth Schedules of the Constitution ensure that different tribal communities are able to maintain their distinct culture and that they have autonomy in the administration of their areas through the mechanism of the autonomous district and regional councils under the Sixth Schedule<sup>72</sup> as well as Tribes Advisory Councils under the Fifth Schedule<sup>73</sup>. These councils have wide-ranging legislative, executive and judicial powers. The Fifth Schedule deals with the administration of Scheduled Areas and Scheduled Tribes in States other than Assam, Meghalaya, Tripura and Mizoram and Schedule Six deals with the tribal areas in these four states. The enactment of the Forest Rights Act has been hailed by most people as a major step in the direction of empowerment of the ST community.<sup>74</sup> This Act recognizes and vests the forest rights and occupation in forest land in forest-dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded. It also provides for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land. In its preamble, the Act also makes a telling statement that

*the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical*

*injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem*<sup>75</sup>.

There were earlier legislations also protecting the rights of STs, such as the Scheduled Tribe's Bonded Labour Abolition Act, 1976, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The new legislation is in the overall interest of India's commitments on conservation of biological diversity and sustainable development. Tribal communities who depend on forests have a positive interest in preserving the biological diversity and ensuring sustainable practices in collecting forest products.

A separate Ministry of Tribal Affairs was set up in 1999 to provide a more focussed approach towards the integrated socio-economic development of the scheduled tribes. The Government of India has also set up a National Commission for Scheduled Tribes as per Article 338A of the Constitution. The Commission, *inter alia*, has the power to investigate and monitor all matters relating to the safeguards provided for the STs under the Constitution and any other law. The chairperson of the Commission is of the rank of a Union Cabinet Minister. The First Commission was set up in March 2004.

### **Appropriate Term: Indigenous, Aboriginal or Tribal?**

There are many terms in academic literature and official records such as first peoples, first nations, aboriginal people, native peoples, autochthonous peoples which are in current use besides indigenous people, though that is the one which is in currency in international discussions. The term 'indigenous' though used by the UN has not found universal acceptance. A 2017 paper says that many tribal groups prefer the term 'First Nations' to 'indigenous' or 'aboriginal'.<sup>76</sup> In Australia, Canada, the USA, etc. First Nation has got more acceptability though some consider that along with the other terms as "offensive to tribal groups especially when used in an international, totalising and universal way".<sup>77</sup> They consider it as homogenising diverse groups

as colonial anthropologists did with the term ‘indigenous’ to define radically different groups because they have the effect of homogenising peoples in ways that early imperial anthropology created ‘others’ as ‘indigenous’, as different from the colonial settlers. Many scholars argue that the “collective nouns used to name the world’s tribal groups have become increasingly problematic and that at source the terms have often been derogatory, historically inaccurate and contaminated by a colonial past based on the demeaning notion of ‘primitive’ peoples with its assumption of western cognitive superiority.” (Peters and Mika:2017). However, many still prefer to use the term ‘indigenous.’ The International Work Group for Indigenous Affairs (IWGIA), a global human rights organisation dedicated to promoting, protecting and defending indigenous peoples’ right with headquarters in Copenhagen, the International Labour Organisation (ILO), etc. use this expression. Some scholars use ‘indigenous and ethnic’<sup>78</sup>. Roxanne Dunbar-Ortiz titled her history of the United States from the perspective of the original inhabitants of that land as “An Indigenous Peoples’ History of the United States” (2014). She uses the terms “Indigenous”, “Indian”, and “Native” interchangeably. Though the term “Indian” is a misnomer, the author says that the indigenous people in North America “on the whole do not consider it a slur.”<sup>79</sup> The expression indigenous is used by many civil society organisations in India such as Indigenous Peoples’ Forum Orissa (IPFO), Jharkhand Indigenous and Tribal Peoples for Action (JITPA), Zo Indigenous Forum (ZIF), Mizoram, etc. However, as observed by Peters and Mika in an editorial, there has been objection by the people who are designated so to the terms ‘Indigenous’ and ‘Aborigine’ (and its cognates) “because they have the effect of homogenising peoples in ways that early imperial anthropology created ‘others’ as ‘indigenous’ in differentiation and opposition to colonial settlers” (Peters and Mika:2017).

In India, the terms tribe, *Adivasi*, *Vanvasi*, etc. have been in use many a time interchangeably. Minority Rights Group International says that the term *Adivasi* is the collective name of “many indigenous peoples of India”. It goes on to explain that the term is derived from two Hindi words, one *Adi* meaning from the beginning and *vasi* meaning inhabitant.

On the use of the term, it says that “it was coined in the 1930s, arguably a consequence of a political movement to forge a sense of identity among the various indigenous peoples of India.”<sup>80</sup> The article concedes that they are not a homogenous group and “little is known of their history”. The term seems to have become popular after the formation of the Adivasi Mahasabha in May 1938 whose president Mr Jaipal Singh was and which aimed at the creation of a separate province of Chotanagpur and Santal Parganas which had then formed part of Bihar.<sup>81</sup> Dasgupta, Sangeeta (2018) says that the term ‘adivasi’ is a politically assertive term and that it “came into use for the first time in 1938, in a political context”.<sup>82</sup>

Ambedkar preferred to use the term ‘aboriginal’ for the tribals. He in his book ‘*Annihilation of Caste*’ (1936) which was a speech prepared for the annual conference of the Jat-Pat-Todak Mandal of Lahore, but not delivered, he says that “these aborigines have remained in their primitive uncivilised state in a land which boasts of a civilisation thousands of years old.”<sup>83</sup> He was not very appreciative of the tribals and said, in an address to All-India Scheduled Castes Federation held in Bombay on 6<sup>th</sup> May 1945 that “Aboriginal Tribes have not as yet developed any political sense to make the best use of their political opportunities and they may easily become mere instruments in the hands either of a majority or a minority and thereby disturb the balance without doing any good to themselves.”<sup>84</sup> This is in marked contrast to what Jaipal Singh argued in the Constituent Assembly, on 19<sup>th</sup> December 1946 that the aboriginal people wanted to be treated like every other Indian and did not want any special protection, a stand that reflects high political sense.<sup>85</sup> Ambedkar’s views might have been influenced by his concerns for the SCs many of whom were ‘*asprasya*’ (untouchables) against which many movements were happening all across India at that time, unlike the case with the STs. He was pleading earlier and also in the Constituent Assembly for a different approach to the ST issue from the SC one. However, the moot point is that he was not using the expression ‘adivasi’.

The term ‘Adivasi’ is presently used in common discourse and media reports in India and abroad, for all the tribal people of India,

irrespective of whether the tribe is included in the list of Scheduled Tribes or not. In fact, *Adivasi* is not a single group of people but belongs to different tribes, settled in different states and places, including cities, practitioners of different religions, speak different languages belonging to different language families and have different cultural and social practices. At the same time, there is also no consensus among academics and civil society organisations as to the use of the term ‘*Adivasi*’ which literally means, original or early settlers in Sanskrit (*Adi*=first plus *vasi*=resident). Ghurya was not comfortable with the term and used the expression “so-called aborigines” (Xaxa: 1999). Prathama Banerjee in a 2016 paper clarifies in a footnote that he uses both the terms because in the North East indigenous groups prefer to call themselves tribes instead of *Adivasis* since that (*adivasi*) is the term applied to the migrants from Central India.<sup>86</sup> In the *Arthashastra*, (“a pioneering work on statecraft written at least one thousand years ago”<sup>87</sup>) Kautilya refers to tribes and tribal people. He talks of border tribes (*seemanth jati*) (“the frontier regions were either mountainous or jungles inhabited by tribes which were not completely under the control of the king”<sup>88</sup>), and tribes being independent (“Unsubdued jungle tribes live in their own territory, are more numerous, brave, fight in daylight and, with their ability to seize and destroy countries, behave like kings”)<sup>89</sup> but not use the expression *adivasi*.

Although mostly occupying hilly and forest areas, certain tribes formed their own kingdoms like the Gond kingdoms in central India during the 14<sup>th</sup> to 18<sup>th</sup> centuries. They, in fact, ruled for almost four centuries the entire hilly region of central India, including parts of Madhya Pradesh, Chhattisgarh and Vidarbha in Maharashtra. They had significant give and take with the dominant cultures of the Hindu and Muslim royal families of those times, including through inter-marriages. Koreti (2016) speaks of many illustrious kings of different Gond kingdoms of central India. Their mother tongue was Gondi, belonging to the Indo-Dravidian family, and spoken in the six states of Madhya Pradesh, Maharashtra, Chhattisgarh, Andhra Pradesh, Telangana and Odisha.<sup>90</sup> In ancient times there were tribal kingdoms like the Kamboja, mentioned in the

Mahabharata. The Ahom kingdom of Assam (1228-1838) is another example<sup>91</sup>. Unlike the Gonds and the Ahoms, there are tribal kings who ruled their subjects only in forest areas like the Mannans of Kerala who in their stories claim that they are 700 years old and are descendants of the Pandya king Chirayvarman who was defeated by a Chola king and got settled in the Idukki district of Kerala seven centuries ago.<sup>92</sup>

Andre Beteille in a 1998 paper<sup>93</sup> describes the evolution of the designation of ‘tribes’ for certain groups of India. He speaks about the use of different terms in the past such as ‘primitive’ which fell out of favour after World War II, ‘disadvantaged’, ‘hill and forest tribes’, ‘aboriginal tribes’ (‘*adivasis*’) and then points out that the term ‘Scheduled Tribes’ was adopted by the government of India even before the Independence. He points out that in India “both tribal and non-tribal populations have undergone many transformations through usurpation, miscegenation, and migration” and by the middle of the 19<sup>th</sup> century the tribes of today have largely been “either subordinated or marginalised economically, politically and socially”. But this is different from the kind of usurpation that took place in Australia or the USA and the appropriateness of the use of the term ‘indigenous’ which emerged in response to a particular experience in a particular part of the world in the Indian context is debatable.

In the Indian context, the concept of ‘indigenous’ needs to be explored from a continental perspective and not from a nation-state angle. In the latter, there is generally a predominant group whose language and culture form the basis of the *raison d’etre* of the nation or the state. In the case of India, with the second-largest population in the world, which form 16 per cent of the world population, with over 2.4 per cent of land area,<sup>94</sup> there are 22 official languages recognised in its Constitution itself.<sup>95</sup> These languages belong to four major language groups, namely, Indo-European, Dravidian, Austro-Asiatic, and Sino-Tibetan. There are different scripts, almost all developed indigenously. The predominant languages in different states vary, with Kerala at one end having more than 96 per cent Malayalam language speakers and Nagaland at the other end having only 14 per cent speaking Ao. There are 1,652 mother tongues, including 103 foreign mother tongues, alone in the country.<sup>96</sup>

It is hundreds of different communities who all have come together to form a country, and not one community speaking the same tongue. The tribal and caste groups are all equal partners in this. They all have roots that run for more than 2000 years in this country. From that angle, all the people of India are 'indigenous' and to make a distinction among them is not appropriate.

In the academic and activist literature, there have been many [Parmar (2018 and 2019), Pillai (2014)] who favour the expression 'indigenous' to refer to the tribal people of India. They mostly base their argument on the statement that the tribals are "the earliest inhabitants of India".<sup>97</sup> They rely on Jaipal Singh's statements in the Constituent Assembly and the Supreme Court judgement in the *Kailas case* (2011). The Supreme Court had noted that the tribal people are probably the descendants of the original inhabitants of India, and also observed that their situation characterised by a high level of poverty, illiteracy, unemployment, disease, and landlessness, is a result of historical injustices. These are deprivations that certainly need to be addressed on priority and the court said that "the historically disadvantaged groups must be given special protection and help so that they can be uplifted from their poverty and low social status".<sup>98</sup>

There is an underlying fear among the members of the STs that considering the tribal people not as indigenous might deny them the human rights of indigenous people, which is their right. Being part of the international movement for the protection of the human rights of indigenous communities naturally gives a boost to their efforts. Karlsson says that several tribal organisations in India base their struggle to establish their rights on the claim that they are the indigenous people of the country and participate in national, regional and international networks engaged in strengthening indigenous rights (Karlsson: 2008). Many of the activists in favour of 'Adivasi' or 'indigenous' are concerned about the denial of land rights to the STs. They raise their voice against the non-restoration of alienated tribal lands during development projects. In the North East, communities demand recognition of their ownership over

coal, forests and oil. (IWGIA: 2021). They were always concerned about their rights over their land and culture, as the Simon Commission (1928), stated: “They do not ask for self-determination, but for security of land tenure, freedom in the pursuit of the traditional methods of livelihood and the reasonable exercise of their ancestral customs.”<sup>99</sup> These concerns still persist and the nomenclature ‘indigenous’ help them to base the demands on international instruments. For example, Roy Burman says that “One of the prime factors for claiming aboriginal or indigenous status for the tribes is to enable them to gain territorial, land rights and control over natural resources” (Roy Burman: 2009). To that extent, the use of the term is a political statement.

India does not easily fit into the colonial construct of large-scale influx and mass destruction of people in the recent centuries. There are both advantaged and disadvantaged groups in India and all the people of British India, and indirectly of the princely states, were under colonial subjugation till 1947, irrespective of their anthropological or social or economic classification. But, as Beteille observes, “intellectual disciplines are so organized today that concepts and terms that emerge in response to a particular experience in a particular part of the world travel to other parts of it where they lodge themselves and acquire a life of their own.”<sup>100</sup> It creates intellectual confusion and gets used for the political or economic agenda of certain groups. Dasgupta, S (2018) states clearly that the literal meaning of Adivasi as “original inhabitants” enables these communities “to position themselves, strategically and politically, as Indigenous People in the global arena.”<sup>101</sup>

Communities other than the scheduled tribes also claim the status of indigenous people. These include various other groups such as Dalits, the Vaishnavite Meiteis of Manipur and the caste Hindus of Assam (Roy Burman:2009).

Identifying the true first settlers of India is a difficult task, but it is a fact that many tribes like the Nagas in the North East are not very ancient settlers. They are believed to have come into India in the middle of the first millennium BC. The Mizos have come to India in the 16<sup>th</sup>

century only (Xaxa:1999). Also, the tribes as well as other communities have moved from their places of occupation many times in the past even within India. Application of historical ethnicity to any group in India is a confusing exercise; should the entire territory of the Indian sub-continent be treated as one whether particular regions be identified; what should be the length of stay in a place, and; when people have been freely intermixing how much cultural purity should be ensured?

The main concern of those who argue for the term ‘indigenous’ and to have India’s STs recognised as indigenous<sup>102</sup> seems to be that principles and obligations on human rights contained in the UN Declaration should be extended to these people. For example, *Cultural Survival* in its observations for the United Nations Human Rights Council in 2016<sup>103</sup> refers to the following types of rights violations such as land and settlement rights, neglecting free, prior and informed consent by extractive industries, and torture, physical abuse and murder. These are equally applicable to almost all communities that may happen to be in the project areas. There are no two arguments that the ST populations’ human rights should be protected, but so are the human rights of other communities, particularly vulnerable groups like the scheduled castes. At the same time, the right to ‘self-determination’ poses problems. Karlsson while referring to the possible grounds for India’s stand at the UN says that “there is a risk that it will undermine national sovereignty and territorial integrity” (Karlsson: 1999. P. 26). Thrusting the tag of indigenous on some communities, which were identified for the specific purpose of extending special treatment for affirmative action under the Constitution, creates complications, irrespective of historical accuracy or not. As already mentioned, such special treatment for development purposes is available to another socially and economically deprived group like the SCs. Pitting STs against SCs, equally, if not more, disadvantaged, is inappropriate.

Each of the terms being used for the STs has its own merits and drawbacks. The term *Adivasi*, though means the first residents only, had through usage acquired in some parts pejorative connotations in common discourse to mean some group who are not ‘civilized’, or barbarians,

etc. This attitude, of course, is not dependent on the term *per se* or its dictionary meaning but on how the others' (i.e., the dominant other) look upon them. Indigenous as the Cambridge Dictionary defines refers to or relating to "the people who originally lived in a place, rather than people who moved there from somewhere else"<sup>104</sup> Extending this definition, one can come to two conclusions: One, indigenous people are those who are still there where *homo sapiens* first emerged, which is around the Victoria lake in Africa, as per the current state of knowledge, and two, the first human settlers in any land (which is very relative and problematic since in most of Asia and Africa the present political boundaries are not very ancient). The Supreme Court seems to have followed the second perspective, but within the territory of India ("The Bhils are probably the descendants of some of the original inhabitants of India living in various parts of the country particularly southern Rajasthan, Maharashtra, Madhya Pradesh, etc."<sup>105</sup>). At the same time, it must be understood that in India the term, *Adivasi* is applied to the people who are addressed so from outside 'to mark out differences from to dominant community'. It must also be kept in view that the term has now been internalised by the people concerned and they use it as a 'tool of articulation for empowerment' (Xaxa:1999).

## Conclusion

India's is a unique nation-building exercise. Different communities speaking different languages, practising different religions and with a multiplicity of social and cultural practices have come together to form a 'nation' and for which they drew up a constitution that guarantees basic human rights as fundamental rights to all its citizens. In order to protect diversity, it extends special rights to minorities and other smaller groups as well as socially and economically disadvantaged groups like SCs and STs. But the objective is an integration of all as equal partners, and not the creation of any 'enclosures.' There are no insiders and outsiders, no indigenous and alien population. It is one people, one country. The stand on nomenclature that India takes in international discussions should be consistent and based on this basic position. It should also be in harmony with its policies on benefit-sharing of genetic resources including human genetic resources,<sup>106</sup> protection of traditional knowledge, conservation of

biological resources, greater use of traditional medicine systems in health care and climate control and environment protection, which are also inter-linked. Irrespective of the nomenclature of any group India should strive to see all Indians are equally empowered to reap the rewards of development so that in a few years there are no socially and economically disadvantaged groups in the country. Ultimately that is what will enable India to take its rightful place in the comity of nations.

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## Endnotes

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- <sup>2</sup> Some of the important publications that RIS faculty had brought out on the subject are the following: Chaturvedi, Sachin. 2007. “TRIPS, Indigenous Knowledge and

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<sup>4</sup> *Ibid*.

<sup>5</sup> 173 times. See [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/CONF.199/20&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.199/20&Lang=E)

<sup>6</sup> The New Oxford Dictionary of English. 1998.

<sup>7</sup> *Ibid*.

<sup>8</sup> Sir Thomas Browne (1646; 6th ed., 1672) *Pseudodoxia Epidemica* VI.x (pp. 370-378), University of Chicago. Accessed at <http://penelope.uchicago.edu/pseudodoxia/pseudo610.html> on 16 November 2021.

<sup>9</sup> Nelson Mandela in his autobiography, *Long Walk to Freedom*, says: “I did not yet know that the real history of our country was not to be found in standard British textbooks, which claimed South Africa began with the landing of Jan van Riebeeck at the Cape of Good Hope in 1652.” (p.27). Most standard books of history of the United States until recently like *A Pocket History of the United States* by Allan Nevis, et al (1942) began with the planting of the colonies by the European settlers. Recently, there has been efforts like Roxanne Dunbar-Ortiz’ *An Indigenous Peoples’ History of the United States* (2014) narrating the history from the point of view of the pre-European people.

<sup>10</sup> UN General Assembly Press Release (GA/10612) dt 13 September 2007. Department of Public Information • News and Media Division • New York. Plenary 107<sup>th</sup> and 108<sup>th</sup> Meetings (AM & PM).

- <sup>11</sup> Resolution No. 61/295.
- <sup>12</sup> <https://www.un.org/press/en/2007/ga10612.doc.htm>. Accessed on 29 September 2021.
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- <sup>14</sup> Ibid.
- <sup>15</sup> ILO Conference, Provisional Record, Seventy-sixth Session (1989), Appendix 25, p. 25/3, para. 12. As quoted in A Practitioner’s Perspective on the Rights of Indigenous Peoples Since the Adoption of ILO Convention No. 169. Accessed at <https://minorityrights.org/2019/07/01/rights-indigenous-peoples-ilo/>. On 21 November 2021.
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- <sup>17</sup> Ibid.
- <sup>18</sup> The Universal Declaration of Human Rights (UDHR), 1957, the International Labour Organization Convention (ILO) Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal populations in Independent Countries of 1957, Convention No.169 Concerning the Indigenous and Tribal Peoples in Independent Countries of 1989 and the United Nations Declaration on the Rights of Indigenous Peoples 2007.
- <sup>19</sup> <https://www.un.org/development/desa/indigenouspeoples/about-us.html>
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- <sup>21</sup> Ibid.
- <sup>22</sup> <https://www.education.gov.in>. Accessed on 30 December 2021. The statistics are based on 2001 census.
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- <sup>25</sup> Available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312314](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312314).
- <sup>26</sup> [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169)
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- <sup>31</sup> A large-scale movement of people occurred at the time of Partition, on the basis of religion, but that was within the boundaries of an erstwhile country which got divided into two on religious lines.
- <sup>32</sup> Tony Joseph. 2018. Early Indians. P. xiv. Juggernaut.
- <sup>33</sup> Government of India, Ministry of Education. Title, year of first publication and author name not available. The paper, however, has proper references. Available at [https://www.education.gov.in/en/sites/upload\\_files/mhrd/files/upload\\_document/languagebr.pdf](https://www.education.gov.in/en/sites/upload_files/mhrd/files/upload_document/languagebr.pdf). Last accessed on 30 December 2021.
- <sup>34</sup> Other hominids like the *homo neanderthalensis*, *homo erectus*, have already moved to this and other parts of the world and when the homo sapiens came they interbred with them. Studies have shown that “all non-Africans carry about 2 per cent of Neanderthal genome.” Joseph:38.
- <sup>35</sup> Reich. P.129.
- <sup>36</sup> Joseph. P.63.
- <sup>37</sup> Narasimhan, et al (2018) pp.13-14.
- <sup>38</sup> Narasimhan, et al (2019). P.1 Abstract.
- <sup>39</sup> These are not perhaps the best nomenclatures since the territory of the ancestors cover the entire south Asia.
- <sup>40</sup> Ibid. P. 135.
- <sup>41</sup> Ibid. p. 136.
- <sup>42</sup> Census 1931 Introduction page 2.

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- 53 Article 14 of the Constitution of India.
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- 58 *Marri Chandra v. Seth G.S. Medical College* (1990) 3 SCC 130; *Action Committee v. Union of India* (1994) 5 SCC 244.
- 59 [https://www.brlf.in/wp-content/uploads/2018/05/Statistical-Profile-of-STs\\_2013.pdf](https://www.brlf.in/wp-content/uploads/2018/05/Statistical-Profile-of-STs_2013.pdf)
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- 84 Ibid.
- 85 Ibid. Incidentally, Vallabhbbhai Patel also shared this perception.
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- 87 L.N. Rangarajan (1990) in his preface to his English translation of the work.
- 88 Ibid p.44.

- <sup>89</sup> Ibid. p.135.
- <sup>90</sup> “The first historically recorded Gond kingdoms came up in middle India’s hilly region in the 14<sup>th</sup> and 15<sup>th</sup> century AD. The first Gond king was Jadurai, who deposed the Kalchuri Rajputs to grab the kingdom of Garha Mandla (1300 to 1789 AD). The second kingdom of Deogarh was created by King Jatba in 1590 AD which lasted till 1796 AD. Around the same time as Deogarh, the Kherla kingdom also came up in 1500 AD and remained for a century. Its first king, Narsingh Rai, who deposed a Rajput ruler, had love-hate relationship with the Rajput and Muslim rulers in his vicinity that attacked his fort due to its geographical accessibility. The Chanda kingdom (1200 to 1751 AD), a contemporary of the Kherla and Deogarh kingdoms, produced several remarkable rulers who developed excellent irrigation systems and the first well defined revenue system among the Gond kingdoms”. Shamrao Koreti, “Socio-Cultural History of the Gond Tribes of Middle India,” *International Journal of Social Science and Humanity* vol. 6, no. 4, p. 288.
- <sup>91</sup> Ahom in Encyclopedia Britannica online at [www.https://britannica.com/topic/Ahom](https://britannica.com/topic/Ahom) . Accessed on 28<sup>th</sup> December 2021. The Tai-Ahom and Matak communities in Assam have been demanding ST status. See The Hindu newspaper on line dated 27 September 2021 at <https://www.thehindu.com/news/national/other-states/st-status-demand-assam-cm-himanta-meets-tai-ahom-matak-community-leaders/article36688582.ece>
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- <sup>100</sup> Beteille. P.191.
- <sup>101</sup> Dasgupta 2018. P.3. She refers to an earlier work Rycroft D.J & Dasgupta, S (2011) *Indigenous Pasts and the politics of belonging*. In Rycroft & Dasgupta (Eds.), *The Politics of belonging in India: Becoming Adivasi* (pp.1-13), Abingdon: Routledge

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- <sup>106</sup> Chaturvedi, S., Crager, S., Ladikas, M., Muthuswamy, V., Su, Y., and Yang, H.(2012). Harmonizing policy on human genetic resources and benefit sharing. In *Nature Biotechnology* volume 30. No. 12. December 2012.

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