

# Indigenous Identity As ‘Subaltern’

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**T**he objective of this research paper is to approach the debates on indigenous/tribal identity in international law deploying the framework of subaltern studies in South Asia with a view to, first, critically reexamine the approaches within the existing international law scholarship in representing the issues of the ‘indigenous’, and second, to apply the ‘subaltern approach’ evolved in the South Asian historiography to reconceptualise the relationship between law/international law and indigenous and tribal people.

The contemporary debates on indigenous people appear to have a characteristic ambiguity. On the one hand over the last two to three decades there is growing recognition of the relative autonomy of the ‘indigenous identity’ vis-à-vis nation states in majority of the jurisdictions of the world, ranging from the ‘aboriginals’ of Australia and Maoris of New Zealand to Native Americans in the Americas. This is amply demonstrated by a number of international conventions, the much too awaited draft declaration on the rights of the indigenous people, and a number of national level judicial decisions dealing with the indigenous people’s disputes vis-à-vis their respective nation states. However, on the other hand, there are far too many restrictions and constraints placed on the recognition of relative autonomy of the indigenous people by many individual nation-states, which partly is responsible for delaying far too long the realization of the draft declaration into a properly adopted declaration. Besides, there seems to be serious hesitation on the part of nation-states, especially from third world, to recognize the autonomy of the indigenous people clearly.

This is partly demonstrated by the numerous reservations declared in the context of ratifying the ILO Convention on indigenous and tribal people, and partly by the continued tendencies of developmental apathy and political coercion vis-à-vis indigenous and tribal people. While the literature on the subject would clearly indicate that these practices are widespread, the case of tribals in the North-Eastern part of India especially would be a useful case study to demonstrate the same. The Indian State, while accords a constitutional status and relative autonomy to 'scheduled tribes', is wary of recognizing them as 'indigenous' (as it would have implications for their 'self-determination' under the international law) and at the same time treating tribal 'insurgencies' or struggles for autonomy as mere law and order problems over the last five decades. The extra-ordinary legislation of the Armed Forces Special Powers Act was put in place originally in 1956 to tackle tribal insurgency for autonomy and it continues to be the basis of governance in the North-Eastern part of the country even today.

While the current international law approach to indigenous people seems to have provided a reasonable compromise in favor of the marginal identities of people in those locations, wherein their numbers and existence no longer poses threat to the mainstream/settled societies (e.g. United States, Canada, Australia etc.), it has not been very effective with regard to tribal populations in those locations where the demand for autonomy is substantive and the nation-state is very strong.

Here I would suggest that the relative ineffectiveness of international law in resolving the issue is two fold. Firstly, it is rooted in the continued perception of international law as an autonomous body of knowledge. And secondly, the conventional wisdom related to universal applicability of norms, including human rights norms is under challenge. I argue that first, there is a need to forge interdisciplinary orientation to international law, and second to evolve strategies that could help contextualise the existing (universal) standard setting related to indigenous and tribal peoples.

I argue that application of the 'subaltern methodology' evolved in the South Asian historiography of the peasant resistance could have valuable insights in help evolving methods of such contextualisation that could hopefully throw light on possible resolution to continuing rupture and conflict between indigenous and tribal peoples and the Indian state. The 'subaltern methodology' originally constituted subversive cultural politics because it exposed forms of power/knowledge that oppressed subaltern people, and also because it provided liberating alternatives. This methodology stood against colonial modernity to secure a better future for subaltern peoples, learning to hear them, allowing them to speak, talking back to powers that marginalize them and documenting their past. It restored the integrity of indigenous history that appears naturally in non-linear, oral, symbolic, vernacular, and dramatic forms. Today, the 'subaltern' methodology is no longer confined to the discipline of history but is expanding in its engagement with more contemporary problems and theoretical formulations.

Through the 'subaltern methodology' of critical reading of texts, oral histories and social research, I wish to highlight the residues of hidden identities, expressions of difference and misunderstood mentalities of the indigenous peoples/tribes in North-East India. I seek to generate a space for 'intertextuality' in which the legal text on indigenous peoples or tribes are conceived and read as a tissue built from and leading to other texts and other discourses such as cultural studies, linguistics, history and law. This research within the framework of the 'subaltern studies' would be a novel and significant contribution to the barely existing literature on Indigenous People/tribes in India and International Law. I will build upon my prior research work done in the area of 'subaltern studies' and its engagement with human rights law.

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