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**INSTITUTIONAL BARRIERS TO IMPLEMENTING
INDIGENOUS RIGHTS UNDER ILO CONVENTION
NUMBER 169: CRITICAL APPRAISAL OF THE JAWARA
(JARAWA) TRIBES**

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ABSTRACT

The study critically analyses the institutional barriers hindering the effective implementation of indigenous rights under the International Labor Organization (ILO) Convention No. 169, with a specific focus on the Jawara Tribes of India. Despite India's rich diversity of indigenous communities and its' international commitments, the realization of rights enshrined in the ILO Convention 169 remains significantly constrained. This research employs a qualitative methodology based on fieldwork observations and a comprehensive analysis of existing legal and policy frameworks. The findings reveal entrenched institutional challenges such as fragmented legal provisions, administrative apathy, lack of political will and socio-economic marginalization that collectively obstruct the effective translation of ILO standards into actionable protections for the Jawara Tribes. Additionally, the study highlights inconsistencies between national laws and international obligations, resulting in gaps that weaken indigenous claim to land, cultural preservation, and self-governance. The Jawara Tribes experience multifaceted exclusion due to these systematic shortcomings, which undermine their autonomy and access to justice. This critical appraisal exposes the disconnect between theoretical frameworks and ground realities, emphasizing the urgent need for comprehensive institutional reforms. Recommendations include harmonizing domestic legislation with ILO Convention 169, enhancing tribal participation in decisions making processes, and establishing robust monitoring mechanisms to ensure accountability. Ultimately, this research contributes to broader discourses on indigenous rights in India by identifying practical pathways to strengthen institutional capacities and ensure the dignity, rights, and welfare of indigenous peoples like the Jawara Tribes, aligned with international human rights standards.

Introduction

The rights of indigenous peoples are covered by an international law, especially the ILO convention number 169, the only binding international convention wholly dedicated to indigenous and tribal peoples. Convention 169 establishes the rights of the indigenous people to their traditional lands, resource, culture and involvement in making decisions that affect them. India as a country has ratified it, however, has not signatory in ILO 169. In India, there are important terms whose definition can be found in the legal domain. The statutory protection of indigenous groups is more or less varied. Constitutional Provisions, (Directive of Article 46 of SC/ST welfare, time schedule, safeguards, schedule, tribe recognition) and by statute, such as the Foreign Rights Act, 2006 (FRA) and the Panchayats (extension to schedule areas) act, 1996 (PESA). But these laws are not always applied evenly or not at all to distant tribes. The Jarawa Tribes (especially in Andaman and Nicobar Island) are a peculiar vulnerable tribal group under the protection of the Andaman and Nicobar Islands (protection of original tribes) regulation, 1956, one of the dominating colonial laws of that time. This paper critically looks at the institutional barrier that have not facilitated meaningful enforcement of indigenous rights of Jarawa to ILO 169 standard. It examines the disjointed, juridical regime, agencies inert and the political nonchalance in Jarawa concerns, and the social economic margin, action of the Jarawa. It also relies on recent case studies of the Jarawa, especially, the Andaman trunk Road and health crisis-and makes some comparisons to propose reforms to make the India regime more like the intent of ILO 169.

ILO convention 169 and the indigenous rights.

On June 27, 1989, the ILO convention number 169 was adopted and became effective in 1991, with a subject of indigenous and tribal peoples in independent states. It establishes the definition of indigenous peoples in a broad way and it is the sole legal binding international instrument in the event of indigenous rights.

Its commitments encompass the rights of tribal peoples to their lands and natural resources, to their cultures and institutions and determine how they are themselves to be developed. The convention expects states to consult the indigenous people via their representatives and seek their free, prior and informed consent to any acts of legislature or administration before any act of legislature or administration directly impacts them and prior to any project directly impacting their lands or resources. It further ascertains preservation of tribal practices and

institutions and maintenance of tribal identities. In sum, ILO 169 enshrine. The principal that indigenous people should not be the objects of the policies made and decided by others, but partners in decision-making regarding their lands and lives. ILO 169 has been ratified by a rather small number of countries, even though it is an old one. By 2017, there are only 22 party country representatives, mostly of Latin American countries. India, prominently, is not a signatory to the convention, the restricted inclusion of Asia as opposed to the indigenous dominant situation of certain Latin American states. Nonetheless, ILO 169 is the standard used in the international human rights bodies to measure the rights of indigenous people. India was, as an example, encouraged by the committee on elimination of racial discrimination that in 2006 it should adopt conventions standards when safeguarding tribes such as Jarawa. In reality, ILO 169 reflects the lowest International norms of indigenous rights (land, consultation, culture, self-determination) by which the domestic policy must be evaluated.

The law and constitutional provision of tribal rights in India.

The Indian constitution and laws provide many provisions on tribals, however, these are spread widely and are restricted in most cases. In the case of the Jarawa, the major legal tool is still the Andaman and Nicobar Islands regulation, 1956, a regulation issued by the President under article 243 of the Constitution. This law describes aboriginal tribes as comprising of Jarawa, and other local tribes. It provides the territories of tribes as preserved places and highly restricts foreigners: to enter a reserve Jarawa tribe territory without a special pass the penalty is a possible term of up to 1 years of imprisonment. The rule specifically dethrones any conflicting law. Effectively, Jarawa land is statutory safeguarded land plans prohibiting land, alienation or exploitation by external parties: transfers between tribal land necessitate the chief commissioners, outsiders may not buy land or conduct business in the areas of reservations without.

Permission. These provisions reflect a protective intent, but in the practice, the regulation has existed with contradictory developments and is poorly enforced. Beyond the A&N regulation India has enacted general laws for tribal welfare:

The scheduled tribes and other traditional forest were formally recognized as the Forest rights act, 2006. This law acknowledges the rights of the tribal and other forest, dwelling dominates over forests, land and resources. FRA grants Individual and community rights (like self cultivation and grazing land), and specifically includes habitat and habitation rights of tribally

vulnerable population groups. The Jarawa are listed under the category of one that is eligible to the protection of FRA on a nationwide basis. Nevertheless, practically, FRA implementation has been a slow and patchy process in India. According to national statistics, small group of people comprising 1.2% of the various eligible forest areas had rights registered in 2014, as a result of administrative delays, absence of Grama Sabha, outreach, and forest department opposition. According to the Ministry of tribal affairs FRA was to reverse historical injustice and give laure to Forest tribes, however the tribal minister of India has confessed that such implementation has been unequal and usually on to the individual officials. Even in the remote reserves of Andaman, FRA claims have not been registered at all, partly due to Jarawa being highly in contact with each other, and possibly averse to formal claims. In this way, although FRA has been progressively provided, the Jarawa have not received a lot of tangible good by it.

Panchayat (extension to schedule areas) act, 1996, PESA is Panchayati Raj, which Fifth schedule is village self-government, states it vests Gram Sabha has authority over the management of local resources, planning and development and requirements consideration of the mining or land transfers. Nonetheless, PESA is only applicable in listed states. Jarawa is legally subject to the PESA, example Odisha and Chhattisgarh which, however, do not contain the union territory of Andaman and Nicobar. One of the scholars points out that PESA was aimed at protecting tribal interests in the planned regions, but it extends only to specific states. The Jarawa tribes do not have a PESA equivalent legislative empowerment of gram Sabha or tribal councils. Part X of the constitution, schedule V and VI, which is a provision of the constitution, specially governs some of the tribal areas, the Andaman Islands being not under these regimes. The principles of the constitution are directives which the state is instructed to follow further tribal, and India has come up with the schedule tribes and other traditional.

Forest Dwellers act and prevention of atrocities act 1989 are among others. Nonetheless, ILO 169 or FPIC are not named in the Constitution, and there is no general legislation on FPIC. Tribals also have a legislative reservation right under article 330 to 332 in legislatures and that do not have any practical effect on Jarawa specific control of land or resources. Concisely, the tribal rights regime in India is a patchwork: it works in theory but fails in most instances applicable or unforced when applied to isolated tribes. PESA and FRA implementation "depends on the initiative of individual district, administrators" to produce patchwork of gains.

The Andaman and Nicobar regulation, 1956.

Considering the special position of the Jarawa, the regulation of 1956 is the one. It made Jarawa territory a reserved area and the chief commissioner has the power to declare a reserved area. In sacred spaces, no foreign member can enter such spaces or purchased land without authorization. Breaking into a reserved place is a punishable offense under section 8. In a sense, The law acknowledges Jarawa sovereignty of their forests. In addition, the regulation clearly says that it prevails over any other statute that has inconsistent meaning to the law, such as the ordinary land or mining laws should give way before the regulation and its protection. Therefore, the act of 1956 gives Jarawa a good legal foundation to defend the Jarawa land and autonomy in practice, but the orders have been violated or rather ignored. The regulations as mentioned below the government itself was constructing the Andaman trunk Road through a notified Jarawa reserve contravening section 3, and providing external use of the road, which weakened the regulations.

Forest rights act, 2006

The FRA recognizes that forest dwelling communities have customary rights over land and resources. For Jarawa the FRA's section 3(1)(m) expressly contemplates habitat rights for PVTG's and official sources list the Jarawa among the 75 PVTG's nationwide in theory. This grants Jarawa title to their forest and legal standing to manage them. FRA also empowers gram Sabha to protect biodiversity and prevent eviction. However, the remote Jarawa habitats are not covered by local institutions (there are no formal Jarawa Sabha of which outsiders have records) Moreover, the Andaman administration has issued FRA notification specifically for Java lens. There is little evidence that Jarawa have received any individual or community for titles under FRA. Thus, although FRA could subsume and strengthen the 1956 regulation goals, in practice, the two regimes exist in parallel, and the older overriding Andaman and Nicobar regulation still over dominates.

The PESA 1996

PESA is mostly a schedule state School intended to curb problems by seeking local governance approval. It requires Grama Sabha to participate in the development planning and it outlaws and land acquisition within the scheduled areas unless approved by the gram Sabha. But Andaman and Nicobar are outside the scheme. One commentator observes that PESA is not effective in areas where tribal communities are small or where they have no recognized local

bodies. Jarawa's have no village councils to exercise such rights and there is no PESA-type act to union territories. Overall, modern tribal laws in India, either failed to apply to the Jarawa or have not been effectively implemented and thus Jarawa are relying on regulation that is 10 years old and that has been not sufficiently in Forced.

Enabling factors to the Jarawa tribe

It is against this backdrop that a number of overlapping obstacles have stood in the way of the implementation of the indigenous rights to the Jarawa based on the provisions of ILO 169. They are a fractured and old resume of law with administrative, laxity, and political, apathy causing institutional social economic marginalization of Jarawa.

Disjointed an obsolete legal regime

The Indian tribal rights policy is legally disjointed. Such laws, FRA and PESA are good in purpose and patchy in application, the Andaman and Nicobar regulation in place does not give special protection to the Jarawa, and its provisions have not been revised since independence. Indicative, the regulation prohibits non-tribal entry into the Jarawa lands of the reservation without a permit, but its own turn, the Government cleared the land with the trunk Road. Even the drafting of the regulation pre-supposed the immobility and separation of tribes, contemporary pressures, like road, tourism projects, etc. were not to be imagined. In the meantime, the habitat rights of FRA would have offered a holistic plan to govern the tribes, although they have no direct application and are not used in the Jarawa situation. In one report, it is observed that tribal laws in India are usually patchy in the implementation of law, which depends on the local authorities. The presence of several conflicting laws (some of which are capable of the application, others not taken into account) has resulted in loopholes and confusion in the Andamans. As an illustration, the FRA is nominal through its rights to forest states, but the super imposed Andaman and Nicobar regulation has legal precedent. Nobody has tried to unite these regimes, example by making amendments to the 1956 law or establishing a new statutory regime of Jarawa autonomy (as ILO 169 would conceive). This dismay is enhanced by the fact that India has not ratified ILO 169 or even adopted its cardinal principles. As a matter of fact, the only ILO convention on tribal populations that India is party to is number 107, which is outdated tool that cannot guarantee FPIC. Therefore, no domestic law exists which require free, prior and informed consent on the behalf of Jarawa on the issue of projects on their land. In the absence of statutory obligation on FPIC, the Jarawa land can

be moved forward with projects as best with consultation, which is enforced by executive orders. This loophole makes Jarawva rights susceptible, although FRA or policies need to be consulted, they are not legally enforced, and the government can merely disregard them, there is no remedy to it. The 1956 regulation appears to be very protective in theory, however, it conflicts with the government's development agenda and it has not been revised to apply modern accountability.

In action and political apathy by the Administrator:

Authorities have been ineffective even in the cases where it is required by law in India. The Andaman authorities have broken the policies of the court and the United Nations on the Jarawa several times. An example, in 2002, the Supreme Court of India declared that the Andaman trunk Road across Java territory should be closed and the settlers must be affected. This order specifically acknowledged the fact that the road cuts across Java Forest, right at the heart of their habitat intruding the rights. But the Andaman officials were unsuccessful in executing it. During the following 10 years, the chief secretaries and lieutenant governors, thus appointed came and went, each of them providing to be inept at carrying out Supreme Court orders, as one of the reports noted. In 2007, the UN committee on the elimination of racial discrimination again requested that India be asked to close parts of Andaman trunk Road passing through the Jarawa tribes reserve that had ordered to do it 2002. Nevertheless, the highway was still open up to the present day. The analysis of the NGO's grieved that even due to the intervention of the judicial and international communities, the local administration has remained unresponsive to the order of the Supreme Court, and has instead continued to remain in difference.

There are other ways in which the neglect of politics is manifest. In 1990 the local government even suggested forcefully resettling the Jarawa in villages, the human rights organization compared to genocide, but the settlement was never carried out. This was as recent as 2007 when the tribal welfare minister of Andaman and Nicobar stated policy in defiance of the SC order that the road passing through the Jarawa land should not be closed as it was necessary to provide connectivity. Even government officials, interviewed occasionally had to pass the buck: one of the tribal-affairs, bureaucrats, interviewed by journalist, replied that cars were already driving through the forest and therefore the existence of the road was a fait accompli. These utterances depict the absence of political will to save God Jarawa tribes. Although the ruling was explicitly prohibited by the 2013 decision of the Supreme Court, which explicitly barred tourist traffic in the Jarawa reserve, local government have

attempted to water down the decision example by defining a different understanding of a buffer zone around sight as such. Simply put, political and administrative authorities have time again decided on short-term developmental objective at the expense of long-term rights of the Jarawa effectively overturning statutory protection

Cultural marginalisation and social economic exclusion:

Java is one of the most isolated tribes in India, they are traditionally hunter gather in a small bands who live on the western coast of the South and the middle Andaman. They are just several hundreds of people, so isolated that they lack social economic infrastructure, such as formal schools, very few health facilities, and practically no formal integration into the mainstream of the economy and government. This in itself is a right exclusion, as an example, the FRA and PESA Will use gram Sabha to obtain rights. They are not in a position to make realistic claim or grievance in the court of law on land and other matters. The traditional ways of living are not within the ordinary course of love. Living in linguistic and cultural isolation, Jarawa have limited scope of introduction to explain the needs to the outside world. This marginalization subjects them to exploitation in cases where there is a contact. Introduction of the Aman trunk Road had literally introduced outsiders into the habitat of Java. Only alcohol, tobacco, and other alien food were introduced into the reserve, which had a devastating impact on the Jarawa health and social life. The development of the “Human Safari” tourism, tour operators publicly sold rights in which tourist have claims of stone tribes along the road. This not only took Jarawa’s dignity and privacy, but also resulted in sexual expectation and begging by Jarawa, a phenomenon, according to some journalist that they call the kiss of death to the tribe. Even the junk food was fed to Jarawa by the tourists on camera at the expense of their traditional diet. Enrolment can be directly attributed to the failure of policy: even there are laws that did not allow entry, there was no proper enforcement to prevent the outsiders to enter in a Safari like intrusion. Another area that the Jawara have been greatly susceptible to is disease. They had never lived in a society and therefore were not immune to widespread infections. Their bands were hit by an epidemic of measles in a 1999-2000 that killed many. Nothing but the oldest of Dr Ratan Chandra Kar, who won the confidence of the tribe and established field hospitals, save the population from a general breakdown. Jarawa infrastructure is limited and the demand to provide healthcare that is specific to Jarawa is urgent. In 2023, Dr. Kar recognized by being awarded Padma Shri because of his work. The epidemics emphasized the social economic negligence, the low level of healthcare, provision, hunger, and a perpetual threat of external infection. It also reveals that Jarawa are not all opposed to all contact: as one

of the elders explained, they had been paid sickness since they have reserved their land and their independence through such a long time, but when tragedy struck, they did not reject help. To conclude, the marginalization of Jarawa, which is socially, economically, and geographically determined, adds more obstacles to the rest. They do not have the political articulation, the educational enlightenment, or the economic motivation that can enable them to assert their rights. Political actors, husband towards the interests of outsiders and money generated by jeopardizing their interest. This institutional exclusion enabled even the laws in books should be disregarded at will.

Case studies: Jarawa right in action

In order to exemplify the above barriers, we consider some real-life examples concerning Jarawa. These case studies clearly demonstrate how the tribe rights have been fed by the institutional failures.

The Andaman trunk Road:

The most famous example is the Andaman trunk Road, ATR that was 123-kilometre Road through Port Blair and Diglipur constructed in the 1970s. The Java reserve is traversed by roughly 60 km of its highway. The highway is a full violation of the intention of the 1956 regulation it is mentioned in 2006 survival report that the road leads to the daily invasion of outsiders into Jarawa territory. As soon as the Jarawa came into the site of the settlers at the end of the 1990s, conversationists submitted a petition of public interest in the Calcutta High Court, subsequently requested to be sent to the Supreme Court. In May 2002, the Supreme Court had ordered the closure of ATR in the Jarawa Forest, wear it operated, and the eviction of civil settlements on the tribal lands. The court appreciated that the Jarawa were facing serious said of logging, settler, violence, and disease due to the highway. This was historic recognition of rights of Jarawa by domestic law. Nevertheless, the Andaman government disobeyed the law. In 2003, survey revealed that the highway was open and the traffic was not stopped. its own order was even challenged by the political leadership in the Supreme Court in order to quash it. The attempts by the NGO's and UN agencies to impose closure also did not work. In 2006, the UN committee on the elimination of racial discrimination, particularly requested India to close the parts of the Andaman trunk Road, which passes through the Jarawa reserve by enforcing 2002 order. India retaliated in 2011 by trying to construct an equivalent Road outside the reserve which is the great Nicobar project. Meanwhile, the Supreme Court in 2013,

once again prohibited tourist traffic across the Jarawa zone. The campaign of Survival International, which reached its climax in 2013, announced that the human Safari campaign has been one as the court recreated that no civil vehicles are permitted to cross the highway across the reserve. The court even directed closure of two tourist sites which had remained open in the reserve by the administration. The ruling is still sporadically enforced. In 2017, reports indicated that local authorities had attempted to work around the buffer zone. Order of the Supreme Court by drawing the zone to permit the zone to remain open to tourism. Even may compliance such as checking traffic or retaining drivers has not been fully hearted. As the ATR case demonstrates, there are numerous barriers, including a progressive legal directive that has been blocked by the administrative cynicism and political politics and where there are no obvious means to make it happen. It is also an expression of the disjointed law: it was the central/local executive that was to construct the road, but the judiciary wants to enforce the closure thereof. Siri lacked a lot of enforcement since the executive fail to do so. Finally, the Jarawa have remained witness to the outside presence of intruder driving into their reserve at high speed without much monitoring. Despite the 1956 regulation, the national court directives continue to be observed.

Tourism and “Human Safaris”:

The human safaris closely relate to the problem of the roads. Since the beginning of 2000, boat and bus tours often transported tourist to boundaries of Jarawa habitats. These strips contravened several standards: the structures of regulation of 1956, the decree of the Supreme Court and the very human dignity. The possibility of seeing a Jarawa tribe as exotic curiosities was openly promoted by the tour operators as reported by the journalist. According to one report, Java beefed with food and liquor, at the other times, they were also duped into photo ops. The ensuring exchanges were highly exploitative: the members of the tribes were stopped, photograph against their will, and subjected to Western stereotypes in 2007 on the pressure of International community, and island, administrative order eventually try to prohibit these tours, by 2013, all the traffic by tourist through these reserves were officially prohibited by the Supreme Court. this was a triumph according to survival international: the Supreme Court prohibited tourist to pass by road that CUTE through a tribal reserve, a road that went through it before it was banned by the Supreme Court, 1992. This ruling has referred to the regulation of 1956 as well as the rights of the Jarawa to determine the time when they want outsiders to contact them. Nevertheless, tourism has still persisted in new forms despite the band. There are local guides who bring tourists to view points or cultural shows on the outskirts of the reserve.

in mid 2017, the authorities acknowledged that tourist continued to come to the ATR through the cave and volcano locations. Survival mentioned that the administration published a water down version of the buffer zone map that permitted the attractions to remain open. Again, there are official instructions in paper, however, are not strictly followed. The pressure of tourism raises the social economic exclusion of Jarawa: they do not participate in the utilization of their lands and do not share any profits. As local benefits, financially, through the Safari operators, the Jarawa do not receive any of it, instead, it is additional interference in their lifestyle. Here the institutional obstacles were partly a legal one (at first no law had prohibited tourism explicitly until the action of the court) and partly a political one (local authorities were not eager to offend tour lobby groups). To this day Jawara is a tourist attraction that has no rights to this activity.

Health crisis and neglect:

The Jawara have had to suffer dire health crisis because of their susceptibility and inability to access health fare. The measuring pox outbreak of 1990-2000 was the worst as it threatened the whole of the tribe. Modern reports that around 60% of the Jarawa became ill and dozens of families were stricken. The outbreak would have wiped out the tribe, had it not been the work of the tribal doctor, Ratan Chandra Kar, who is actually on the ground. Dr. Kar spent 1908-2003 living with the Jarawa and learned their language and beliefs, and bravely gave them vaccines and treatment. He established temporary clinics in Jawara campus despite the suspicion. His job demonstrated that Jarawa lives could be spared with culturally sensitive outreach. More recently he has been honoured with the Padma Shri after rescuing the tribe which faced the risk of extinction. The episode highlights two issues, the first, the state has been more than negligent to provide basics health services to isolated tribes. Jarawa reserve has no formal primary health center (government health posts are usually available to accessible population, as opposed to small wandering tribes). Second, it demonstrates that the administrative's attitudes were altered only when the media and NGOs focused on the issue. Policy makers could not see tribal mortality before the intervention of Dr. Kar. It has been observed is one of the accounts that nobody knew the exact number of Jawara or their location, which shows negligence. A small health program was more recently attempted: it pressures that Andaman and Nicobar administration had certain contact points, where basic medical treatment and education is given in this case the Jarawa approach voluntarily. Nevertheless, these are incompetent considering the requirements of the tribe. Jarawa children also have no culturally inappropriate school and therefore the level of literacy and skills is low. In terms of

ILO 169, health crisis indicated a state failure of performing its' obligation of development at its' impacts their lives and improvement of conditions of life to the tribal peoples (convention art. 7). In the case of India, the policies have put into consideration tribal health although implementation is minimal. The situation of the Jarawa has not elicited a concerted strategy and legislative solutions in fact the government tends to intervention in response. In India there is no legal obligation to consult tribes prior to designing healthcare or relocation, in contrast to Nepal, so the health crisis of the Jarawa is mostly rather a personal tragedy than a state issue and this shows the discrepancy between the promise in the Indian constitution and the reality.

Recommendations for Aligning India's Regime with ILO 169

In order to close the divide between the present tribal rule in India and that of the ILO Convention 169 - and hence to improve the protection of the Jarawa - several changes must be introduced:

- **Ratify and Domesticize ILO 169:** The quickest measure will involve India ratifying ILO 169, representing national adherence to its values. The ratification would not necessarily alter the domestic law, yet it would place international scrutiny on India and persuade the legislative action. The Parliament may begin by using the provisions of 169 (FPIC, land rights, cultural rights) as the basis of a new statute or modify the current statutes. India can be used as an example where the country may pass a law called the Domestic Legislation on Indigenous and Tribal Peoples which will enshrine free, prior and informed consent on projects on tribal territory beyond the voluntary guidelines which are currently in force. The A&N Regulation of 1956 need to be revised and updated. At the very least, it should repeal any outdated government action remaining (as the case may be), give express implementing rules, and press its terms to the letter. This would involve literally closing the ATR where necessary (or constructing alternative carrying off-reserve) and harshly penalizing unauthorized access. Follow-up of compliance may require special departments or authorized tribal welfare officers. Alternatively, the 1956 regulation could be replaced by a new act passed under modern principles (perhaps a Jarawa Rights Act) to specifically ensure Jarawa land title and self-governance and any form of consent on any development.
- **Adopt Free, Prior and Informed Consent (FPIC):** The Jarawa do not have a legal veto on projects without an effective domestic FPIC law. In India, FPIC is to be legislated according to 169. This would be through changing the Land Acquisition Act or other

sectoral legislation (e.g. mining, forestry, infrastructure) to make it necessary to seek pre-tribal consent. Any development activity that will impact on the Jarawa should at least be consulted with the tribal representatives and should take it into account, which is not done at the moment. The FPIC could be controlled by Supreme Court or Central Empowered Committee mechanisms of upcoming projects, and development is only carried out based on tribal approval.

- **Unite Forest and tribal Laws:** Provisions of the FRA are to be clearly extended to Jarawa habitats, such as distribution of community forest rights and habitat rights. Formal notification should be made under FRA in the tribal areas (even in A&N), revenue and technical assistance should be provided to organize claim drives. At the same time, the government ought to explain that the protections of the 1956 Regulation are continuing to be superior (or even incorporate its main provisions into FRA regulations). This would eliminate ambiguity in the law. The concept of the Gram Sabha in the context of FRA could be applied to the situation in Jarawa (e.g. by acknowledging Jarawa hamlet councils as comparable institutions with the authority to regulate the resources).
- **Lack of responsibility among administrators:** The government at the national level should set up a high-level vigilante of tribal rights, another possible institution is the Tribal Rights Commission which is empowered power to investigate the breach of judicial orders and treaties. Breaches of orders protecting Jarawa (e.g. sustained tourism "safaris") ought to be regarded as contempt of court or administrative malfeasance. Tribal advisory bodies (now a legal requirement in) specialized special areas) ought to be established with A&N, such as Jarawa elders, to consult the UT administration. Such bodies are able to see the respect of tribal approval and can take things to central authorities in the event of lack of responsibility of local government.
- **Support of cultural and social development:** The respect entails being congruent with ILO 169 and advertising Jarawa culture. The management ought to collaborate with Jarawa peoples on culturally sound education (e.g. Jarawa language literacy programs) and medical care. Any education or health initiative also needs to be coordinated with the tribe, as it would prevent cultural alienation. Mother and child care should be availed (as the case of Dr. Kar illustrates) within the Jarawa traditional sectors, instead of compelling the tribe to make a decision between their culture and health.
- **Oversight by the International and the Civil Society:** This is based on India as given its track record monitoring can help. There should still be an urge towards implementation

by the NGOs and UN bodies Such bodies as the supervision of ILO (Committee of Experts) or the Special Rapporteurs of UN could periodically report on the developments in India. Even prior to ratification, India could make regular national reports on ILO 169 obligations.

- These recommendations would make the policies of India closer to those of the international standards. As an illustration, an autonomy statute (approved by Parliament and Andaman legislature) specific to Jarawa, which reflects FPIC, would have a concrete correspondence to Article 6 of ILO 169. By making FPIC part of the Indian legislation, any proposal related to Jarawa land (a road, a mine, a telecommunication tower) would not pass without Jarawa approval, as is the case today. Enhancement of the law would lead to decreasing the administrative laxity that recent studies and findings decry.
- Though, it should be mentioned that there is also a certain positive change: with the help of ATR and human safaris interventions by the Supreme Court and the Padma Shri given to Dr. Kar the Jarawa issues at least appeared in the media. However, there is a long way to go to make these outcomes institutionalized. It would be a powerful incentive to have the domestic legislation in India congruent with the provisions of ILO 169, without any formal ratification. It is not only legally, but also morally, essential that the Jarawa people should be treated as equal stakeholders (not as a pitied and spectacted object) by their cultural promoters.

Conclusion

The example of the Jarawa tribe in India clearly demonstrates how the indigenous rights can be undermined by the institutional obstacles. Despite the abundance of constitutional and statutory protections of tribal people in India, they have not made the ground with the Jarawa - a small, remote tribe covered by an old colonial rule. The outcome has been legal division, political will and social exclusion. Without any means of redress, the Jarawa have fallen victim to incursions of land (highways, tourist safaris) and health shock. Their narrative differs with that of ILO 169 in which the indigenous peoples are empowered, and are self-determined.

To correct this situation, India needs to transform its methods: it needs to adopt FPIC, reconcile its legislation, and actively implement protections. The potential benefits of the implementation of international standards as binding can be viewed by comparing Japan to other countries (e.g.

Nepal recently implemented ILO 169 norms by the court). In case of the Jarawa, it is tangible measures like closing the forest road, prohibiting uncontrolled tourism and so on providing health care in the form of tribal schemes would be a long way. In the end, applying the spirit of ILO Convention 169 in India does not only entail the adoption of laws on paper, but also holding the tribes such as the Jarawa to the promise of doing with their lives and lands, which the institutions of India must finally keep.

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