

DOUBLE DISCRIMINATION: THE LIMITATIONS IN ADDRESSING THE INTERTWINED THREATS OF CLIMATE CHANGE AND SOCIAL DISCRIMINATION AGAINST INDIGENOUS SOCIETIES IN INDIA

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I. **ABSTRACT**

Indigenous communities, already marginalized and discriminated against as minorities, face a double burden with the escalation of the climate crisis. Indigenous communities across the world are disproportionately affected by the adverse impacts of climate change, as they depend heavily on natural resources for their livelihood and have a strong cultural and spiritual connection to their land. In India, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and various International Conventions. They recognize and uphold the rights of forest-dwelling indigenous communities. This paper delves into the complex nexus of climate change and pre-existing social discrimination faced by indigenous communities in India, focusing on the limitations of legal frameworks in adequately addressing their intersecting vulnerabilities through quantitative research. They often lack access to adequate healthcare, education, and socio-economic opportunities, further exacerbating their vulnerability. This paper argues that these issues are intertwined, with social marginalization leaving indigenous communities more vulnerable to climate-induced disasters and resource depletion. The paper examines the limitations of the current legal framework in addressing this double discrimination. It analyses existing legislation while highlighting their shortcomings in effectively protecting indigenous rights and mitigating climate change impacts. To address this issue, it is crucial to strengthen the implementation of these legislations and ensure that indigenous communities have effective participation in decision-making processes related to climate change adaptation and mitigation efforts. It is important to recognize and respect their traditional knowledge and practices, as they have proven to be sustainable and resilient over centuries. By examining the limitations of existing legal frameworks and advocating for inclusive, community-driven solutions, this paper aims to contribute to a more just and equitable approach to addressing the intertwined challenges faced by indigenous societies in India. Empowering these communities through stronger legal frameworks and proactive measures will not only ensure their resilience in the face of climate challenges but also uphold their human rights.

Keywords: Indigenous communities, Double Discrimination, Climate Change, Sustainable Development, Inclusion.

imply a group's "first mover" status within a particular location. While there's no universally accepted definition capturing the diverse characteristics of indigenous peoples, key elements often associated with the concept include:

1. Lineage and Continuity: A shared ancestry and historical connection to the earliest

II. **INTRODUCTION**

Both the English and Spanish terms "indigenous" and "indigena" stem from the Latin "indigenae." This term distinguished between those born in a specific territory (original inhabitants) and later arrivals (outsiders). The French "autochtone" (Greek roots) and German "ursprung" similarly

inhabitants of a place, predating conquest, colonization, or settler society.

2. Territorial Connection: Occupation of and a profound attachment to distinct ancestral lands.

3. Subsistence Practices: A lifestyle closely tied to the surrounding natural resources and environment.

4. Distinct Systems: Unique customary social, cultural, linguistic, economic, and political frameworks.

5. Non-Dominant Status: Occupation of a non-dominant position within society.

The statement of coverage of the ILO Convention No. 169- Article 1(i)(b) (Bermen, 1988)-largely based on criteria developed by José Martinez Cobo-identifies indigenous peoples as being: *"peoples in independent countries who are regarded as indigenous on account of their descent from populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present states boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions."*

India's indigenous communities, constituting roughly 8.6% of the population⁶⁰⁵, face a unique set of challenges. Historically marginalized and often dispossessed of their ancestral lands, these communities now find themselves on the frontlines of a new threat: climate change. This paper argues that climate change and social discrimination act as a form of "double discrimination" for indigenous communities, exacerbating their vulnerabilities and jeopardizing their traditional ways of life.

III. LAWS RELATED TO INDIGENOUS COMMUNITIES

Article 342 of the Indian Constitution empowers the central government to designate specific tribal communities as "Scheduled Tribes". Administrative recognition is based on

indications of "primitive traits, distinctive culture, shyness of contact with the community at large, geographical isolation and backwardness. Article 244 further strengthens these rights by guaranteeing the enforcement of the Fifth and Sixth Schedules, which detail administrative provisions for Scheduled Areas and Tribes. These Schedules recognize the pre-existing governance structures and cultural identity of indigenous communities.

The Panchayat (Extension to Scheduled Areas) Act, 1996, is considered a cornerstone of tribal legislation. It recognizes traditional self-governance systems and empowers communities to manage their resources and social affairs. This act grants village councils control over local development projects, resource management, and decision-making on issues like mineral extraction. This fosters self-determination at the grassroots level and ensures their representation in the political process.

The Ministry of Tribal Affairs and the Forest Rights Act (FRA), 2006, established in 1999, the Ministry of Tribal Affairs spearheads policy and program development for STs. The Forest Rights Act (FRA) is another key legislative instrument. It recognizes and vests forest rights in Forest Dwelling Scheduled Tribes (FDSTs) and Other Traditional Forest Dwellers (OTFDs). The FRA aims to protect both forests and marginalized forest dwellers by granting them rights related to the ownership, use, management of forest resources, and development opportunities⁶⁰⁶. The FRA aligns with the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁶⁰⁷, aiming for democratic forest governance and upholding minimum standards for indigenous well-being.

Despite national and international efforts, achieving self-determination, regional development, and socioeconomic upliftment for

⁶⁰⁵ U.S. Agency for International Development (USAID). (2023, June 19). Indigenous Peoples: Regional and Country Profiles—India [Indigenous Peoples]. USAID. <https://www.usaid.gov/indigenous-peoples>

⁶⁰⁶ Ministry of Tribal Affairs & UNDP. (2014). Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. <https://tribal.nic.in/>

⁶⁰⁷ United Nations Declaration on the Rights of Indigenous Peoples. (2007). https://www.un.org/development/desa/indigenouspeoples/wpcontent/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

indigenous communities remains a challenge. National development priorities often overshadow local needs and aspirations⁶⁰⁸. Limited awareness and knowledge about their legal rights further hinder their ability to claim them effectively. Firstly, land alienation is a critical issue. Colonial and post-colonial eras saw a significant displacement of tribals from their resource-rich lands for mining and industrial development. This resulted in loss of forest rights, traditional livelihoods, and increased indebtedness, pushing them towards a precarious existence under money lenders and landlords. Secondly, displacement has triggered a cascade of problems. Disconnected from their homelands and ill-equipped for urban life, tribals face an identity crisis. Additionally, their low literacy rate (significantly lower than the national average) further marginalizes them. Factors like poverty, isolation, and lack of culturally sensitive education infrastructure contribute to this educational gap. This raises concerns about gender issues within these communities. Sudden exposure to urban life and the inability to adapt leave them vulnerable to exploitation and marginalization within their own communities⁶⁰⁹.

Economic reforms implemented in 1991 prioritized industrial development, leading to land allocation for projects like oil, gas, mining, and heavy industry. This allocation, however, often overlapped with Scheduled Tribe territories, resulting in displacement and ongoing legal battles for protection of their lands or fair compensation. The government's focus on industrial development and plantation forestry, rather than preserving natural ecosystems crucial for Scheduled Tribe livelihoods, a potential violation of their fundamental rights.

⁶⁰⁸ Gadgil, M., & Guha, R. (2012). *Ecology and Equity: The Use and Abuse of Nature in India*. Penguin Books India.

⁶⁰⁹ RAJA VENKATA PAVAN KUMAR DHULIPALLA, "TRIBAL LAWS, ISSUES AND CHALLENGES: IN INDIA", *International Journal of Creative Research Thoughts (IJCRT)*, ISSN:2320-2882, Volume.10, Issue 8, pp.e442 - e447, August 2022, <http://www.ijcrt.org/papers/IJCRT2208306.pdf>

IV. HUMAN-RIGHTS-BASED APPROACH TO DEVELOPMENT

The pursuit of development by nation-states often collides with the rights and cultural integrity of indigenous communities. State-driven development policies frequently prioritize economic growth models that view natural resources, central to indigenous cultures and survival, as mere commodities. This economic-centric approach contradicts the indigenous perspective on development, which may prioritize sustainability and a holistic relationship with the environment⁶¹⁰.

The concept of development itself is contested. While some see it as synonymous with integration into the global market and economic advancement, others view it as achieving a sustainable lifestyle that meets community needs without jeopardizing ecological balance. However, the reality for many developing nations is that some level of industrialization and modernization is seen as inevitable. This often leads to the marginalization of traditional beliefs and cultural practices. This is not to say that development is unimportant. A human-development approach is crucial, where humans are both the subjects and objects of development, and this development is intertwined with the concept of human rights.

Despite a plethora of laws protecting indigenous lands, poor implementation and a denial of fundamental rights continue to plague these communities. The United Nations' 2030 Agenda⁶¹¹ for Sustainable Development Goals (SDGs) is a case in point. Both development and human rights are fundamental pillars of any nation-state. Human rights are inherent to all individuals, encompassing political, economic, and social rights. They predate and inform legal systems, ultimately stemming from the concept of human dignity. These rights have driven domestic and international policies

⁶¹⁰ McInerney-Lankford, K., & Sano, H. (2010). *Human Rights and Sustainable Development: Exploring the Linkages*. Earthscan

⁶¹¹ United Nations. (2017). *Transforming our world: The 2030 Agenda for Sustainable Development*. A/RES/70/1

and challenged discriminatory practices across various sectors.

Development, on the other hand, is a continuous process encompassing economic, social, political, and cultural advancement for the entire population. Here, individuals actively participate in the process, with benefits distributed equitably. While development and human rights can be viewed as independent concepts, their goals often complement each other. Therefore, a legal framework for development should strive for a mutually reinforcing relationship between these two critical areas.

V. EARTH JURISPRUDENCE AND CLIMATE CHANGE

"The Great Jurisprudence" – that emphasizes human integration within the Earth System. It argues that traditional legal frameworks, which often place humans at the center, should instead be grounded in the Earth's self-regulating processes, developed over millennia⁶¹². In essence, the Great Jurisprudence isn't a fanciful theory, but a recognition of fundamental ecological principles⁶¹³. The natural world, with its interconnected systems, offers a more fundamental framework for human law than any human-created legal system.

Earth Jurisprudence challenges the traditional view of law by proposing the Earth itself as the ultimate source of legal principles. This philosophy argues that human-made laws should be understood within the broader context of the Earth System, a concept encompassing the interconnected natural world. Here, rights are seen as inherent to existence itself, not simply granted by human legal systems. All living beings, not just humans, are recognized as playing vital roles within this

interdependent system⁶¹⁴. Therefore, human actions should be limited to avoid disrupting the functioning of these roles. Ultimately, Earth Jurisprudence seeks to guide human governance towards decisions that prioritize the well-being of the entire Earth System.

Earth Jurisprudence, in the context of climate change, proposes empowering local communities. This localization could enable them to challenge environmentally destructive projects like coal mines or new roads, similar to previously discussed cases. However, this approach clashes with the current international legal framework which heavily relies on market mechanisms, like carbon pricing, to incentivize emission reduction. Regardless, granting them decision-making power over such activities would act as a check on corporate freedom and potentially promote more sustainable practices, even if complete emission prevention isn't guaranteed⁶¹⁵.

VI. INTERSECTION OF CLIMATE CHANGE AND INDEGENIOUS COMMUNITIES

India's diverse landscape is intertwined with the cultural heritage and identity of its numerous Scheduled Tribes, the country's official designation for indigenous peoples. While 705 ethnic groups are currently recognized as Scheduled Tribes, a significant number likely qualify but remain unrecognized. These communities are primarily concentrated in the Northeastern states and the "central tribal belt," stretching from Rajasthan to West Bengal. A defining characteristic of these Scheduled Tribes is their close connection to their natural habitats, residing near riverbeds, forests, seashores, and hinterlands to preserve their traditions and cultural legacy. Their way of life is demonstrably dependent on the resources obtainable from these environments, including forest produce, highlighting their inherent reliance on a healthy ecosystem for subsistence.

⁶¹² HARDING; PETER BURDON, The Great Jurisprudence, in EXPLORING WILD LAW: THE PHILOSOPHY OF EARTH JURISPRUDENCE 59 (Peter Burdon ed., 2011)

⁶¹³ CORMAC CULLINAN, A History of Wild Law, in EXPLORING WILD LAW: THE PHILOSOPHY OF EARTH JURISPRUDENCE 12 (Peter Burdon ed., 2011) 13. The tenets of Earth Jurisprudence are set out in Cullinan's earlier book WILD LAW: A MANIFESTO FOR EARTH JUSTICE (2002)

⁶¹⁴ The Gaia Foundation, Earth Jurisprudence – Earth Law, <http://www.earthjurisprudence.org>

⁶¹⁵ Wright, Glenn. (2013) "Climate Regulation as if the Planet Matters: The Earth Jurisprudence approach to Climate Change," Environmental and Earth Law Journal (EELJ): Vol. 3: Issue. 1, Article 2.

India has a comprehensive legislative framework to address environmental concerns, some of which indirectly contribute to mitigating climate change. The Environmental Protection Act (1986) empowers the central and state governments to improve environmental quality and prevent pollution. This broad framework allows for regulations to address climate-changing emissions. The Air Act (1981) specifically targets air pollution by setting emission standards for industries. This helps reduce greenhouse gas emissions and improve air quality.

The National Green Tribunal Act (2010) establishes tribunals for swift and effective resolution of environmental disputes, including those related to climate change. The Energy Conservation Act (2001) promotes energy efficiency by mandating the use of efficient equipment and fostering sustainable power development. This approach indirectly reduces reliance on fossil fuels and associated emissions.

The Forest Conservation Act (1980) safeguards existing forests, which act as carbon sinks. Protecting forests plays a crucial role in climate change mitigation. The Water Act (1977) aims to prevent water pollution from various sources. Cleaner waterways indirectly benefit ecosystems and contribute to a healthier environment. The Wildlife Protection Act (2002) and the Biological Diversity Act (2002) focus on wildlife and biodiversity conservation. Healthy ecosystems play a vital role in mitigating climate change impacts. While these legislations don't exclusively target climate change, their combined effect promotes environmental protection and contributes to India's fight against climate change⁶¹⁶.

The UN Declaration on the Rights of Indigenous Peoples guarantees that indigenous communities have the fundamental right to protection and conservation of the environment

within their territories⁶¹⁷. Indigenous communities in India are deeply dependent on natural resources for their survival and cultural practices. They possess a wealth of traditional ecological knowledge (TEK) that has enabled them to live in harmony with their environment for generations. However, climate change disrupts these delicate relationships. Rising temperatures, erratic rainfall patterns, and extreme weather events threaten indigenous livelihoods, food security, and access to water. Social discrimination further hinders their ability to adapt to these changes. Land dispossession, lack of access to government benefits, and limited political representation leave them with fewer resources and a weaker voice in decision-making processes. This marginalization undermines their traditional knowledge systems and weakens their capacity to cope with the changing environment.

Climate change disproportionately impacts vulnerable communities. Millions are forcibly displaced due to climate-related disasters, with an average of 21.5 million displaced annually since 2008⁶¹⁸. In 2017 alone, nearly 19 million people in 135 countries were affected by extreme weather events. While everyone is affected, socio-economic factors like poverty and limited resource access exacerbate the issue for marginalized groups. Indigenous communities, despite being stewards of biodiversity and constituting only 15% of the global population, are among the poorest and most exposed to the immediate consequences of climate change⁶¹⁹.

Climate change poses a significant legal challenge for indigenous communities in India, particularly those in Northeast India, Andhra Pradesh, Telangana, Central India, and states like Odisha, Jharkhand, and Maharashtra. These communities traditionally rely on

⁶¹⁶ Important Climate Change Laws in India, ENVIS Centre on Environment, Haryana, <https://envis.haryana.gov.in/important-climate-change-laws-in-india/>

⁶¹⁷ Climate Change and Indigenous Peoples | OHCHR. (2008). [OHCHR website]. <https://www.ohchr.org/en/stories/2008/03/climate-change-and-indigenous-peoples>.

⁶¹⁸ Internal Displacement Monitoring Centre. "Global Report on Internal Displacement." Geneva: Internal Displacement Monitoring Centre, 2016, <http://www.internal-displacement.org/globalreport2016/>

⁶¹⁹ Indigenous Peoples, Understanding Poverty, The World Bank, (2018), <https://www.worldbank.org/en/topic/indigenouspeoples>

agriculture and natural resources for their livelihoods. However, changing monsoon patterns and erratic rainfall are disrupting these age-old economic practices. This disruption forces them to adopt unfamiliar financial systems, potentially exposing them to new legal and financial risks.

A recent study by specialists⁶²⁰ examined these transactional risks and the adaptive strategies employed by indigenous communities in these affected regions. The study analysed a century's worth of climate data, revealing a significant rise in average temperatures during November and December across the studied districts. Furthermore, rainfall patterns, particularly in October and November, have shifted, leading to increased precipitation in some areas.

These climate-induced changes necessitate legal and economic responses that address the specific vulnerabilities faced by these communities. The study highlights the importance of leveraging existing community solidarity and collaboration, drawing upon the inherent values of unity and support within these traditions. The authors propose the creation of a special legal entity to identify measures for sustainable economic growth. This entity would ideally integrate traditional ecological knowledge with modern technological advancements. Additionally, it should advocate for climate-sensitive governance practices and empower indigenous communities with effective risk-averse transactional strategies. This two-pronged approach of adaptation and resilience building is crucial to ensure the legal and economic security of these communities in the face of climate change.

The ecological devastation wrought by climate change in India disproportionately burdens indigenous communities. This is due to their inherent dependence on a healthy environment

for their cultural practices, livelihoods, and very existence. The rising frequency and intensity of extreme weather events, such as floods, droughts, and landslides, disrupts their traditional way of life. Furthermore, the degradation of natural resources like forests and river ecosystems threatens their access to vital resources and exposes them to novel diseases with potentially limited medical interventions.

VII. INDIGENOUS WISDOM FOR CLIMATE CRISIS

Across India, diverse tribes showcase the potency of indigenous knowledge in developing climate-resilient agricultural practices⁶²¹. The Apatani tribes of the Eastern Himalaya exemplify this with their sustainable farming techniques like wet cultivation, terrace farming, and paddy-cum-fish culture. These practices, honed over generations, enhance food security and water management in the face of changing weather patterns⁶²².

Examining tribal agricultural practices reveals a treasure trove of legal principles applicable to contemporary environmental challenges. The Lahaul tribe's ice-water harvesting and agroforestry, for instance, demonstrate sustainable resource management within a harsh climate. Similarly, the Dongria Kondh's utilization of diverse crops, organic practices, and agroforestry showcases effective adaptation strategies. The Irular tribe's rich knowledge base in pest management, seed storage, and weather prediction, encompassing various techniques, further emphasizes the efficacy of indigenous knowledge in fostering resilience. These practices collectively establish a legal precedent for sustainable land use and climate change mitigation.

Furthermore, the Khasi community's traditional agricultural system, based on shifting cultivation, home gardens, and responsible

⁶²⁰ Impact of climate change on tribals. Daily Pioneer. Retrieved from <https://www.dailypioneer.com/2023/columnists/impact-of-climate-change-on-tribals.html>

⁶²¹ Meena, R.K., Vikas, T.P., Yadav, R.P., Mahapatra, S.K., Surya, J.N., Singh, D. and Singh, S.K., 2019. Local perceptions and adaptation of indigenous communities to climate change: Evidences from High Mountain Pangi valley of Indian Himalayas.

⁶²² Aich, A., Dey, D. and Roy, A., 2022. Climate change resilient agricultural practices: A learning experience from indigenous communities over India. PLOS Sustainability and Transformation, 1(7), p.e0000022.

forest resource use, provides a compelling model for climate-resilient food production. Their practices highlight the potential of organic and ecologically balanced food systems. Additionally, many indigenous communities possess social structures that promote cooperation during crises. This aspect of their knowledge system offers valuable insights for building community resilience in the face of environmental disasters.

Climate and health policies for indigenous communities should prioritize tribal expertise and self-determination⁶²³. State and federal governments should create funding opportunities specifically designated for tribal nations, with simplified application processes and technical assistance. This ensures equitable access to resources and empowers tribes to address their unique needs. Collaboration between tribal governments, state and federal agencies, and NGOs is crucial for a holistic approach. However, such collaboration must be undertaken with utmost respect for tribal sovereignty and data ownership. Formal government-to-government consultations with tribal leadership are essential to ensure their voices are heard during policy development, fostering tribal self-determination and effective climate change adaptation strategies.

Enhanced coordination and collaboration are critical for improving tribal climate change adaptation efforts. This collaborative approach fosters best practice sharing and reduces duplication of efforts. Climate change has demonstrably adverse health impacts on tribal communities. This underscores the need for incorporating alternative or tribal definitions of health, working alongside tribal organizations, to seamlessly integrate health concerns into existing climate plans. Recognizing tribal sovereignty is paramount. As sovereign nations, tribes possess the right to determine their own

health priorities and climate change responses. The diverse needs and circumstances of different tribes necessitate a flexible approach.

By prioritizing tribal expertise, respecting sovereignty, integrating health considerations, fostering knowledge sharing, and acknowledging tribal self-determination, governments and NGOs can work collaboratively with indigenous communities towards a more equitable and resilient future in the face of climate change. While legal frameworks and policies exist to address these issues, their effectiveness is limited by gaps in implementation, enforcement, and accountability. To truly tackle double discrimination, a holistic approach that integrates environmental justice with social justice is imperative. This entails recognizing and respecting indigenous rights, amplifying indigenous voices in decision-making processes, and supporting community-led initiatives for climate adaptation and resilience.

⁶²³ Schramm, P. J., Al Janabi, A. L., Campbell, L. W., Donatuto, J. L., & Gaughen, S. C. (2020). How Indigenous Communities Are Adapting To Climate Change: Insights From The Climate-Ready Tribes Initiative. *Health affairs (Project Hope)*, 39(12), 2153–2159. <https://doi.org/10.1377/hlthaff.2020.00997>