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INDIA'S INDIGENOUS STRUGGLE

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ABSTRACT

Recognition is an individual's identity that is asserted and granted rights based on it. Human beings have inherent rights, independent of nationality, colour, gender, religion, or other characteristics. Recognition shapes an individual's identity and the privileges that come with it. In society, identity is extremely important for a variety of reasons, and being recognised and acknowledged by others is as important. This recognition helps to promote several factors, including social inclusion. Individual rights are also internationally recognised. However, because of their lack of status as Indigenous in their native country, Indian Indigenous people face difficulties in obtaining international acknowledgement of their rights. India supports the UN Declaration on Indigenous Peoples' Rights but argues that all Indians are indigenous, not just Adivasi peoples, so the declaration doesn't apply. Also, India hasn't agreed to the International Labor Organization Convention 169, making it tough for Adivasi people to have their internationally recognized rights, including religious freedoms, protected in India. This violates their internationally barred rights and they are barred from using the same. This also leads to differential treatment and denial of rights as compared to the other indigenous people of the world. This paper addresses the critical issue of Adivasi peoples in India lacking internationally recognized indigenous status, which has resulted in systematic neglect of their rights. This lack of recognition impedes their ability to maintain their Indigenous identity, as they are compelled to align themselves with the other people of India thereby eroding their indigenous cultural heritage. This paper addresses how Indigenous people's absence of status affects their rights internationally and limits their legal protection. It explores how this impacted the rights not adequately acknowledged under the current framework. The paper highlights the challenges Indian indigenous face, including differential treatment and equality outlined in the UNDRIP, due to the absence of a lack of status as indigenous. The paper will commence with an introductory overview, followed by a historical exploration of the subject matter. It will then delve into a comparative analysis of indigenous status across different nations, scrutinizing India's stance on indigenous rights within the framework of international regulations. The challenges confronting indigenous populations will also be a focal point of the research. Through case studies, it examines the need for indigenous status for Adivasi in India and analyses how this lack of status contributes to individuals facing deprivation of their rights. The paper focuses on the indigenous status of Adivasi people in India internationally.

Keywords: Recognition, Indigenous, UNDRIP, Scheduled Tribes, Rights

INTRODUCTION

The term indigenous is derived from the Latin word indigena, which means 'sprung from the land, native.'630 There is no universally accepted definition of the term Indigenous under

international law. The United Nations Declaration of Rights on Indigenous People does not proclaim any definition of 'indigenous' The Indigenous populations are recognized as the first inhabitants of the territory, possessing a

 $^{^{630}}$ Oxford English Dictionary Online, "indigene, adj. and n." (last updated Sept. 2016), $\underline{\text{https://www.oed.com/}}.$

⁶³¹ U.N. Office of the High Commissioner for Human Rights, Indigenous Peoples and the United Nations Human Rights System (Fact Sheet No. 9, 2013), at 3.



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profound connection to their land and natural resources before the onset of colonization. They maintain a distinct, identity, and culture from the mainland society. Indigenous people are termed by varied names across the world such as first citizens, aborigines, Inuit, Native Americans, etc

'Adivasis' refers to the diverse groups of indigenous peoples in India. The term itself is derived from the Hindi words 'adi,' meaning ancient or from the beginning, and 'vasi,' which translates to inhabitant or resident. This nomenclature emerged in the 1930s, largely as a result of a political movement aimed at fostering a collective identity among the various indigenous communities in India. The definition of 'adivasi' as 'Scheduled tribe' in India is an administrated word connoted for legal and constitutional purpose. 632 While the Constitution officially recognizes them as Scheduled Tribes, many Adivasi people prefer the term 'Adivasi' as it better captures their unique identity and heritage. 633 The indigenous group of North East India prefer to be called "tribe" rather than 'Adivasi' This is to differentiate themselves from indigenous people who migrated from central India during the colonial era. 634 The term 'Adivasi' has evolved, shaped by various political, social, and cultural movements. It's a reflection of the Adivasi people's struggle for recognition and their desire to preserve their distinct cultural traditions. The term 'indigenous' has not been officially recognized in India, although there have been some occurrences of its usage.

632 Minority Rights Group, "Adivasis in India," (Apr. 12 2024), https://minorityrights.org/communities/adivasis2/#:~:text=Adivasis

%2C%20as%20their%20name%20reflects,than%20they%20do%20at%20pre

REASEARCH OBJECTIVES

The objectives underscored are as follows:-

- 1. to understand the concept of Indigenous in India and the international level
- 2. to understand the background and reasoning behind India's stance
- 3. To understand the different treatment India's Indigenous face as compared to other country's Indigenous

RESEARCH METHODOLOGY

The research is entirely based on Arm Chair method of research which mainly focuses on collection of secondary data mainly through newspaper, articles, journals, published unpublished theories, economic reports, books and websites. To understand the concept of the term indigenous and its importance in International level, the researcher researched various online articles which helped in understanding the basics.

UNDRIP & STATUS OF INDIGENOUS PEOPLE IN INTERNATIONAL LEVEL

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a critical foundation that addresses the entitlements of indigenous populations worldwide. This agreement, adopted in 2007, sets a common standard for protecting and developing these rights. Despite its lack of legal enforceability, it holds significant moral and political power, influencing legislation and policies in several UNDRIP recognises countries. Indigenous peoples' rights to self-determination, cultural identity, land tenure, and participation in governance processes. It is critical in resolving both historical and contemporary injustices faced by Indigenous communities, encouraging reconciliation and working towards a more just society.635

 <u>sent.</u>
 ⁶³³ Parijat Ghosh, "Adivasi, Tribe or ST: The Debate on the Status of Adivasi
 Livelihoods," Sampark.Net (Oct. 12,

^{2022),} https://www.pradan.net/sampark/adivasi-tribe-or-st-the-debate-on-the-status-of-adivasi-livelihoods/.

⁶³⁴ Sanjukta Das Gupta, Colonial Representations of Adivasi Pasts of Jharkhand, India: The Archives and Beyond (2020), https://doi.org/10.4000/books.pressesinalco.23721.

⁶³⁵ United Nations, "United Nations Declaration on the Rights of Indigenous Peoples" (2007)



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Indigenous peoples have territorial rights, including the right to their traditionally owned lands, territories, and resource⁶³⁶. They have the right to practice and revitalise their cultural traditions, maintain and protect their heritage, and develop their spiritual traditions.637 They also have the right to participate in decisionmaking matters⁶³⁸ affecting their rights and selfdetermination. 639 They also have the right to free prior and informed consent for the development or use of their lands or resources, with states consulting with indigenous peoples through institutions.640ILO their representative Convention no.169 is legally binding treaty which delineates explicit standards and aims at safeguarding and advancing the rights of indigenous and tribal populations. It addresses critical matters including land entitlements, preservation of cultural identity, and involvement in governance processes.

RECOGNITION OF INDIGENOUS IDENTITY IN INDIA

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) does not offer a definitive characterization of 'indigenous', yet it several fundamental characteristics commonly linked to indigenous communities. characteristics These encompass identification, wherein individuals perceive themselves as members of such groups and receive recognition from their respective communities, as well as historical continuity, which involves sustaining a connection to ancestral lands and territories. Furthermore, indigenous peoples are distinguished by their cultural identities, which characterized by specific social, economic, political, cultural, and spiritual traits. this framework is not comprehensive in nature and

serves as a valuable tool for comprehending the notion of indigenous peoples within the context of international law. Indigeneity refers to the historical, cultural, and social identity of indigenous populations, characterized by their deep-rooted connections territories, traditions, languages, and systems of knowledge. This concept transcends mere ethnic or racial categorization, being influenced by enduring relationships with both the land and community, as well as the ongoing resistance to colonial and contemporary state mechanisms. Indigeneity serves as a powerful emblem of resistance and resilience, illustrating how indigenous communities have preserved cultural practices, their languages, governance structures in the face of prolonged marginalization. is situated international legal contexts, such as the United Nations Declaration on the Rights of Indigenous Peoples, which affirms the rights of indigenous self-determination, peoples to cultural preservation, and land ownership. Indigenism, as a political and ideological movement, champions the rights, protection, empowerment of indigenous communities, often arising in situations where these groups have experienced land dispossession, enforced assimilation policies, or exclusion from political processes.641

INDIA'S STANCE ON INDIGNOEUS STATUS IN INDIA

The importance of asserting Adivasi identity over Scheduled Tribe identity in India stems from historical and contemporary challenges faced by indigenous communities. The Supreme Court of India recognized Adivasis as 'the original inhabitants' of India in a landmark ruling in 2011⁶⁴² Despite this, Adivasis have been denied the rights guaranteed to indigenous populations globally, leading to the need to

https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>.

⁶³⁶ United Nations Declaration on the Rights of Indigenous People, 2007, Article 26.

 $^{^{637}}$ Article 11 of United Nations Declaration on the Rights of Indigenous People, 2007.

⁶³⁸ Article 8 of United Nations Declaration on the Rights of Indigenous People, 2007.

 $^{^{639}}$ Ārticle 3 of United Nations Declaration on the Rights of Indigenous People, 2007.

⁶⁴⁰ Årticle 32 of United Nations Declaration on the Rights of Indigenous People, 2007.

⁶⁴¹ Geoffrey Benjamin, "Indigenous Peoples: Indigeneity, Indigeny or Indigenism?" in Routledge Handbook of Asian Law 376 (2016), https://www.taylorfrancis.com/chapters/edit/10.4324/97813156605 47-30/indigenous-peoples-indigeneity-indigeny-indigenism-geoffrey-benjamin.

⁶⁴² Kailas & Ors v State of Maharashtra TR. Taluka P.S n (Crl) No. 10367 of 2010.



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protect and assert their identity. In the twentyfirst century, Adivasi identities have been overshadowed by Scheduled Tribe identities,643 raising the question of why it is crucial to remember Jaipal Singh Munda's Scheduled Tribes as demand to identify 'Adivasi.' Jaipal Singh Munda advocated against the term 'Scheduled Tribes' as it risked excluding certain tribes and not encompassing all indigenous groups based on their deeprooted connection to the land as the original inhabitants. By emphasizing the term 'Adivasi,' Munda aimed to preserve the broader and more inclusive identity of indigenous communities in India, ensuring that all tribes are recognized and represented beyond mere categorization based on backwardness.644The evolution of the term 'Adivasi' beyond its Indiaspecific origins signifies a broader global recognition of indigenous peoples who have endured colonization and exploitation across continents. The historical context of colonization reveals a pattern of cruelty and violence inflicted upon indigenous lands communities, resulting deep-seated in injustices that persist to this day. recognition of Scheduled Tribes as 'Adivasi' or indigenous within India would not only acknowledge their indigenous claims but also grant them specific rights over their lands, resources, and ways of life in alignment with UNDRIP. This recognition is crucial for preserving promoting indigenous cultures and ensuring their continued existence amidst ongoing challenges.

The adoption of the UN Declaration on the Rights of Indigenous Peoples marks a pivotal moment in the global recognition of Indigenous rights. India's support for the declaration, however, was contingent upon a unique interpretation that 'all Indians are considered indigenous' post-independence. This stance

aligns with a widely accepted definition of indigenous peoples as those who defeated by colonizers. Nevertheless, India's perspective is challenged by the reality of power transfer from British colonizers to local elites, who were also considered intruders. This raises questions about the extent to which all Indians can be truly considered indigenous. Colonisation, as emphasised by the government, cannot necessarily be European colonisation and India's history could be traced back to several immigrations which colonise the land. the indigeneity of indigenous people in India also faces a political agenda. there are varied political reasons as to why the term Indigenous is still not inclusive in India. There is also a political reluctance to adopt terminology that could imply a need for special rights or recognition for tribal groups that might challenge existing power structures. government's refusal to acknowledge these communities as 'Indigenous' can be seen as an effort to maintain control over how these groups are represented and what rights they are afforded.645

STATUS OF INDIGENOUS PEOPLE IN OTHER COUNTRIES

The lack of a clear definition of indigenous peoples has led to three distinct approaches among Member States. One group of countries considers certain sections of their populations to be indigenous, as opposed to other nonindigenous peoples; another group considers their entire population to be indigenous; and a third group denies the existence of any indigenous population groups. 646 The legal recognition of indigenous peoples exhibits considerable variation across the examined nations. Certain countries have enacted specific legislation that acknowledges and safeguards the rights of these groups, while

Bodies on Issues Affecting Them (A/71/L.82, Sept. 2017).

 ⁶⁴³ Santosh Gedam, "Adivasi Identity in the Twenty First Century: We Must Know the Past to Understand the Present," Adivasi Lives Matter (Aug. 4, 2021), https://www.adivasilivesmatter.com/post/adivasi-identity-in-the-twenty-first-century-we-must-know-the-past-to-understand-the-present.
 644 Saquib Salim, "Jaipal Singh Munda: Man Who Organised Adivasis," Heritage Times (Jan. 2, 2024), https://www.heritagetimes.in/jaipal-singh-munda-man-who-organised-adivasis.

⁶⁴⁵ Zumbish & Zumbish, 'Wordplay': Activists Criticise Centre for Refuting Indigenous Peoples' Concept at UNPFII," *Donn to Earth* (Apr. 28, 2023), https://www.downtoearth.org.in/governance/-wordplay-activists-criticise-centre-for-refuting-indigenous-peoples-concept-at-unpfii-89030.

646 Permanent Mission of India to the United Nations, Adoption of Draft Resolution on 'Enhancing the Participation of Indigenous People' Representatives and Institutions in Meetings of Relevant United Nations



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others may employ alternative terminology yet still provide certain protections. Such rights are in legal various frameworks, including dedicated statutes, judicial rulings, or national development strategies. Nonetheless, the extent of these protections is inconsistent, affecting both individuals and communities, and discrepancies may arise among different legal and policy frameworks. In nations such as Bangladesh, India, Indonesia, and Malaysia, distinct legal statuses have been established for indigenous populations. These practices persisted post-independence, with contemporary states incorporating constitutional assurances and specific legal measures aimed at safeguarding the rights of indigenous communities. For instance, India identifies 'scheduled tribes' and accords them a unique legal status, which encompasses reserved positions in governmental institutions and tailored administrative frameworks. In Malaysia, the Constitution acknowledges the special rights of the indigenous peoples of Sabah and Sarawak, which includes quotas for government employment and educational advantages. Conversely, the indigenous groups of Peninsular Malaysia, referred to as the Orang Asli, do not receive equivalent recognition; their rights are governed by the 1945 Aboriginal Peoples Act. The indigenous communities of the Chittagong Hill Tracts, known as 'Pahari'or 'Jumma,'benefit specific from protections established through a peace agreement in 1997. In contrast, the indigenous populations of the plains, termed 'Adivasi,' experience significantly reduced protections, with their rights primarily addressed in a land law enacted in 1950.647

EFFECT FACED DUE TO NON-RECOGNITION

of formal The absence recognition indigenous status in India profound implications for the rights Adivasi of communities, both within the country and on the international stage, thereby hindering their pursuit of rights comparable to those enjoyed

prevents Adivasi communities from being acknowledged as such in international platforms, including the United Nations. Globally, indigenous groups benefit from a range of international legal protections and frameworks, such as the United Nations Declaration on the Rights of Indigenous Peoples and the ILO Convention No. 169. In contrast, Adivasis in India are denied this official recognition, which effectively bars them from accessing the protections these instruments provide. This lack of recognition limits their ability to seek redress from international bodies when their rights are violated, particularly concerning issues of land, self-determination. cultural heritage, and Furthermore, due to the government's stance on indigenous identity, Indian indigenous communities often find themselves disconnected from global advocacy networks indigenous rights. champion disconnection restricts their engagement with international human rights mechanisms and reduces their presence in worldwide dialogues regarding indigenous rights. Indigenous populations in various nations possess rights to their ancestral territories safeguarded by both national legislation and international agreements. For example, the ILO Convention mandates recognition of indigenous peoples' rights to their traditional lands under Article 14; however, this provision is not applicable in the context of India. Here, Adivasi communities are classified solely as Scheduled Tribes according to domestic laws, such as the Forest Rights Act, which does not align with the broader international standards for indigenous rights.

by indigenous populations in other nations. The

lack of official designation as indigenous

The lack of international recognition greatly limits Adivasis' ability to protect their lands from industrial encroachments, mining, and deforestation through global legal frameworks. Unlike Indigenous peoples in other countries who can rely on international law to defend their territories, Adivasis in India face frequent violations of their land rights and struggle to

⁶⁴⁷ Stefania Errico & Int'l Labour Org., The Rights of Indigenous Peoples in Asia (1st ed. 2017), http://ilo.ch/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_545487.pdf.



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access international legal support. Today, they face growing threats from both the Modi government and conservation efforts, putting their lives, lands, and survival at risk. In 2019, the Supreme Court of India ordered the eviction of 8 million people, and around the same time, Prime Minister Narendra Modi's administration pushed for stricter forest laws that would allow forest officials to use lethal force without accountability. These actions severely weaken the vital protections offered by the Forest Rights Act, leaving Adivasi communities more vulnerable than ever.⁶⁴⁸

Adivasis experience considerable global underrepresentation in indigenous movements and forums, primarily due to the Indian government's failure to acknowledge them as indigenous peoples. In contrast, indigenous communities from other countries able participate in international platforms, such as the United Nations Permanent Forum on Indigenous Issues (UNPFII), where they can advocate for their rights. This lack of representation deprives Adivasis of vital opportunities to establish global partnerships and bring attention to their struggles on an international level. The Pathalgari Movement serves as a case study illustrating the obstacles Adivasis encounter in their pursuit of recognition and self-determination. This movement, which emerged in Jharkhand seeks to affirm Adivasi rights over their lands and resources, directly challenging the authority of the Indian state. The absence of acknowledgment as indigenous peoples prevents Adivasis from accessing international advocacy platforms, thereby restricting their ability to garner support and solidarity from other indigenous groups facing analogous challenges globally. This situation significantly undermines their potential to form alliances and disseminate their narratives. 649

Adivasis of India, despite their deep-rooted connection to their lands, often find themselves marginalized in the global arena of human rights advocacy. Their lack of formal recognition hinders their ability to access international platforms and leverage international agreements. The Dongria Kondh, an Adivasi group in Odisha, India, exemplify this struggle. Their opposition to mining on their ancestral land has garnered international attention, but their limited access to global institutions has made their fight more challenging.650 The right to self-determination is a fundamental principle that empowers indigenous communities to govern their own lands, preserve their unique cultures, and manage their resources. In countries that officially recognize indigenous peoples, they are often granted greater autonomy, including the ability to form their own political institutions. However, in India, Adivasis, or indigenous people, are classified as Scheduled Tribes and, while they have some protections, they are denied the internationally recognized right determination. This limits their ability to govern themselves according to their traditions and customs.

While indigenous peoples around the world benefit from international protections that safeguard their cultural and linguistic heritage, Adivasis in India do not have these protections at the international level. As a result, they face the real threat of cultural erosion, especially under the pressure of development and assimilation policies. One stark example is the construction of the Sardar Sarovar Dam on the Narmada River, which displaced thousands of Adivasi communities, submerging their sacred sites and destroying traditional livelihoods. These communities were forced to leave their ancestral homes, their lives upended by the dam's construction. The loss of their land and cultural heritage has had a devastating impact on their way of life. Indigenous knowledge

⁶⁴⁸ "India's Indigenous People under Attack by Modi Government and Conservationists," *Survival*, https://www.survivalinternational.org/articles/India-indigenous-under-attack (accessed Sept. 16, 2024).

dia-indigenous-under-attack (accessed Sept. 16, 2024).

649 Laura Pérez Portela, "The Pathalgari Movement for Adivasi Autonomy: A Revolution of India's Indigenous Peoples," *IWGLA - International Work Group for Indigenous Affairs* (Mar. 11, 2022), https://www.iwgia.org/en/news/4613-the-pathalgari-movement-for-adivasi-autonomy-a-revolution-of-india%-E2%80%99s-indigenous-peoples.html.

⁶⁵⁰ ritimo, "Claiming Niyamgiri: the Dongria Kondh's Struggle against Vedanta," Ritimo (Sept. 2, 2021), https://www.ritimo.org/Claiming-Niyamgiri-the-Dongria-Kondh-s-Struggle-against-Vedanta.



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systems, including those related to agriculture, medicine, and environmental management, are often protected under international frameworks like the Nagoya Protocol. However, because Adivasis of India are not recognized as indigenous, their traditional knowledge is not protected under such global conventions, leaving them vulnerable to exploitation by industries such as pharmaceuticals and agriculture.

Indigenous peoples in other countries have access to international monitoring mechanisms that ensure compliance with human rights standards. Adivasi communities, without recognition as indigenous, do not benefit from the same level of scrutiny by international human rights bodies. Indigenous communities elsewhere can bring cases of rights violations to international courts or tribunals, but Adivasis have limited access to such mechanisms. A pertinent case study involves the Acquisition Act in India, which has often been detrimental to Adivasi communities. The Act allows for the acquisition of land development projects, frequently without adequate consultation or compensation for the affected communities. Adivasis, lacking formal recognition, have limited recourse to challenge these acquisitions through international mechanisms. Numerous indigenous communities successfully advocate for development policies that honor autonomy and ensure their involvement in decisions regarding projects that impact their lands and resources. In contrast, Adivasis frequently encounter development strategies imposed from above, where their consent is inadequately sought, thereby contravening the principle of Free, Prior, and Informed Consent(Herein as FPIC), which is recognized as a global standard for indigenous peoples. A notable instance of FPIC(Article 19 of UNDRIP) violation occurred in August 2022 at the Melaghat Tiger Reserve in Maharashtra. This reserve, inhabited by indigenous groups such as the Gond and Korku tribes, was designated for conservation under the Wildlife Protection Act. However, local authorities neglected to secure the consent of these communities prior to enforcing regulations that criminalized their traditional practices. This infringement of the FPIC principle underscores a pervasive trend of disregard for indigenous rights in Maharashtra, where conservation legislation frequently criminalizes customary practices without sufficient consultation.⁶⁵¹

CONCLUSION

The indigenous status of Adivasi communities in India highlights an urgent need for formal recognition and protection of their rights, which remain compromised due to a lack acknowledgment at the national level. This lack of recognition not only perpetuates systemic neglect but also limits their ability to advocate for their rights and access international protections available to indigenous peoples around the world. The Indian government's stance that all citizens are indigenous postindependence complicates the conversation around Adivasi rights, blending the diverse experiences of various communities into a single narrative. While this view seeks promote national unity, it overlooks the specific injustices Adivasis have faced and the socioeconomic disparities continue they experience. The political reluctance to formally recognize Adivasis as indigenous reflects a fear of unsettling power structures, as it could impact resource allocation and governance. The consequences of this lack of formal recognition are profound. Adivasi communities are often excluded from international platforms where they could advocate for their rights, making it difficult to seek justice for violations. Recognizing Adivasi communities as indigenous is crucial for addressing historical injustices and ensuring their rights are upheld in line with international standards. This recognition would allow Adivasis to reclaim their cultural identity, assert their rights over traditional lands and

⁶⁵¹ Indigenous Rights Advocacy Centre, "India: Impacts of Tiger Reserves on Indigenous Peoples" (2022), https://irac.in/wp-content/uploads/2022/12/India-Impacts-of-tiger-reserves-on-indigenous-peoples Final Print Version.pdf.



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and take part more fully resources, governance processes. Ratifying conventions ILO Convention No. 169 significantly strengthen the protection of indigenous peoples' rights India, in safeguarding their cultural integrity and ensuring they have a voice in decision-making processes. While India recognizes Adivasis as 'Scheduled Tribes' domestically, a shift in policy is needed to declare them as indigenous peoples on the global stage. This would require advocacy from Adivasi organizations to secure recognition at the United Nations, highlighting their rich cultural heritage and long history of marginalization. The government's classification of certain northeastern states as home to 'indigenous populations' suggests a potential shift in perspective, but India's position at the UN, stating that 'all Indians are indigenous or no indigenous in India,' risks downplaying the unique challenges Adivasis face. It is important to distinguish between Adivasi people and the broader Indian population to secure their recognition as indigenous at the global level.

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