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ASIAN INDIGENOUSNESS: THE CASE OF INDIA

India voted in favour of the United Nations' Declaration on Rights of Indigenous Peoples in September 2007. So did the majority of the other Asian countries, with a few exceptions such as Bangladesh and Bhutan who abstained. How then should we understand this over-all support for the Declaration by Asian states? Is it to be regarded as a critical event that signals a new readiness for serious engagement with indigenous peoples' issues in this part of the world? Several Asian states have previously been reluctant to do so. Alternatively, should we see this move as the easy option, thus avoiding sticking one's neck out and inviting further debate and contention? A Declaration is, after all, a non-binding international instrument and states risk little by approving them. Significantly, only four states (Canada, the United States, Australia, and New Zealand) voted against the Declaration, with eleven abstaining. In this article, I will look at the situation in India, discussing above all the position of the Indian government vis-à-vis indigenous peoples' rights.

In India, 461 ethnic groups are recognized as Scheduled Tribes, and these are considered to be India's indigenous peoples. In mainland India, the Scheduled Tribes are usually referred to as Adivasis, which literally means indigenous peoples. With an estimated population of 84.3 million, they comprise 8.2% of the total population. There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but which are not officially recognized. Estimates of the total number of tribal groups are as high as 635. The largest concentrations of indigenous peoples are found in the seven states of north-east India, and the so-called "central tribal belt" stretching from Rajasthan to West Bengal. India has several laws and constitutional provisions, such as the Fifth Schedule for mainland India and the Sixth Schedule for certain areas of north-east India, which recognize indigenous peoples'



West Khasi Hills. Photo: Bengt G. Karlsson

Professor Ram Dayal Munda. Photo: Bengt G. Karlsson





The British mining company Vedanta plans to build a massive bauxite mine, on top of the Dongria Kondh's most sacred mountain, Niyamgiri, which will destroy the forests on which the Dongria Kondh depend. The company has already built an aluminium refinery at the foot of the mountain. Photo: © Survival



rights to land and self-governance. Indigenous peoples continue to face civil and political rights violations, land alienation, displacement and false prosecution for accessing minor forest produce. As India's booming economy requires more resources, indigenous peoples' land and resources have been grabbed, resulting in a strong sense of alienation among the indigenous peoples and further exacerbating conflicts. The laws aimed at protecting indigenous peoples have numerous shortcomings and their implementation is far from satisfactory. India has a long history of indigenous peoples' movements aimed at asserting their rights.¹

The official position

A striking feature in India is the silence on the part of the government regarding indigenous peoples. It is hard to find any official statement that could be identified as the formal position of the Indian government. This would perhaps surprise many, especially as India is commonly listed as a country with one of the largest populations of indigenous peoples in the world. When the Declaration was adopted at the sixty-first UN General Assembly, the Indian representative Mr. Ajai Malhotra, stated that India "had consistently favoured the promotion and protection of indigenous peoples' rights". In the case of the right to self-determination, however, he noted that this would only apply to people under "foreign domination" and not those living in sovereign independent states.² In other words, the indigenous peoples' right to self-determination would not apply to India. This naturally raises the question as to whether the Indian government views any of the Declaration's other provisions as applicable to India and in addition whether the Indian government at all recognises the existence of indigenous peoples on its soil.

This last question is relevant in view of earlier statements by Indian representatives, in various international contexts, pertaining to the argument that neither the formally recognised so-called "Scheduled Tribes" nor any other category of people can be designated as indigenous peoples. What is usually claimed is that there are either no indigenous peoples in India or conversely that all Indians are indigenous. International law scholar Benedict Kingsbury noted a decade ago that several other Asian countries, for example China and Laos, maintained a position similar to that of India.³ The Indian organisations that took part in the UN Working Group on Indigenous Populations in Geneva during the 1990s pushed for the recognition of the tribal groups or *adivasi* (original dwellers) as indigenous peoples.⁴ Such a demand, however, has made little headway within government circles.

In the absence of formal documents we have to try to re-construct the Indian position. Let me follow a slightly odd lead. The then Chief Justice of India, Mr. Y. K. Sabharwal, speaking on indigenous peoples' rights at an international conference in Toronto in June 2006, argued that the term "indigenous peoples" was still being debated in India.⁵ He pointed out several problems with identifying some groups as indigenous, noting especially the critique by the well-known Indian sociologist André Beteille. It did not occur to Chief Justice Sabharwal to address the other side in the debate, i.e. arguments in favour of the concept of indigenous peoples. Instead he suggested a general "Indian perception" according to which the term indigenous peoples is considered a misnomer in the context of India. The reasons for his dismissal are the usual ones, which, as I have suggested earlier, can be grouped under two main types of arguments, "substantivist" and "political".⁶ The first type of opposition relates to a larger debate about the impossibility of establishing universally acceptable criteria or a definition of the term indigenous peoples, as the history and present-day situation in different parts of the world vary so greatly. This then can be used to further the claim that it is a futile exercise to try to establish who is indigenous and who is not. The second type of opposition, the "political" argument often goes hand in hand with the "substantivist" one. The main issue here is that a political mobilisation based on indigenousness is likely to prove disastrous, or to have undesirable consequences in a country like India. Firstly there is a risk that it will undermine national sovereignty and territorial integrity, due to the stated right of indigenous peoples to self-determination. Mr. Malhotra raised this point at the UN General Assembly; this is also a concern for a number of other states. Secondly, assertions of indigenousness are considered to enhance ethnic divisions and pit marginalized groups against each other. This would then hamper a broader, class-based political mobilisation of oppressed groups in society.⁷ Objections of this latter type are usually emphasised by scholars and intellectuals in India with a leftist leaning.

More could be said about this, but for my purpose here I believe it is fair to say that what the Chief Justice identifies as the "Indian perception" could indeed be regarded as approximating to the official government position. Here then can be seen a generally substantivist concern regarding the definition and a political one regarding national sovereignty but again, we cannot be sure; this would appear to be how the government prefers to have it. Instead of talking about indigenous peoples the Indian government sticks to its own category, i.e. tribal peoples or more precisely the Scheduled Tribes. In short, the Scheduled Tribes are peoples or



Munda women – Photos: Christian Erni



communities that have been listed as such by the government and who enjoy certain constitutional provisions such as quotas for educational institutions, state employment and political representation. About eight percent of the Indian population belongs to the Scheduled Tribes category corresponding to roughly some eighty-four million people from some 460 groups recognized as tribes. These include small groups of hunter-gatherers and pastoralists in addition to several million people engaged in agriculture.

Chief Justice Sabharwal also used the major part of his presentation to outline the advances India had made through the affirmative action schemes relating to tribal people, described with a quote from Bêteille,⁸ as one of the “oldest and most extensive” in the world. He ended by suggesting other countries could learn from the Indian experience in tribal welfare, which, as he put it, “can be tried in other parts of the world to protect the rights of indigenous peoples”.⁹

Let me pause here and sum up what is going on. India’s Chief Justice is invited to deliver a keynote speech on indigenous peoples’ rights for international colleagues and he begins by declaring that the term “indigenous peoples” is not applicable in India. He then moves on to talk about the extensive affirmative action programmes for tribal peoples, which he concludes by suggesting as a general model for protection of indigenous peoples’ rights elsewhere in the world. This appears paradoxical to say the least. Some may choose to brush this aside as just erratic remarks by a single official and hence not the position of the government. But considering that the person speaking was at the time the highest judge in the Supreme Court of India, his views do carry some weight. And if we return again to the statement by India’s representative at the UN General Assembly, Mr. Malhotra, we can note the same paradox in claiming to be a champion of indigenous rights yet denying that such rights apply to India.

The other side

The official rejection has, however, not prevented people in India identifying themselves as indigenous peoples and aligning with the global indigenous movement. Being indigenous obviously resonates with the experiences, sensibilities and political aspirations of tribal peoples in various parts of India. Several tribal organisations in India base their struggle on the claim of being indigenous peoples and participate in national, regional and international networks that seek to strengthen indigenous rights. Various transnational actors such as multilateral institutions, donor agencies,

environmental and social campaign networks also apply the term “indigenous peoples” to refer to tribal communities in the country. In general it can be said that indigenous, tribal and adivasi are used as synonymous terms.¹⁰ International legislation and policies pertaining to indigenous peoples can therefore be considered to apply to India as well. A recent example of this is the ongoing campaign against the British mining corporation Vedanta which seeks to mine tribal lands belonging to the Dongria Kondh. The issue has been re-directed to the Supreme Court.¹¹ Survival International along with a number of other organisations is trying to put pressure on the Indian government to stop the project. In a campaign letter to Prime Minister Manmohan Singh, it said:

*Mining Niyamgiri without the Dongria Kondh’s free, prior and informed consent would violate the principles of the UN Declaration on Indigenous Peoples, for which India voted in September 2007.*¹²

It is worth noting here that Survival International takes for granted that tribal peoples like the Dongria Kondh come under the provision of the UN Declaration.¹³

In cases such as the one above, the usefulness of the indigenous peoples’ framework becomes obvious. Indigenous peoples have certain universal rights, above all, the right over their land, livelihoods and culture. If such rights are threatened by outside actors, it is relatively easy to communicate such violations to an outside audience and mobilise support networks around the world. Transnational corporations like Vedanta are not immune to such pressure and even if the company gets approval to go ahead with the mining from the necessary Indian authorities, they still have to consider the wider implications of pursuing the project. In the past few years the global mining industry has been trying hard to improve its tarnished reputation by projecting itself as socially and environmentally responsible. Such a venture is not helped by demonstrators, rallying outside the company’s headquarters in London, saying that Vedanta’s mining will destroy a valuable forest area, a sacred site as well as the livelihoods of a small indigenous people.

But looking more generally, what difference does it make for tribal communities like the Dongria Kondh to be recognised as indigenous peoples? After all, they already enjoy special status as scheduled tribes? To begin with I would like to stress the different nature of the scheduled tribes and indigenous peoples frameworks. The scheduled tribes framework is a state welfare project that seeks to uplift weaker sections of society.



Forty Dongria Kondh from several villages blockaded the road to the proposed mine site. Dongria activists swore not to leave Niyamgiri and stated, 'Niyamgiri is Dongria land. Vedanta cannot come here without our permission. We say no.' Photo: © Survival

Agency in this case can be said to reside with the state and its institutions. The state defines those who are eligible for assistance, i.e. it decides who the scheduled tribes are. Furthermore the state allots funds, designs schemes and executes these. In general it can be said that the scheduled tribes themselves have little influence over these activities. The indigenous peoples framework, on the other hand, has its base and rationale outside the state sphere. It could be argued that the international indigenous peoples' movement has emerged as a reaction to the failure of states to protect the interests of people who now assert themselves as indigenous. Rather than asking for welfare measures, indigenous peoples seek recognition as peoples with the right to govern themselves. This includes the right to their traditional territories and the natural resources therein. Agency thus remains with the peoples concerned as it is they who may decide if, for example, mining and other outside activities would be allowed on their lands. Another element that is important here is the right to self-identification, i.e. that indigenous peoples themselves should decide who should be regarded as indigenous. Self-identification is obviously a tricky issue, especially in view of the present demand by several communities in

India to be recognised as scheduled tribes.¹⁴ Here, as with other aspects of the indigenous peoples framework, it is a matter of finding a new set of decision making mechanisms and institutions to take over responsibilities that now rest with the state.

In a conference in Guwahati, in 2005, organised by the Indian Confederation of Indigenous and Tribal Peoples (ICITP), the well-known tribal leader professor Ram Dayal Munda argued that the scheduled tribe schemes have mainly led to the advancement of single individuals who have managed to get education and employment through the quota system, but that it has done little to improve the situation of tribal peoples in general. "The community is the missing link here", he said. Further, and more importantly, the tribal welfare programmes have done little to stop the ongoing displacement of tribal peoples. "Displacement", professor Munda argued, "is our destruction". He continued by saying, "since the state, who is supposed to take care of us, couldn't do it, now we have to do it ourselves".¹⁵ Munda and his organisation ICITP propagate a milder version of indigenous self-determination in that it precludes the right to secede.¹⁶ This is one of the most contentious issues within the indigenous movement globally. In India it has become a trial for the indigenous

peoples' organisations as to how they should relate to the Naga quest for independence.¹⁷ Supporting the Naga quest would confirm the government's fears that recognising indigenous rights would ultimately undermine territorial sovereignty. But to rule out completely the possibility that there are circumstances under which an indigenous people might have to resort to secession, and hence that the right to self-determination should include such a provision, would be to go against what indigenous representatives in various international forums have insisted on.

Conclusion

As I have argued in this article, the notion of indigenous peoples has had a mixed reception in India. On one hand, it has become a crucial identity and political articulation for marginalized tribal peoples. As such the notion of indigenous peoples is a social reality today. But on the other hand, the Indian government and the state more generally continue to avoid engaging with it, sticking to the view that the international framework for indigenous peoples rights are not applicable to the situation in India. In this respect, the official Indian view seems to remain unchanged. This, however, is not to say that everything remains the same. The newly passed Forest Rights Bill, that recognise land rights in forest areas for scheduled tribes and other forest dwellers, is an important move forward in respect of indigenous rights. It still remains to be seen how the Bill will be implemented. Several organisations have expressed concerns over delays and compromises but the Bill shows at least a willingness on part of the government to redress historical injustices against India's tribal, adivasi or indigenous peoples. □

Notes

- 1 **Paritosh Chakma**, 2008. India. In: Kathrin Wessendorf (ed.). *The Indigenous World 2008*. IWGIA, Copenhagen.
- 2 See "General Assembly Adopts Declaration on Rights of Indigenous peoples", (GA/10612), 13 September, 2007, Department of Public Information, New York.
- 3 See the important article by **Benedict Kingsbury**, 1998: Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy, *The American Journal of International Law*, 29(3).
- 4 I discuss this in an earlier article, **B.G. Karlsson**, 2003: Anthropology and the 'Indigenous Slot': Claims to and Debates about Indigenous peoples Status in India, in *Critique of Anthropology*, 23(4). This article is also reproduced in the edited volume **B.G. Karlsson and T.B. Subba** (eds.), 2006. *Indigeneity in India*. London: Kegan Paul Ltd.
- 5 See "Plenary Session: Rights of Indigenous Peoples", speech by Chief Justice Mr. Y. K. Sabharwal at the 72nd Conference of the

International Law Association, Toronto, 4-8 June, 2006 (http://www.supremecourtofindia.nic.in/new_links/ILA-TORONTO.pdf).

- 6 Karlsson, 2003.
- 7 For a recent example, see **Alpha Shah**, 2007: The Dark Side of Indigeneity? Indigenous People, Rights and Development in India. *History Compass*, 5(6)
- 8 Quoted from the much discussed article by **André Béteille**, 1998: The Idea of Indigenous Peoples, *Current Anthropology*, 39(2).
- 9 Page 11
- 10 See Karlsson & Subba 2006, "Introduction".
- 11 As this article is being revised, the Indian Supreme Court has ruled in the favour of Vedanta, who then will be permitted to mine the said areas.
- 12 Survival International campaign letter to Prime Minister Manmohan Singh, available at <http://www.survival-international.org/tribes/dongria>. More information can be found on Survival International's website: www.survival-international.org.
- 13 The Friends of the Earth has also joined this campaign and urge people to send similar appeal letters, see for example the statement by the president of Friends of the Earth Finland, 21 January, 2008 (<http://www.wrm.org.uy/countries/India/Appeal/Nyamgiri.pdf>).
- 14 The Gujar community in Rajasthan is an example of such an agitation for ST status. Their demand has so far been rejected, a decision that most tribal organisations have welcomed, see for example the report *The State of India's Indigenous and Tribal Peoples, 2008*, by Asian Indigenous and Tribal Peoples' Network (<http://www.aitpn.org>).
- 15 Professor Ram Dayal Munda speaking at an international consultation on "education and empowerment for self-rule" in preparation for the 4th session of the UN Permanent Forum on Indigenous Issues, Guwahati, 27 Feb., 2005.
- 16 I base this on the several discussions I have had with professor Munda.
- 17 The Nagas have been striving for independence from India for more than half a century. This struggle has caused tremendous suffering with tens of thousands dead. During the last years there is a peace agreement in place and negotiations are going on between the main rebel groups and the Indian state. For more details on the background, see **A. Gray** (ed.), 1986: *The Naga Nation and Its Struggle Against Genocide*, Copenhagen: IWGIA. and updates in IWGIA's annual yearbook *The Indigenous World*.

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