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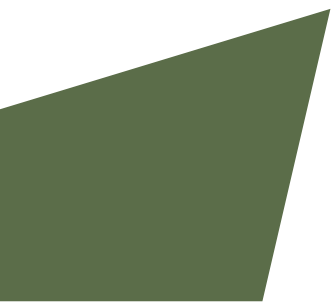
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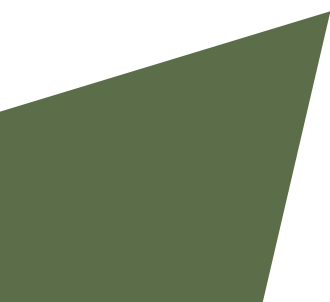
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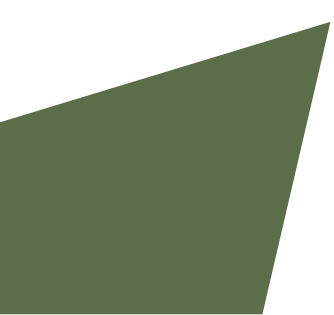
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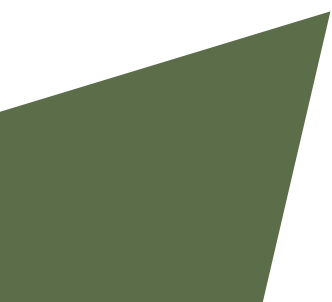
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Rethinking Indigenous Education Culturalism and Politics of Knowing

Adv. Abhinabra Barooah

ABSTRACT

The objective of the article is analysis and examine the status of indigenous population in terms of traditional knowledge and literacy rate, gross enrollment and case studies. It is apt to mentioned that education is the process in order to change the lives of indigenous population in terms of economically and socially. As a result, international organization and the respective governments of the states are held responsible in order to bring changes in the lives of indigenous community.

INTRODUCTION

India has the one of the largest populations of indigenous peoples compared to other countries. There are about 80 million of indigenous populations which are scattered around the country based on their ethnics, social, cultural and economic way. The indigenous people differ from the smallest to the largest. For example, the Sentinelese of the Andaman is the smaller group as compared to Gonds and Santhals of central India are the largest. There are some communities who are living in a extreme destitution and there are some whose annual income is well above an average income. Indian indigenous communities do share one characteristic as they are social, economic, culture and religious.

The common problem which tends to arise for the tribal population is to seek autonomy, right to seek justice on the bases of their own tradition and their own laws and right to exploit their own natural resource. In constitution of India and statues of tribal these issues are addressed and specific articles are mention for the tribal population in India. The treatment of peninsular tribe and north eastern tribe is different from one another. The British Indian government had two criteria for determining the self government that the tribes would exercise: (a) whether the tribe had the ability to manage its own affairs, and¹ (b) whether the tribal region in question had a significant non-tribal population.² According to these criteria the tribes of the north eastern states are isolated but seem to be more socially advanced and given more autonomy compared to the tribes in the rest of the country which have been placed under the aegis of provincial governors. The tribes of the north eastern states are codified in the sixth schedule and the other tribes are codified in the fifth schedule under the constitution of India. The recommendation of distinct community and their differences in attitude of

¹TRIBAL LAWS & CUSTOMS IN INDIA, [HTTP://WWW.LEGALSERVICESINDIA.COM/ARTICLE/ARTICLE/TRIBAL-LAWS-&-CUSTOMS-IN-INDIA-847-1.HTML](http://www.legalservicesindia.com/article/article/tribal-laws-&-customs-in-india-847-1.html).

²Tribal Rights in India, <https://lawupdaterblog.wordpress.com/2016/10/11/article-on-tribal-rights-in-india>

two region of the tribe were approved by the constitution of India at the time of independence. Majority of the tribal population are in the fifth schedule areas so the Indian parliament decentralizes and legislate the (panchayat extension and schedule areas) which is known as PESA act 1996 exclusively for these areas. PESA officially ordered the tribal and non tribal communities to pass down the political, administrative and fiscal to the local government. PESA did not amend the Fifth Schedule but the participation of the tribal communities should be through limited self government and the arrangement is to be better suited to their level of advancement. After a decade, it is apparent that PESA is clearly not achieving that objective because of the state administration to cede authority which compelled the tribes of the fifth schedule areas to reassert their own identity and rights violently by threatening the state government. Yet, the government did make any alternative schemes for tribal population in peninsular area in India and no debate took place governing this tribal region. Various development took place in the last few years like the creation of two new states Jharkhand and Chhattisgarh, political movement in 2000 introduces and revision of the National Tribal Policy, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act passed in December 2006, which grants tribal population some measure of ownership in forest lands for the first time. With this tribal right are increasingly rising as a national concern for the Indian government.³

OBJECTIVE OF THE STUDY

1. To analyze the Tribal population to cope up with imposed laws.
2. To analyze development towards protection of indigenous population in the world.
3. To examine the challenges faced by Tribal population.
4. To analyze the Traditional Knowledge of different tribes and how Intellectual property plays a role.
5. To examine the case studies and provide suggestions.

³TRIBAL LAWS IN INDIA AND TRIBAL CONVENTIONS ON RIGHTS OF INDIGENOUS PEOPLE WORLDWIDE, [HTTPS://WWW.LEGALINDIA.COM/TRIBAL-LAWS-IN-INDIA-AND-TRIBAL-CONVENTIONS-ON-RIGHTS-OF-INDIGENOUS-PEOPLE-WORLDWIDE/](https://www.legalindia.com/tribal-laws-in-india-and-tribal-conventions-on-rights-of-indigenous-people-worldwide/)

RESEARCH METHODOLOGY

This study basically follows the Collective/doctrinal research method in which the compilation, interpretation and systemizing the primary and secondary source of data has been done. The research has been the done from the various articles and judgments from different websites of Indian Government and world government which pinpoints the data that are collected. After collecting the data, the researcher conducted the in-depth analysis of the content through which it concluded that the data is historic, descriptive and contains analytical views. The study of these articles is organized and systematized from the secondary source material. Thus, it will provide ample information regarding struggle of indigenous people in our country and worldwide.

PURPOSE AND LIMITATION OF STUDY

The paper is an attempt to trace the impact of indigenous people and basically deals with the deals with the challenges/ issues, protection of indigenous knowledge, role play by intellectual property law and developments etc. It also provides some judgments and describe different tribes and the role they played.

However, every study has their limitation. The study of indigenous population is very wide and extensive which is why it is impossible to study each and every judgments and tribes in the country. Moreover, all the judgments, traditional knowledge, struggles of each tribe etc. are not possible to discuss and describe in details. Only the prominent portions are curved out from the websites and are mentioned in the research paper.

THE TRIBAL STRUGGLE TO COPE WITH IMPOSED LAWS

In spite the guarantees given by PESA and also the custom and traditions are respected by state government and their laws, the state laws would respect tribal customs and traditions. This Act has reduced the value of the tribal traditions of self-governance. The sub national lack of interest does not violate the tribal norms instead the statutory schemes of the government which compels the tribes to follow the non tribal concept. When the system was promoted by the local government for non tribal communities in part IX of the constitution and the aged old system of indigenous governance was

instantly abolishes by the parliament of India. This created an unexpected turn for the tribes which create an unexpected shift from traditional institutions to an alien concept of elected representatives and Panchayats has affected the participation of the tribal people and not utilizing the institutions properly⁴. Our nation has one of the largest populations of indigenous peoples as compared to any country in the world. Approximately there are 80 million indigenous population in India which is one fourth of the world's indigenous population and these peoples vary in ethnicities, cultures and socio-economic situations. They go from last isolated or lost indigenous communities in the world, like the Sentinelese of the Andamans, to some of the largest, such as the Gond and Santhals of central India. There are some indigenous communities who live under condition of extreme poverty but there are also communities whose social, economic and psychological welfare is well above national average. There is only one characteristic that Indian indigenous communities do share around the world and that is social, political and economic marginalization.

In acknowledgement of this fact and reflecting over a century and with continuous struggles by indigenous people, India has a complete and impressive set of laws, policies and Constitutional provisions which are aimed to protecting the rights of such indigenous communities. India opposes to recognize and acknowledges international framework for such protections, embodied primarily in International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples, 1989 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007. India did sign an agreement to ILO Convention No. 107 on Indigenous and Tribal Populations and voted in favor of the UNDRIP. Therefore, it firmly insists that of indigenous communities of their own group cannot claim status or protection under these laws. The Indian government rejects term 'indigenous peoples', and says that all Indians are indigenous and especially hostile to any reference to the rights of indigenous people to self rule, self-governance or self-determination". In spite of the fact that India's own laws provide various degrees for such protection in some cases to certain communities.⁵

The Indian approach and legitimate structure for indigenous people rights and their liberty will value the spirit of international law. Part I and Part II will be giving different reports such as Part I describes on the contrary to social and political situation of the indigenous communities while Part II examines

⁴ file:///C:/Users/ABHINAB/Downloads/UNDP-Policy-Brief-on-PESA.pdf.

⁵ Paltasingh, Tattwamasi. (2014). TRIBAL POPULATION IN INDIA: REGIONAL DIMENSIONS & IMPERATIVES. Journal of Regional Development and Planning, Vol. 3, No.2, 2014. 3. 27-36.

the policy and legal framework on specific areas of indigenous peoples' rights.⁶ On the basis of this report the Indian political and legal situation tends to be focused on the basis of principles of equity, self-governance and justice under the basis of the international instruments. On the contrary of all the three principles India is far short on the rights of indigenous people on international standards compares to other nations. The legal and policy instrument of Indian law for indigenous peoples' rights is spoiled by one fundamental flaw that clashes Indian states with the political rights of indigenous peoples and the subsequent widespread violations of these.

THEORITICAL PERSPECTIVES: CASE STUDIES

Education system:-In India the societies are differentiated by high level of structural inequalities based on the caste and ethnicity. According to Indian society the tribal people are mostly socially and educationally backward group in India. The differences in social and economic histories of indigenous people which tend to differentiate the education for Indigenous and tribal people. This paper will help us to analyze the access and contribution of the most disadvantaged group of Indian population through enrolment, GER, enrolment by level, and sexual orientation differences. This paper will also discuss about the affirmative action in practice and also propose some suggestion.

Committee reports:-the tribes of Andhra Pradesh were studied by K. Sujatha (1994) which deals with the educational development of tribal communities and fails to address the specific disadvantages distinguishing the tribal population. She found out that the reason behind the tribal education problem was because of the adoption of dual system of administration⁷.

Rani, M (2000) observed in her study that due to the language differences between the tribal children and the teachers lead them to end their education at some point.

Jha&Jhingran, D. (2002) believe and supported that in the tribal areas the teacher should use their mother tongue or home language as a medium of language in the early stage of education. Hence this

⁶ INDIA AND THE RIGHTS OF INDIGENOUS PEOPLES, [HTTPS://AIPPNET.ORG/INDIA-AND-THE-RIGHTS-OF-INDIGENOUS-PEOPLES-2/](https://aippnet.org/india-and-the-rights-of-indigenous-peoples-2/).

⁷ Language, Rights and Opportunities: The Role of Language in the Inclusion and Exclusion of Indigenous Peoples, <http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/StudyLanguages/FernandDeVarenes.doc>

will create greater significance for the tribal children for their education as the main language is quite different from the regional language and will help them to learn more efficiently. It is also wise advisable to have local teachers of the same tribal community.

According to the Praitichi Committee Report (2002) the lack of motivation of teacher, lack of inspection, cost of schooling and also the private tutoring is the main problem in the path of tribal children's education.

Gautam, V. (2004) wrote in his article that dropout rates of the tribal children is pretty much high. He also examines that due to the appointment of non tribal teacher and the communication gap between them was the main reason of high dropout in tribal schools.

According to Maharatna in 2005, his main concern was how the tribes and the mainstream society can develop mutual interaction between them but does not concern how tribes can be brought within the folds of mainstream society and culture.

Nair, P. (2007) has given significance on non-formal education in tribal territories especially to with the hardest-to reach group of children in remote areas. NFEs hence target children who drop-outs from the formal system of education. This non-formal method of education provides room for innovations and is flexible to a rigid system in terms of organization, teaching method, content, target group of learners and evaluation procedures.

Sedwal, M. and Kamat, S. 2008 has mainly focuses on issues related to Scheduled Castes and Scheduled Tribes. This group recognizes the positive action within the Constitution of India.⁸

TRADITIONAL KNOWLEDGE OF INDIGENOUS TRIBES

TRADITIONAL KNOWLEDGE OF KANI TRIBE:-

This case was related to kani tribe who lived in the Agasthyimalai in Western Ghats. The total population of the indigenous tribe is about is 25000. A group of scientist from JNTBRI went for the expedition and found out the value of the leaves and the fruits to avoid fatigue.⁹

⁸ Scheduled tribes education in india: issues and challenges, <http://oaji.net/articles/2017/1174-1536999030.pdf>.

⁹ Jeevani to fetch benefits for Kani tribe, <http://www.thehindu.com/news/national/kerala/jeevani-to-fetch-benefits-for-kani-tribe/article7718163.ece>

They research on the plants which were headed by Dr Pashupandra. According to him if the medicinal plants are found to be safe then it will be of great value.

After years of research these chemicals which is combined with three other plants and TGBRI produced scientifically verified and standardized herbal formulation for its reproduction. At last the name was given Jeevani which is known as giver of life.

Dr Pashupandra and their research team thought that without proper intellectual property protection they would not be able to generate proper revenue for Jeevani and no financial gain for Kani Tribes. Dr Pashupandra had filed original patent application to Intellectual property India on 2008. Patent application was published in India but yet not granted. Under the terms and agreement between JNTBRI and Avp. JNTBRI will receive two percent of Royalties on sale of the Jeevani. JNTBRI maintain right to license for other companies as well. From there on licensing remain consistent and renewed thereafter.

The use of traditional knowledge is quite rich among the kani tribes it played pivotal role on their years of survival. Dr Pashupandra and their team never took the traditional knowledge for granted. Yet JNTBRI received United Nations Equator Prize for its work in fostering the creation of the agreement for their work. It is the foreign national who exploited the traditional knowledge and attempted to protect the component of the Indian Traditional Knowledge under patent regime. The jeevani product was sold in United states market without the knowledge of JNTBRI. When this came to JNTBRI attention, this erupted to a great dispute and brought considerable media attention. Hence the case never fully resolved and abandoned the trademark resolution on 2001.

Despite the lack of IP protection in major markets such as the United States, Jeevani has been a big success for JNTBGRI, AVP and the Kani people¹⁰. Jeevani is now known as the “ginseng of India” and has been one of AVP’s most successful products. It has made a significant financial impact on the lives of the Kani people. The Kani have already received financial injections into their community, and the success of the benefit sharing agreement has led BMC to propose that the license fee be doubled to US\$ 52,000 and the royalty payment also be doubled from two percent to four percent, which would translate into more financial gains for the Kani¹¹.

¹⁰ *Despite the lack of IP protection in major markets such as the United States, Jeevani has been a big success for JNTBGRI, AVP and the Kani people*, http://www.wipo.int/ipadvantage/en/articles/article_0078.html

¹¹ INTERNATIONAL JOURNAL OF LAW & MANAGEMENT STUDIES, <http://www.ijlms.in/issues/vol1iss3.pdf>.

TRADITIONAL KNOWLEDGE OF BONDA TRIBE:-

Hadi Dhangada Majhi is a 19 year old Bonda (primitive tribe) indigenous Boy. He belongs to a family of seven siblings along with his father. His father profession is a farmer and he is the eldest in the community. Two of his sibling's work as sharecroppers to add to the family income. All these misfortune of life abstained Hadi from achieving education that he always wanted to achieve in his village. A mediocre boy, Hadi Dhangada Majhi had interest and was very enthusiastic in sports but no opportunities were available for him. He was enrolled in his village school; however, his priorities changed as soon as he reached class IV¹². By that time he was through with his education and he had to put aside his hope to be educated and assist his father in getting some family income. After 5 years he got the opportunity to be educated again. This time the teachers and counsellors from KISS introduced him to the institute. His journey has been one of great wonder and joy for him. Though he was an average at his students, he took sports as his priority. He started playing Kabaddi and represented Odisha at national level meets with the help of his coach at KISS. He switched to play rugby and soon became very popular with the game. In 2007, Hadi was part of a team of twelve that commences on a journey to England. the tournament progressed and Hadi alongside his team cavorted past teams from Zambia, Romania, Switzerland and Kenya meet South Africa in the finals. The final was a one sided as KISS trashed the opponent by winning 19-7 and becoming the Under - 14 World champions. Hadi met people from various cultures and the opportunity was enormous. However, he continues thinking about his roots. Hadi came back to India as a hero. Hadi says that he would like to stay in KISS untill he graduates and he cannot even think about a life beyond KISS for the support and love he received from KISS. Now his aim is to become a sports person and a coach; and he would love to train his people in sports¹³.

STATE OF MADHYA PRADESH V. KUMARI NIVEDITA JAIN: -¹⁴

The Supreme Court of India dealt with the question of admission of students to the M.B.B.S. Course in the State medical colleges. The Government of Madhya Pradesh framed rules providing for a minimum of 50 % as qualifying marks for the students of general category for admission to medical

¹² USING TRADITIONAL KNOWLEDGE TO REVIVE THE BODY AND A COMMUNITY,
[HTTP://WWW.WIPO.INT/IPADVANTAGE/EN/DETAILS.JSP?ID=2599](http://www.wipo.int/ipadvantage/en/details.jsp?id=2599)

¹³ Pattnaik, Sonali & Pani, Chitta. (2015). Indigenous Knowledge & Traditional healing Care: Belief & practices among Bonda, Saora, Kandha & Paraja Tribe of Southern Odisha.

¹⁴ 1981 AIR 2045, 1982 SCR (1) 759.

colleges but Scheduled Castes/Scheduled Tribes students, the minimum was zero. Upholding the validity of the rule, the Supreme Court submit that entry 66, List I, did not apply to the selection of candidates for admission to the medical colleges because standards would come in after admission of students. The Court ruled that entry 25, List III was wide enough to include within its ambit the question of selection of candidates to medical colleges and there was nothing in entries 63, 64, 65 and 66, List I to suggest the contrary.

DEVELOPMENTS TOWARDS THE PROTECTION OF INDIGENOUS KNOWLEDGE

The early developments in international law were to protect the expressions of folklore which was the part of the culture of indigenous people. In the year 1967, when an amendment to the Berne Convention sought to recognize the claim of unknown authors in case of unpublished works. This was one of the first developments to seek the work of an unknown author in an international instrument on IPR. However, the scope was very limited as the term folklore was not expressly mentioned. The Tunis Model Law which was drafted by UNESCO and the WIPO, it set up some guidelines which needs to be act based on this guidelines and also some significant changes were made in order to protect the folklore for an indefinite period, whether or not it was fixed in some material form or not. In the year 1982 Model Provisions for National Laws on the Protection of Expressions of Folklore were released by UNESCO and WIPO. This model law got rid of the idea of individual ownership and instead creates a competent authority at the national level to protect folklore. The prior permission of the authority needs to be consented before using the folklore outside the traditional or territorial context. They also need to acknowledged the origin of the folklore and provide for criminal penalties in violation of the provisions. However, till date it has not been tested because no country has adopted them so far. The application of the model provisions are limited as they do not seem to consider all aspects of indigenous interest. The protection mechanism on an authority which was created by the state, it neglected the role of the indigenous community as an agent to control and

preserve the indigenous knowledge, hence, denying the inherent link which exists between indigenous knowledge and the holders of such knowledge.¹⁵

The earlier treatment of indigenous people in the conventions of the International Labour Organization did not address the issue of indigenous knowledge. ILO made an attempt to integrate the indigenous people into their respective countries presents them as backward. The ILO went a step further and recognized that indigenous customs essential to survive. The Convention on bio diversity focuses more on the rights of indigenous people over the control and protection of indigenous knowledge. The need to promote indigenous knowledge for the protection of biodiversity is recognize in the Article 8(j). The indigenous knowledge recognition and the fact that it is valuable and can be exploited are positive steps toward protection of indigenous knowledge. Although it does not tackle the right of control over knowledge that vests in the indigenous community, hence it provides for the benefits of sharing with the indigenous community. Many declarations of indigenous people like the Matatua Declaration which highlight that indigenous people should define for themselves their cultural and intellectual property and that existing mechanisms were not sufficient.¹⁶

OVERVIEW ON INDIGENIOUS IN INDIA

In India there are around 8.6% of the total populations in the world. Out of the total number of population 705 schedule tribes are recognize by the government of India. Each of them has different cultures, social practices, religions, language, and occupations¹⁷. The tribal groups are diverse in different ways and their distinctions are a function of the environment in which they live, the level of exposure to the main Hindu population. The government of India gets involves with the tribal population of their history, economic status and their present lives. Most of the Indigenous people are heavily found in the north eastern part of India, which is Arunachal Pradesh, Meghalaya, Mizoram, and Nagaland, though the percentage is small compared to the total population in India. Despite the fact that the percentage is small but they were given protection under the constitution of India (1950) and are the most burdened ethnic group in India.

¹⁵ The knowledge of indigenous peoples and policies for sustainable development: updates and trends in the second decade of the world's indigenous people, https://www.un.org/en/ga/69/meetings/indigenous/pdf/IASG%20Thematic%20Paper_%20Traditional%20Knowledge%20-%20rev1.pdf.

¹⁶ The ILO and Indigenous and Tribal Peoples, <https://www.ohchr.org/Documents/Publications/GuideIPleaflet8en.pdf>

¹⁷ <https://www.iwgia.org/en/india.html#:~:text=Indigenous%20peoples%20in%20India%20comprise,which%20are%20not%20officially%20recognized.>

Analysis: - In 2009-2010, approximately around 1.08 million of indigenous students were enrolled in higher education. Out of the total indigenous student enrolment, around 0.40 million were females and 0.68 million were males. The number of male populations was higher than the female indigenous population. The number has increased since last decade. The enrolment for male population grew 304.48%, whereas female enrolment grew 399.14% during the period of last decade that is 2000-2010. The annual growth rate of indigenous enrolment during this period was 33.52%. The female percentage has also increased from 32 percent to 37 percent during the last decade. The participation of females getting enrolled was very less as compared to male during 1990- 1991. But eventually the number has increased that is from 0.02 to 0.06 million in 1995. In the year 2004 and 2005 the figure of enrollment increased that is 0.15 million females and 0.43 males indigenous population. By the year 2009-10 the participation percentage of males were 6 percent and female were 4.82 percent.

An analysis by level of education revealed that out of the total number of indigenous students enrolled in higher education, 0.36% were enrolled in Ph.D./M.Phil. programmes, 7.25% in postgraduate programmes, 60.38% in undergraduate programmes, 6.87% in post-School diploma programmes, 0.28% in postgraduate diploma programmes and 24.85% in open universities.

CHALLENGES IN SPREADING EDUCATION AMONG INDIGENIOUS

Problems of Tribal Education are as follows: -

- Language – Language is the main problem of tribal children that prevents them access to education. There is huge communication gap between local language and tribal language.
- The Location of the Village – the location is one of the causes of the problem as the tribal children are physically hurdle which leads them to attend the school in neighboring village.
- Economic Condition - The economic condition of tribal people is so bad that they do not desire their children to attend schools.
- Attitude of the parents – As parents do not want to spend money on their children education instead, they prefer their children to work so that they can support their family. With this kind of attitude most of the tribal children remains uneducated.

- Teacher Related Problems – teacher is often absent because of the location of the village and with this the tribal children do not get proper education which destroys the quality of the education.
- Lack of proper monitoring- There is no system of proper monitoring by the Tribal Welfare Department and School Education Department as the coordination is very poor.¹⁸

The major shortcoming is that formal school systems rarely reflect the realities of indigenous livelihoods or traditional educational systems:

- Most of the national curriculum tends to ignore indigenous peoples' history, cultures and their languages; textbooks, scripts and other educational materials reflect their values, norms and traditions of the tribal society.
- Formal school education which is provided in the national language and the languages of indigenous peoples as well as their traditional knowledge and skills are ignored or underestimated.¹⁹
- The School terms and the daily schedules do not consider with the indigenous peoples' livelihood, for example, pastoralism and nomadism.
- The methods for conveying instruction and class discipline clash with those commonly practiced in the student's home or community for example, they abstain from using corporal punishment or humiliating children in front of others.
- Most non-indigenous teachers are not ready to teach in indigenous communities because of lack of cultural training and understanding of indigenous people's values and their ways of life.
- Elders and members of the community are not involved in setting up the direction or educational goals of the school for the tribal people.

The following factors also negatively affect indigenous peoples' access to formal education:

- Lack of school infrastructure in the areas where they live;

¹⁸ Challenging Issues of Tribal Education in India, <http://www.iosrjournals.org/iosr-jef/papers/vol3-issue2/Version-2/J03224852.pdf>.

¹⁹ Challenges in policy and practice: pastoralists and nomadic peoples, <http://minorityrights.org/wp-content/uploads/old-site-downloads/download-657-Case-Study-Challenges-in-policy-and-practice-pastoralists-and-nomadic-peoples.pdf>

- Lack of mobile schools and culturally adequate boarding facilities for nomadic and semi-nomadic indigenous children;
- Financial burden on tribal children by imposing tuition fees and the indirect costs of education eg:-materials, uniforms, school meals, transport);
- Poor learning conditions like shortage of desks and chairs, poorly lit and ventilated classrooms and unsafe school environments.
- Militarization in indigenous territories disturbs the normal functioning of daily cycle and firmly establishes fear which affects the children's education including the use of community schools as military detachments.²⁰

These shortcomings create negative impacts on many indigenous peoples worldwide which share traumatic school experiences. There are some instances like 1) separation of children from their families; 2) living in boarding schools which are unfriendly and unsafe; 3) abused by fellow pupils 4) learning foreign systems of knowledge in a language other than their own 5) Taught by teachers from cultures that are different from their own.²¹

Thus, many indigenous children experience the loss of their identity and with the mainstream values and norms. While not all the indigenous youth fully becoming a part of the dominant national society. Research shows that the loss of cultural identity and schools are the important factors lead them to substance abuse and suicide among indigenous youths.

LIMITATIONS IN INTELLECTUAL PROPERTY LAW TO PROTECT INDIGENOUS KNOWLEDGE

The Intellectual property right is inadequate to protect the expression of indigenous knowledge of the tribal community like art and craft, invention from herbs and so on. The origin of the copyright law lies in the western roots which recompense the efforts of the individual. Thus it focuses the efforts of

²⁰ <https://www.slideshare.net/sankar1975/issues-and-challenges-of-education-in-tribal-areas>.

²¹ BARRIERS TO ABORIGINAL EDUCATION,

[HTTPS://WWW.CREATIVESPIRITS.INFO/ABORIGINALCULTURE/EDUCATION/BARRIERS-TO-ABORIGINAL-EDUCATION](https://www.creativespirits.info/aboriginalculture/education/barrriers-to-aboriginal-education)

individuals and has requirements for the originality, fixation, protection to be limited duration and focuses on economic remedies. Folklore a kind of indigenous knowledge is passed from generation to generation in the tribal community. Thus, leads to problems of vesting of rights as the intellectual property for the individual and not the community. The Australian case of **Yumbulal v. Reserve Bank of Australia** it showed that how individual notion of copyright law is difficult to reconcile with indigenous interests. In this case, the Court said the community was not provided with the protection under copyright act which is essentially communal in first place. The court rejected the indigenous artwork which was printed on currency note and also prevent the use of the artwork in a culturally abusive manner. The Court gave the decision which relied on the terms of the contract between the bank and the individual artist. Hence, the Court stated the limitations of IPR to recognize communal ownership to property. After granting such decision the customary law of the Indigenous people was completely ignored by the court that shows failure of IPR based on western description and also ignored the other types of descriptions. The law for copyright requires some degree of originality in which expressions of folklore may lack as in many cases. This kind of work is necessary which grant greater importance for the preservation of the culture. The length of time and the protection is very limited which requires to balance between Labour produced and the demands of the public. Thus, the development of the folklore is indeterminate and passed on to generation to generations that's ensures the cultural preservation of the community. Hence placing a fixed time for its protection actually goes against the very process of development of folklore and against the hope of indigenous people. Further, it can enforce protection through the litigation process which will emphasizes on their economic, commercial work and also help them with their financial strength which is their rights in a court of law.²²

²²THE CHALLENGE OF INDIGENOUS EDUCATION - UNESDOC - UNESCO,
[HTTP://UNESDOC.UNESCO.ORG/IMAGES/0013/001347/134773E.PDF.](http://unesdoc.unesco.org/images/0013/001347/134773e.pdf)

FINDING AND ANALYTIC VIEW

Indigenous population in terms of number are very large. They are the most economically improvised group in our country. They have to face lots of challenges in order to uplift their status in the society. Moreover, traditional knowledge played an important part in the lives of indigenous population. Such people are taken as example and they are kani tribes of western ghats. These does not end well and they cannot protect their indigenous knowledge without any proper education.

Indigenous people have faced lots of problem in their entire life. The steps were taken by lot of International organization to protect and provide rights to the indigenous population. Such as UNESCO and WHO have drafted guidelines and International Organization has attempted to protect the indigenous people. However, this will not help the tribal population if only international organization attempts to protect but it should be the countries own government to recognize the tribal groups and help them achieve to uplift their status and also to protect their traditional knowledge. Moreover, government should provide education to the tribal groups in their own mother tongues so that it helps them to understand the outcome of the lessons thoroughly.

The judgments that are cited in this article provides with the view of indigenous population struggle. Every case has one or the other problem and provided the views of indigenous population and their traditional knowledge. However, the article cites some of the tribes and their problem faced by them. Further, it also viewed the struggle of the tribal population to cope up with imposed laws. Moreover, the article gave the overview perspective of the indigenous population in the country like India and what are issues and challenges they faced in their day to day lives. However, intellectual property rights are very limited for indigenous population and the government should be held responsible in order to provide the rights to the tribal community. In the end lot of problems are needed to tackle down in order to preserve the rights of the indigenous communities.

CONCLUSION AND SUGGESTIONS

Our study is step towards documenting the facts relating to traditional knowledge of indigenous tribe which could be used for the understanding of essentials of tribal community. To the best of our knowledge, we also tried to highlight the immense scope of further study in the traditional knowledge, geographical, educational and political area. However, the advent of modern civilization has adversely affected the tradition and heritage of the tribal community and thus the younger generations are not exposed to traditional practices. There should be focused efforts to promote the use of traditional knowledge. Modern arena of advancement can also provide an opportunity to promote and explore the existing traditional knowledge among Indigenous tribe.

Some suggestions for improvement of tribal education are as following:

- Literacy campaign - Proper awareness campaign should be organized to create the perception of the situation about the importance of education. There should be literacy campaign in the tribal dominated districts may be undertaken on a priority basis to literate the tribal.
- Attitude of the tribal parents with proper education and counseling the attitude of the tribal parents should improve towards education.
- Relevant study materials in local languages - All the study materials should be supplied in local languages of tribes.²³
- Appointment of Local teachers and female teachers - The appointment of more tribal teachers and female teachers in the tribal areas is to importance. The ecological, cultural, psychological characteristics of tribal children should be considered carefully by the teachers in tribal areas.
- Stipends and various scholarships - Since higher education among the tribes is less, special ST scholarships should be provided to the tribal students perusing higher education, particularly in medical, engineering, and other vocational streams.²⁴
- Residential schools – there should be more residential schools which needs to be established in each states and districts and need to be extended up to PG level in tribal areas.

²³Challenging Issues of Tribal Education in India, <http://www.iosrjournals.org/iosr-jef/papers/vol3-issue2/Version-2/J03224852.pdf>.

²⁴NEW PERSPECTIVES IN SOCIOLOGY AND ALLIED FIELDS EDITED BY SHASHIKANT SHARMA, PAGE 88.

- Social security- Social security of students, especially of adolescent girls is of great concern in residential schools.
- Proper Monitoring – The officers of higher level should check the functions of the schools frequently that relates to the teaching methods, working hours, and attendance registers.²⁵