

CHAPTER – I INTRODUCTION

1.0 Introduction

Human right is an area of wide academic discourse in contemporary world and the more crucial ever before is the rights of weaker section of people i.e. women, child and indigenous people. The world witnessed an extraordinary proliferation of human rights law in the course of 20th century and beginning of this millennium. Today, we are in 2nd decade of 21st Century and world has witnessed lot of changes due to Liberalization, Privatization and Globalization (LPG). But, the fruit of these changes have been tasted and enjoyed by some section of people only. Still it seems a dream for weaker section of people, which needs to be true in real life. Despite numerous efforts to stop, more or less the violations of human rights are still prevailing across the globe. Truly speaking, the rights of weaker section of people have often been forgotten. Such ongoing trend on weaker section of people is threatening to their survival.

The Human society started to acknowledge the necessity of means through which human needs and aspirations can be fulfilled and satisfied in precise approach to develop his or her personality and look for their best since the dawn of civilization. Such sort of development of cognizance brought the thought and idea of concept of claims in the society. These claims of individual transformed into the term “rights” in the later part. Therefore, the right is simply defined as sum total of those opportunities or privileges which ensure the enrichment of personality of human being. Rights are ethical principles of liberty or freedom or entitlement which often considered exceptionally crucial to human developments, being viewed as established pillars of society and culture. Ernest Barker defines it as “any particular right which have a capacity of enjoying some particular status or employing some particular power of action, which has been secured and guaranteed to me by law.”¹ According to Bosanquet, “a right is a claim recognised by society and enforced by the state.”² Rights are generally classified into two categories viz. moral rights and legal rights. Again the legal rights subdivided into civil and political

¹ Arora, Prem (2000), Political Theory. Gurgaon: Cosmos Bookhive (P) Ltd., p. 406

² Jayapalan, N. (2000), Human Rights. Delhi: Atlantic Publishers and Distributors, p. 2

rights.³ The term human rights on the other hand is being used in broader and more specific sense and gained its momentum in 20th Century after the 2nd world war.

1.1 Meaning of human rights

The history of mankind being a rational living being marked by efforts to ensure respect for the dignity of human beings. Human rights means birth rights of people in society, which are inalienable in nature and essentially belong to every individual irrespective of one's race, religion, region, nationality, language, sex or any other factor. Presently, the vast majority of philosophers and scholars agree that every human being is entitled to some basic rights. Thus, there is universal acceptance of human rights in principle in domestic and international plane. Human rights is a generic term and it embraces variety of rights may be civil rights, civil liberties, social, economic and cultural rights. It is therefore difficult to give precise definition of the term human rights. However, it can be said that the rights that all people have virtue of their being human are human rights.⁴

The concept of human rights has grown based on human beings inherent demand for life in which one's dignity and worth as human being is respected as well as one's right to equality and liberty are protected. These are moral claims of individual by virtue of his or her humanity alone and absence of this no one can develop their personality. These claims are articulated and formulated in what is present context of world system recognized it as human rights. These rights have been transformed into legal rights, established according to the law creating process of societies both national and international arena.

Human life and human dignity have been disregarded throughout the history of mankind and still today continue to be disregarded. Discrimination continues to exist due to ignorance, prejudice and fallacious doctrines that always try to justify inequality. Human rights are based on mankind's increasingly demand for a life in which the inherent dignity and worth of each human being can receive respect and protection. Therefore, from this observation it can be clear that there is a need of proper protection for man not

³ Ibid p.3

⁴ Agarwal, H.O. (2006), Human Rights. Allahabad: Central Law Publications, p. 2

only from society but from his fellow human being in fulfilling their needs and aspirations. That is the urge of new way to look at rights of human being which came to be identified as the human rights.

Experts have their different views and definitions on human rights. Some of the widely accepted definition of Human Rights are as the United Nations Centre for Human Rights defines “as those rights which are inherit in our nature and without which we cannot live as human being.”⁵ Karel Vasak defines “human rights which are essentially individual in character, for they are meant to be enjoyed by individuals, constitute a social phenomenon by virtue of those for whom they are intended.”⁶ Nickel characterize human rights as “norms which are definite, high priority, universal and existing and valid independently of recognition or implementation in the customs or legal systems of particular countries.”⁷ Szabo puts human rights within the framework of constitutional law, the purpose of which is “to defend by institutional means the rights of human beings against abuse of power committed by the organs of the state and at the same time to promote the establishment of human living conditions and the multi-dimensional development of human personality.”⁸ According to Subhash C. Kashyap, human rights are those “fundamental rights to which every man inhabiting any part of the world should be deemed entitled by virtue of having been born a human being.”⁹

The real beginning of the development of international protection of human rights was made only during the 19th century. The world wars and the huge loss of life and gross abuses of rights took place during wars were the driving force behind the development of modern human rights instruments. The formation of United Nation was landmark in this regard. The character of UN and Universal Declarations of Human Rights (UDHR) are the most explicit expression of human rights and dignity. Human rights as enshrined in the major international instruments are embodiments of basic rights of individuals, which they are entitled to enjoy as human being. These are some certain standards set to induce the states to respect the fundamental freedoms of their citizens.¹⁰ Apart from the character

⁵ Yasin, Adil-ul and Archana Upadhaya (2004), Human Rights. New Delhi: Akansha Publishing House. p. 3.

⁶ Agarwal, H.O., *op.cit.* p. 2

⁷ Yasin, Adil-ul and Archana Upadhaya, *op.cit.* p. 3

⁸ *Ibid*, p. 4

⁹ Agarwal, H.O., *op.cit.* p. 2

¹⁰ Ghosh, Peu, (2011), International Relations. New Delhi: PHI Learning Private Limited, p. 335

of UN and UDHR of 1948, other international instruments regarding human rights such as International Covenant on Economic, Social and Cultural Rights (ICCPR) of 1966, International Covenant on Civil and Political Rights (ICCPR) of 1966, the convention on Prevention and Punishment of Crime and Genocide of 1948, the Convention relating to the Status of Stateless Person of 1954, the Convention on the Elimination of Discrimination Against Women of 1979, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal People of 1989, the Convention on the Rights of Child of 1989, UN Declaration on the Rights of Indigenous People (UNDRIP) of 2007 and many other have been adopted. Some other regional instruments were also being adopted in various corner of world. These are certain means of expression or guarantee to protect basic human rights of individual being the human.

1.2 Origin and growth of human rights

1.2.1 Ancient Period: - The evidence can be found in the laws of Babylonian of ancient Mesopotamia dated back to 1754 BC regarding protective provision of people's right and whatever term has been recognised as human rights in present day world. The 6th Babylonian king Hammurabi issued set of laws to his people and which is commonly known as 'code of Hammurabi' or 'Hammurabi's Code.' The areas in which the Hammurabi or Hammurabi's code deals with as part of the laws were women rights, children rights and slave rights. The available written sources where the rights, duties and responsibilities of an individual were reflected are in the Assyrian laws, the Hittite laws of Hittite empire, the Vedas, the Bible, the Quran and the Analects of Confucius. In this connection, it is noteworthy to mention that every religion of the world have their own humanist perspective principle which support to human society in their survival by ensuring rights despite of different ways and means in their worship and belief system as well. The ancient human society could not ignore the importance of ethical concept, justice and dignity, though no such written record has found in history but it has been continuing from one generation to another through oral histories.

The root of human rights can also be found in the ancient philosophical concept of 'Natural Law' and 'Natural Rights'. There are some Greek and Roman philosophers,

who recognised the idea of natural rights and laws. In this regard, Plato (427-348 BC) is considered as one of the earliest thinkers, who advocate a universal standard of ethical conduct. Roman jurist Ulpian has viewed on natural law that which nature and the State assures to all human being. According to this law the foreigners must be treated in the same way as one deals with one's compatriots. It is applicable in conducting war in a civilized manner. In the Republic (400 BC), it was proposed to recognise the idea of universal truths by all. According to Aristotle (384-322) BC as mentioned in his Politics that the justice, virtue and rights are changing according to different kinds of institutions and circumstances. Another thinker Marcus Tullius Cicero (106-43 BC) in his work the law mentions about the natural law and human rights where he believed that there should be universal human rights laws that transcend customary and civil laws.

The idea of freedom of expression of opinion against the state was first promoted by Sophocles (495-406 BC). A higher order law which corresponded to nature and served as a standard for the laws of civil society and government as the ethical concept of natural law was employed by Stoics. Later in Christianity, the writing of St. Thomas Aquinas (1225-1274) in a divine law based on natural law revealed that man is discoverable by him through right of reason given by God.

The City States of Greece provided freedom of speech, equality before law, right to vote, right to be elected for public office, right to trade and right to access for justice to their fellow citizens. Similar rights were enjoyed by the Romans through the 'Jus Civile' of the Roman law. Thus, the root for the origin of the concept or idea of human rights can be found in the Greco-Roman natural law doctrines of 'Stoicism' (the ancient Greek school of philosophy founded by Zeno of Citium in the early 3rd Century BC), which held that a universal force spread through all creation and that human conduct should, therefore, be judged according to the laws of nature.

1.2.2 Medieval Period: - Major contributions to the development or improvement of the concept of human rights done by various declarations. There are - the Magna Carta of 1215 in England, which was considered as one of the most important landmarks in the history of human rights. On 15th June 1215, King John of England granted this to the English barons in response to the stiff opposition to the heavy burden of the taxation created by the third Crusade and the ransom of Richard I, who was captured by the Holy

emperor Henry IV. Apart from Magna Carta declaration, the other major landmarks can be mentioned in the protection of rights of human beings as the American Declaration of human being, American Declaration of Independence of 1776, the French Declaration on the rights of Man of 1789 and Bolshevik Revolution of Russia in 1917. These declarations made different contribution towards the advancement of human rights. The English barons protected against the heavy taxes and reluctantly they had to again let King John rule without granting some concessions regarding their rights. The ever reaching theme of the Magna Carta was the protection against arbitrary acts by the King. According to this declaration, judges had to know the law and should respect it, and land and property can no longer be seized and laws should not be imposed without common counsel. Without trial there will be no punishment. The merchants got the right to travel within England and outside freely. The concept of jury trial was also introduced by Magna Carta in its clause 39. Which provided protection against arbitrary arrest and imprisonment. So, the Carta introduced the principle that the Kings' power is not absolute.

During the reign of John's son, Henry III, The Magna Carta was contained by Parliament and Edward I in 1297 also confirmed it in modified. The Carta was reinforced by the petition of Rights in 1628 and by the bill of rights in 1689. It formed the platforms for parliamentary superiority over the crown and gave a documentary authority of rule of law in England. The views of endowment with certain eternal and inalienable rights of human being reflected in the writings of St. Thomas Aquinas and Grotius.

Different concept of rights get its philosophical foundations of the liberal democratic tradition in different places of Europe like in France, Great Britain and US. The fundamental Rights of Man found its declarations and constitutional instruments in many states. As we can take the example of 'Declaration Independence' of the thirteen states of America in 1776, which is known as the Virginia Declaration, 1776) and the Constitution of the United States of America, 1787 with amendment in 1789, 1865, 1869 and 1919 with specified numbers of rights. According to the Virginia Declaration of Rights, all men are in this universe are equal by nature, free and independent as well with certain inherent rights. The French Declarations of Rights of Men and of Citizen of 1789 worked on the inclusion of laws for the protection of human rights in the European states. Provisions for the fundamental rights of war were made in Sweden in 1809, Spain in 1812, Norway in 1814, Belgium in 1831, Denmark in 1849 and Russia in 1850.

Henry David Thoreau in his treatise *Civil Disobedience* talked about the philosophical understandings of Human Rights. We can also find the same in the works of English Philosopher John Stuart Mill (*Liberty*, 1859) and in the essay *The Rights of Man* 1791 by American Political Theorists Thomas Paine. The contribution regarding the rights of men were made in the age of reformation, renaissance and in the Puritan Revolution and the glorious revolution of 17th Century. Great philosophers like Thomas Hobbes in his book *Leviathan* (1652), John Locke in his works like *Essays Concerning Human Understanding* and *Essays on Civil Government* (1689) and Jean Jaques Rousseau in his book *The Social Contract* (1762) gave contributions through his notions of *Vox Populi* or *General Will*. Their contribution on the idea and notions of human rights were immense. It influenced a lot on the formulation of documents, declarations, conventions on human rights and treatise at international, national and regional levels.¹¹

1.2.3 Modern Period: - The term ‘Natural Rights’ gradually has been losing its importance, however the idea/concept of ‘Universal Rights’ gradually increasing its significance, but ‘Universal Rights’ established its notion by taking root. The phrase ‘The Rights of Men’ got its meaning but it considered inappropriate as it failed to understand the universal significance to comprehend the rights of women. Eleanor Roosevelt was the person who recommended for the first time in 1947 that the term ‘Rights of Man’ should be changed to ‘Human Rights’.

Thomas Paine was the one, who first coined the term ‘Human Rights’ and used it in his English translation of the French Declaration of the Rights of Man and Citizen in 1789. On the other hand, Henry David Thoreau in his classical treatise *Civil Disobedience* expanded this concept. Any sort of attempt to emphasize the human rights was regarded as an attack upon the concept of state sovereignty till the 19th and beginning of 20th century. However, there were on the rule of the adoption of the Slavery Convention of 1926 and the establishment of the International Labour Organisation (ILO) in 1919. The covenant of League of Nation adopted at the end of World War I was silent on the issue of the human rights. People started realising more of human rights. People started realising more about the need of human being and it led to issue a proclamation of the Man in 1929 by the Institute of International Law. It laid down the duties of the state

¹¹ Ghosh, Peu, (2011) *op.cit.* p. 334

rather than enumerating the rights of human being. The proclamation of 1929 acknowledged more about the rights of individual to liberty, life, prosperity; and about the rights of individual without any discrimination on the basis of sex, race, nationality and language. Every individual had the right to practice in public and in private of any faith, religion or belief. The proclamation can be regarded as the turning point because for the first time an attempt was made towards the universalization of human rights and the traditional approach came in 1940s at the time of extreme abuse of human rights in war torn Europe during World War II. During the time of war extreme form of atrocities against humanity was committed and it was seen as the suppression of fundamental human rights. The regime of complete lawlessness and tyranny has been established by the Nazi leaders in German. They falsified the values and dignity of human being within the territories and took the law in their hand. It was essential and high time to restore freedom and rights of the people and to establish of international peace and security. The spirit of the principle was clearly seen in the proclamation issued by the American President Roosevelt on 6th January 1941, later which was known as ‘Four Freedom.’ In the proclamation Roosevelt announced, “Freedom means the supremacy of human rights everywhere” German held individually responsible for their violations of International law by the US, UK, France and Soviet Union in the Moscow Declaration of Germany atrocities of 30th October 1943.

Number of conferences and meeting were held before the formation of the United Nations (UN) as an international organisation in 1945. These are United Nations Declaration of 1942, Moscow Declaration of 1943, Tehran Declaration of 1943, Dumbarton Oaks Conference of 1944 and San Francisco Conference of 1945. President Franklin W. Roosevelt of the US and Winston Churchill, Prime Minister of UK jointly declared and issued the document on 14th August 1941 and that document came to known as ‘Atlantic Charter’. The declaration of the UN signed the first document in Washington on 1st January 1942 and the term human rights was used for the first time. The signatories who were fighting against the Axis Powers recognised the necessity to “Preserve human rights and justice in their own land as well as in other lands.”

1.3 Classification of human rights

Human rights are indivisible and interdependent, hence it is difficult to make division to different kind of human rights precisely. All human rights are equal in importance and are inherit in all human beings. The Universal Declaration of Human Rights therefore did not categorize the different kinds of human rights. It simply enumerated them in different articles. However, the subsequent developments made in the human rights field under the United Nations system make it clear that human rights are of two kinds. These are – i) Civil and Political Rights and ii) Economic, Social and Cultural Rights.

i) Civil and Political Rights: - Civil rights are those rights, which are related to the protection of the right to life and personal liberty. These rights are essential for every individual of human society so that every individual can live and lead a dignified life. These rights include right to life, liberty and security of persons, right to privacy, home and correspondence, right to own property, freedom from torture, inhuman and degrading treatment, freedom of thought, conscience and religion and freedom of movement.

Political rights on the other hand may refer to those rights which allow a person to participate in the political system of state. These are – right to vote, right to be elected at genuine periodic elections, right to take part in the conduct of public affairs, directly or through chosen representatives.

The nature of these two civil and political rights may be different by name but they are inter-related and interwoven between each other. Hence, it does not appear logic to differentiate them. This reason led to the formulation of one covenant covering both civil and political rights into one covenant, i.e. call International Covenant on Civil and Political Rights.

ii) Economic, Social and Cultural Rights: - Economic, social and cultural rights are those rights which are related to the guarantee of minimum necessities of the life to human being is endangered in the absence of those rights. The rights which include in this category are – right to adequate food, clothing housing and adequate standard of living, freedom from hunger, right to work, right to social security, right to physical and mental health and right to education. These rights are included in the International

Covenant on Economic, Social and Cultural rights. These rights require active intervention on the part of the states. Therefore, these rights are counterpart to the first generation of civil and political rights. There is in need of major commitment of resources to enjoy these rights, and therefore, the realization of these cannot be immediate as in case of civil and political rights.

In addition with the above mentioned two categories of rights, there is another kind of rights which may be enjoyed by every individuals collectively such as right to development, right to protected environment, right to self-determinations or the physical protection of the group as such through the prohibition of genocide. This rights are referred to collective rights. It is difficult to maintain difference between individual's right and collective rights, it may be stated that while individual's rights are available to individuals of a group, collective rights are not available to individuals alone. They may be enjoyed by a group of individuals collectively. These category of rights come under the rights of third generation of rights.

1.4 Generation of human rights

The contemporary concept of human rights can be understood commonly as the term of three generation of human rights. The development of new ideas of experts and social scientists on various rights of human being encouraged to realize. This way for the first time, the division of human rights into three generation was introduced in 1979 by the Czech Jurist Karel Vasak at the International Institute of Human Rights in Strasbourg. He used the term at the early of November 1977.¹² This three generation of rights refers to historical transistors as in the changes that have been taking place because of the passage of time passing from one generation to another generation. In another sense, it can be refers as the qualities shift of laws concerning protection of human rights issues for the better security.

The first generation of rights deals with Civil and Political rights. These are Civil rights, which includes freedom of opinion, right to assemble, freedom of expression and press, personal ownership, right to individual security and equality before law. The

¹² Karel Vasak (November 1977), Human Rights: A Thirty-Year Struggle: The sustained Efforts to give force of law to the Universal Declaration of Human Rights, UNESCO Courier 30:11, Paris: United Nation Educational, Scientific and Cultural Organization.

political rights include right to vote, equal access to public, control of taxes, citizen control over the administration and participation in elaboration of laws.

The second generations of rights are economic, social and cultural rights. Some of these rights include right to education, right to housing, right to health, right to employment, right to adequate income, right to social security and many more. The Universal Declaration of Human Rights (UDHR) of 1948 includes rights through that are thought of Second as well as first generation of rights, but clear distinction is not made in itself.¹³

The most cherished rights belonging to third generation category of rights are - right to self-determination, right to development, right to environment and right to peace. Right to self-determination is one of the most basic collective rights. By virtue of the right of self-determination people have right not only to freely determine their political status but also to freely pursue their economic, social and cultural development. Thus, right to self-determination includes right to development.

The right to development on the other hand is encompasses within its ambit of all human rights and fundamental freedoms including self-determination. Article 1 of the Declaration on the Right to Development run as: 1.1) The Right to development is an inalienable human right by virtue of which every human person and all people are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. 1.2) The human rights to development also implies the full realization of the right of the people to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. Thus, right to development is of multidimensional character incorporating all civil, political, economic, social and cultural rights necessary for the full development of individual and the protection of his dignity.

The right to peace is also one of the most important collective rights. The United Nations Commission on Human Rights has asserted in 1976 that everyone has the right to live conditions of international peace and security, and fully can enjoy economic, social and cultural rights, and civil and political rights as well. The Commission has further asserted that unqualified respect for and the promotion of human rights and fundamental

¹³ http://en.wikipedia.org/wiki/Three_generations_of_human_rights.

freedoms require the existence of international peace and security, and that flagrant and massive violations of human rights, including economic, social and cultural rights, may lead the world into arm conflict.

Right to healthy environment, clean air and water etc. are also some of the most important human rights. It is noteworthy to mention that the three categories of rights, termed the three generations of human rights are interdependent between each other.

1.5 Indigenous people

The term “indigenous” is derived from the Latin word “indigena” which means “native” or “born within”.¹⁴ According to the Oxford dictionary “indigenous” means native, belonging to naturally, that of the people regarded as the original inhabitants of an area.¹⁵ Thus, those ethnic groups who are having a set of specific rights on the basis of their historical connections with a particular territory and their cultural or historical distinctiveness from other majority sections of people, who are often politically and culturally influential or dominant are considered as indigenous people. The United Nations defines indigenous people as “Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, considered themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them.”¹⁶ According to 1(1) (b) of revised Convention No. 169 of International Labour Organization in 1989 “indigenous people” are those “peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the established of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”¹⁷

¹⁴ Soane, Catherine, Alam Spooner & Sara Hawler (2005), Compact Oxford Dictionary: Thesaurus and Word Power Guide. New York: Oxford University Press Inc. p. 458

¹⁵ A. S. Hornby, Oxford Advanced Learner’s Dictionary of Current English. 3rd ed. Oxford University Press (1974).

¹⁶ Gupta, Aman (2005), Human Rights of Indigenous Peoples. Volume 1, Protecting the Rights of Indigenous People. Delhi: Isha Books. p. 2

¹⁷ Das, J.K. (2001), Human Rights and Indigenous Peoples. New Delhi: A.P.H. Publishing Corporation. p. 21

Indigenous people sometimes referred to as aborigines, native peoples, first peoples, first nations or as autochthonous, a Greek term that means “sprung from the earth” and sometimes identified as primitives, savages or uncivilized. During the 17th century indigenous people were commonly levelled uncivilized. Proponents of civilization like Thomas Hobbes considered them merely savages. Jean Jacques Rousseau, one of the critics of civilization considered them to be “noble savages.” Those who were close to the Hobbesian view tended to believe themselves to have a duty to civilize and modernize indigenes. Although anthropologists, especially from Europe, used to apply these terms to all tribal cultures, it has fallen into disfavour as demeaning and, according to anthropologist, inaccurate.¹⁸

After World War I, however, many Europeans came to doubt the value of civilization. At the same time, the anti-colonial movement, and advocates of indigenous people argued that words such as ‘civilized’ and ‘savages’ were products and tools of colonialism, and argued that colonialism itself was savagely destructive. In the mid-20th century, Europeans began to recognize that indigenous and tribal peoples should have the right to decide for themselves in order to protect their ancient cultures and ancestral lands. The advocates of the concept of indigenous peoples have strong argument that, despite diversity among the indigenous peoples in various corner of world, but share common problems and issues in dealing with the present society.¹⁹ The indigenous groups of people are vulnerable to exploitation, marginalization and oppression in every aspect of life may be politically, economically, socially, culturally and morally by the dominant ethnic group or advance section of people in the residing territory.

1.5.1 Indigenous people of world

There are between 300 to 500 million indigenous people all over the world. They embody and nurture 80 per cent of the world’s cultural and biological diversity, and occupy 20 percent of the world’s land surface. The settlement of indigenous people can be seen in all the countries of every continent of the world. They form a spectrum of humanity, ranging from traditional hunter gathers and subsistence farmers to legal

¹⁸ Gupta, Aman (2005), *op.cit.* p. 1

¹⁹ *Ibid* p. 2

scholars. Like all cultures and civilization, indigenous people are always adjusting and adopting with changing time and situation in world.²⁰

Some of the important indigenous people of world are includes Ainu of northern part of Honshu in Northern Japan, Aboriginal people in Australia, Awa of eastern Amazon forest of Brazil, Ayero of Paraguay, Basque of both Spain and France, Bororo of the Mato Grosso region of Brazil, Bushmen or San peoples of South Africa and neighbouring Botswana and Namibia, Celt of Central Europe, Degar of Vietnam, Enxet of Western Paraguay, Frisians of Netherland, Native Hawaiians of Hawaiians Island, Innu in Eastern Canada, Inuit of Northern America, Massai or Masai of Kenya and Northern Tanzania, Makuxi on the border between Brazil and Guayana, Maori of New Zealand, Mapuche of Central and Southern Chile and Argentina, Moriori of New Zealand, Native America, Negritos of Phillipines and the Semang of Malay Peninsula, Northern indigenous people of Russia, Nuba of Sudan and Africa, Ogiek of East Africa, Penan and Semang people of Malaysia, Sami peoples of Northern Sweden, Norway, Finland and Russia, Pygmy peoples of Central and Western Africa, Democratic Republic of Congo (DRC), Cameroon, Central African Republic, Rwanda, Burundi and Uganda, Taiwanese aborigines of Taiwan, Tsimshian of north coast of British Columbia and the southern corner of Alaska, Yanomani people of Brazil and Venezuela, Yora of Amazonian rainforest in South-east Peru, close to the border with Brazil and Wichi of northern Argentina.

1.5.2 Indigenous people of India

The term ‘Indigenous people’ is an issue of considerable contention and debate in the context of India. Whether ‘Scheduled Tribes’ of India are ‘Indigenous People’ or not, it was being debated several times between representatives of India in UN and other members of UN both in the soil of India and Geneva. The Government of India officially does not consider any specific section of its population as ‘indigenous people’ as generally understood and implied in its usage in United Nations. Rather, the government claims all its peoples as indigenous. Historically, if we look back in this regard certain noteworthy point may be mention, in the UN Working Group on Indigenous People of

²⁰ Ibid p. vii

1984, the representatives of Government of India repeated stated that the ‘Scheduled Tribes’ of India are not ‘Indigenous People.’²¹ Again the Indian representatives in UN Working Group’s meeting in 1993 held at Geneva argued that the term ‘indigenous’ was not adequate for his country. Since, entire population of the nation had been living on its land for several millennia. Therefore, all these people are indigenous and any attempt to make distinction between indigenous and non-indigenous would be artificial. Further elaboration was mentioned about formation of National Commission to monitor all the matters in respect to safeguards and promotes the rights and interest of Scheduled Caste (SC) and Scheduled Tribe (ST).²²

The view of Permanent mission in India to United Nations Office is something different. While agreeing to the differences between indigenous people and minorities, they asserted that indigenous people cannot be equated with SC and ST, since they are categorized by the Constitution of the purpose of positive discrimination to provide special privileges in order to ensure their accelerated progress on account of backwardness due to historical reasons. Refusing to acknowledge the presence of indigenous people in India, the government seeks to achieve is to ensure that there is no problems for it, if it is being discussed in the UN Sub-Committee. The worry and fear of the government to accept the existence of indigenous people is that it would eventually be mean ratification of the Declaration of the Rights of Indigenous Peoples in future and making it much more obligatory for the government of India to fulfil the demand of autonomy as per the constitution on the one hand, while on the others such demand are obviously going to emerge from the other areas of nation as the process of internal colonization of Adivasis gain momentum in the wake of opening up of the nation for the imperialists.²³ Another debate was occurred in the symposium on the theme ‘who are the Indigenous People of India?’ held at New Delhi in 1992. In that particular symposium, the Indian Council of Indigenous and Tribal People (ICTP), which was formed in 1987 and affiliated to World Council of Indigenous Peoples, an organization which received consultative status with the United Nations Economic and Social Council (UNESCO) recognized the fact and admitted that the ‘Scheduled tribe’ or ‘Adivasis’ of India falls under the UN definition of

²¹ Das, J.K. (2001), *op.cit.* p. 33

²² Erica-Irene A. Daes. Report of the Working Groups on its Eleven Session. UN.Doc./E/CN.4/Sub.2/1993/29 at p. 22

²³ C. R. Bijay (1992), Emergence of Submerged: Indigenous Peoples at UN. EPW 28 at p. 1360

indigenous people. In the symposium, it was also further mentioned and elaborated that Adivasis areas subject to internal colonialism and Adivasis are being treated as subjects of colonizers even by the Government of India, that millions of Adivasis are displaced, for which, there arose constitutional crisis in Adivasis areas. This fact has even acknowledged by official reports of Government of India in the 29th Report of the Commission for Scheduled Caste and Scheduled Tribe of 1988, where there is even section title ‘Constitutional Crisis in Tribal Areas.’²⁴

However, operationally in many of its dealings, people those who are falling within the administrative category of ‘Scheduled Tribes’ (ST) are considered as indigenous peoples. Though STs are not coterminous with either the socially and historically accepted term ‘Adivasis’ (meaning indigenous or original people) or ‘tribal’, by and large it is accepted that the STs include mostly ‘indigenous people’ in the Indian context.²⁵ Referred to the views of the Indian Council of Indigenous and Tribal People and criteria that has been adopted by Government of India to recognize the scheduled Tribes clear conclusion may be made that ‘Scheduled Tribes’ in India comes and falls within the very scope of the contemporary understanding and recognized term of UN ‘Indigenous People.’

Precise classification of an ST as homogenous socio-cultural category is not possible. Neither has it been possible to arrive at a clear anthropological definition of a ‘tribal’ in terms of ethnicity, race, language, modes of livelihood or social forms. The tribal communities are divided into Veddis, similar to the Australian origins, Paleamongoloid Austro-Asiatic from the Northeast, the Greco-Indians who spread across Gujarat, Rajasthan and Pakistan from Central Asia and the Negrito group of the Andaman Islands – the Great Andamanese, the Onge, the Jarawa and the Sentinelese.²⁶

The formation of identity criteria as indigenous people in India is on the basis of their relative geographical isolation, reliance on forest, ancestral land and water bodies within the territory of the community for food and their necessities, a distinctive culture which is community oriented and gives primary to nature, relative freedom of women within their society, absence of a division of labor and caste system and lack of food

²⁴ Ibid p. 1359

²⁵ Bijoy, C.R., Shankar Gopalkrishnan and Shomona Khanna (2010), India and the Rights of Indigenous Peoples. Thailand: Asia Indigenous Peoples Pact (AIPP). p. 1

²⁶ Ibid

taboos.²⁷ These all characters always give them distinct status and distinguish from other section of people of the nation. But, among the indigenous communities there is enormous diversity, each of which has its own distinct culture, language, history and unique way of life. Despite these differences, indigenous peoples in India share some common values derived in part from an understanding that their lives are part of an inseparable from the natural world.

Of the 5, 653 distinct communities, around 700 communities are notified as ST in India. The ST population was 8, 43, 26, 240 or 8.2% of total population in 2001²⁸ and there are 10, 42, 81, 034 or 8.6% of total population in 2011 that includes male 52, 40, 9823 and female 51, 87, 1211. The decadal growth rate of ST population in period 2001 to 2011 was 23.7% against 17.64% general population growth of nation.²⁹

The following **table 1.1** shows total and ST population of state with the percentage as per 2011 census in the states or union territory (UT) of Indian union, where ST population shares more than 10 percent of total population of the state.

Table 1.1

All population and ST population of State with percentage as per 2011 census

Sl. No.	States/UT	All population	ST Population	Percentage
1	Lakshadweep	64473	61120	94.8%
2	Mizoram	1097206	1036115	94.4%
3	Nagaland	1978502	1710973	86.5%
4	Meghalaya	2966889	2555861	86.1%
5	Arunachal Pradesh	1383727	951821	68.8%
6	Manipur	2570390	902740	35.1%
7	Sikkim	610577	206360	33.8%
8	Tripura	3673917	1166813	31.8%
9	Chhattisgarh	25545198	7822902	30.6%
10	Jharkhand	32988134	8645042	26.2%
11	Madhya Pradesh	72626809	15316784	25.7%
12	Odissa	41974218	9590756	22.8%
13	Assam	31205576	3884371	12.4%
14	Jammu & Kashmir	12541302	1493299	11.9%

Source: - *Census of India, 2011.*

²⁷ Summary of resolutions on indigenous and Tribal peoples' struggle for right of self-determination and self- government in India. UN.Doc.E/CN.4/Sub.2/AC.4/1994/4/Add.1 at Para 3 and 10.

²⁸ Census of India, 2001

²⁹ Census of India, 2011.

Some of the most significant ST population of Northeast India includes Kuki, Chakma, Hajong, Hmar, Garo, Dimacha (Kackari), Khasi and Jayantia of Mizoram and Meghalaya, Bhil, Chakma, Bhutia, Chaimal, Garoo, Halam, Bengshel, Dub, Jamatia, Kaipeng, Kalai, Karbong, Lrngui, Mussum, Suku chep and Thang chep of Tripura, Naga, Kuki, Kachari, Mikhir and Garo of Nagaland, Aimol, Anal, Angami, Chiru, Chote, Gangte, Hmar, Kabui, Kacha, Naga, Koira, Koireng, Kom, Lamgang, Mao, Maram, Maring, Mizo, Monsang, Moyon, Paite, Purum, Ralte, Sema, Simte, Suhte, Tangkul, Thadou, Vaiphui, Zou, Pouami Naga, Tarao, Kharam and any Kuki tribes of Manipur, Abor, Aka, Apatani, Dafla, Galong, Khowa, khampti and sherdukpen of Arunachal Pradesh, Bhutia, Lepcha, Limboo and Tamang of Sikkim and many others.

The STs of other part of India are Balti, Beda, Bot, Boto, Brokpa, Drokpa, Dard, Shin, Changpa, Garra, Mon, Purigpa, Gujjar, Bakarwal, Gaddi and Sippi of Jammu & Kashmir, Asur, Agaria, Baiga, Banjara, Bathudi, Bedia, Binjhia, Birhor, Birjia, chero, Chik, BaraikGond, Gorait, Ho, karmali, Kharia, Dhelki Kharia, Dudh Kharia, Hill Kharia, Kharwar, Khond, Kisan, Nagesia, Kora, Mudi-Kora, Lohra, Mahil, Mal Paharia, Kumarbhag Paharia, Munda, Patar, Oraon, Dhangar (oraon), Parhaiya, Santal, Sauria Paharia, Savar, Bhumji, kawar and Kol of Chattisgarh, Bagata, Bhakta, Baiga, Dal, Banjuri, Bhuyan, Birhor, Chenchu, Holva, Bodo Paroja, Mahali, Rajuar, Lodha, Lodh, Saora, Savar, Kondadora, Korua, Mahali, Matia, Gandia and many more of Odissa, Agariya, Andh, Baiga, Bhaina, Halba, Omitted, Saur, Sont, Bhil and many others of Madhya Pradesh, Andamanese, Chatiar, Chari, Kora, Tabo, Bo, Yere, Kede, Bea, Balwa, Bojjigiyab, Juwai, Kol, Jarawas, Nicobarese, Onges, Sentinelese and Shom Pens of Andaman and Nicobar Islands as well as many others.

1.5.3 Indigenous ST people of Assam

The state of Assam is strategically situated in the North Eastern part of the country with a geographical area of 78, 438 sq. km represents 2.39 per cent total land area of the country. Geographically Assam is surrounded by seven states i.e. West Bengal, Meghalaya, Tripura, Mizoram, Manipur, Nagaland and Arunachal Pradesh. It also shares international boundaries with Bangladesh in the Southeast and Southwest, Bhutan in the North and Northeast. The state of Assam is consists of 32 districts with sitting capital at

Dispur. It has got unicameral legislature with 126 members of legislative assembly in state.

There are 23 (twenty three) numbers of ethnic groups has been identified as Schedule Tribes in Assam as per the list of notification issued by President of India through the Constitution (Scheduled Tribe) Order of 1950. These include both plain and hill tribes. Out of these, 9 (nine) ethnic groups viz. Boro Kachary, Barmans of Cachar, Deori, Miri (Mishings), Sonwal Kachari, Rabha, Lalung, Mech and Hojai are found in plain areas of state categorized as plain tribes. The rest 14 (fourteen) groups are mainly found in the two hill districts viz. Karbi Anglong and North Cachar Hills. These hill tribes include Karbi, Dimasa Kachari, Chakma, any Kuki tribes, Pawi, Hmar, Lakher, Garo, any Mizo tribes, any Naga tribes, Khasi and Jaintia, Hajong, Maan Tai Speaking and Synteng.

According to 2001 census, the total population of state was 2, 66, 55, 528 out of that total tribal population was 33, 08, 570 which accounts for 12.41 per cent of state's population. The decadal growth rate of tribal population in the state is estimated as 15.5 per cent as compared to 18.92 per cent of total population growth of state.³⁰ But as per 2011 census, the tribal population is 38, 84, 371 which consist of male 19, 57, 005 and female 19, 27, 366 shares some 12.4 per cent of total population of the state.³¹

The following **table 1.2** shows the growth pattern of ST population of Assam since 1961 to 2011.

Table 1.2
Decadal growth pattern of ST population in Assam since 1961 to 2011

Sl. No.	Year	Total ST Population	Decadal growth rate in %
1	1961	11,64,641	--
2	1971	16,06,648	37.95
3	1981	No census was held	-
4	1991	28,74,441	78.91
5	2001	33,08,570	15.10
6	2011	38,84,371	-

Source: - Census of India, 1961, 1971, 1991, 2001 and 2011.

As per recorded in 2001 census, the most dominant plain tribes are Bodos and Miris, together account for roughly half of the total tribal population of the state. Bodos alone constitute 40.9 per cent of the total tribal population, followed by Miris with 17.8

³⁰ Census of India, 2001.

³¹ Census of India, 2011.

per cent, Mikir 10.7 per cent, Rabha 8.4 per cent, Sonowal Kacharis with 7.1 per cent and the rest are 15.1 per cent.³²

1.6 Profile of BTAD

Bodoland Territorial Council (BTC) is created under the 6th Schedule of the Indian constitution according to the Memorandum of Settlement (MoS) on 10th February 2003 among BLT, Govt. of India and Govt. of Assam. The area under the BTC jurisdiction is called the Bodoland Territorial Area Districts shortly known as BTAD. This consists of four contiguous districts viz. Kokrajhar, Chirang, Baksa and Udalguri carved out of the seven existing districts viz. Kokrajhar, Bongaigaon, Barpeta, Nalbari, Kamrup, Darrang and Sonitpur. The geographical location of BTAD is roughly between way 89°46' to 92°16' east Longitude and 26°7' to 26°46' North Latitude and coverage land area is 8, 795 Sq. Km. i.e. 35% of total land area of Assam 27, 100 Sq. Km. This region is on the northern bank of mighty river Brahmaputra, stretched to the great Himalayan. It shares international border with Bhutan in northern part, Indian state West Bengal on the west, some other districts of Assam in the South and East.

Map 1: Showing the maps of a) India, b) NE region including the state of Assam and c) Bodoland Territorial Area Districts (BTAD).

Map 1: Map of India, Assam and BTAD

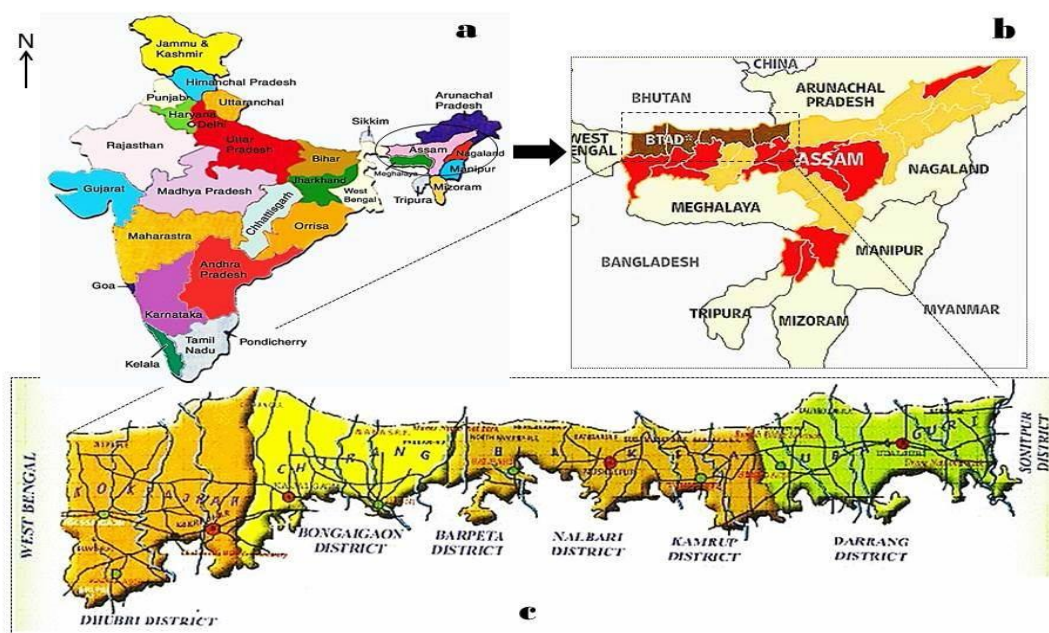


Image Source:

<http://www.plantsjournal.com/archives/?year=2013&vol=1&issue=5&part=A&ArticleId=73>

³² Census of India, 2001.

The administrative sub-division of BTAD is divided into 10 different sub-division including 3 each in Kokrajhar and Baksa districts, and 2 each in Chirang and Udalguri districts. Again administrative set up has been spread into 13 revenue circles, 25 development blocks, 415 Village Council Development Committee (VCDC) and 3066 villages. The following **table 1.3** shows the details of district wise sub-division, development blocks, VCDC and Villages in each districts of BTAD.

Table 1.3
District wise sub-division, development blocks, VCDC and villages of BTAD

Districts	Sub-divisions	No. of Dev. Blocks	No. of VCDC	No. of Villages
Kokrajhar	Kokrajhar (HQ)	08	134	1068
	Gossaigaon			
	Parbatjhora			
Chirang	Kajalgaon (HQ)	04	67	508
	Bijini			
Baksa	Mushalpur (HQ)	06	104	690
	Tamulpur			
	Salbari			
Udalguri	Udalguri (HQ)	07	110	800
	Bhergaon			
BTAD (in total)	10	25	415	3066

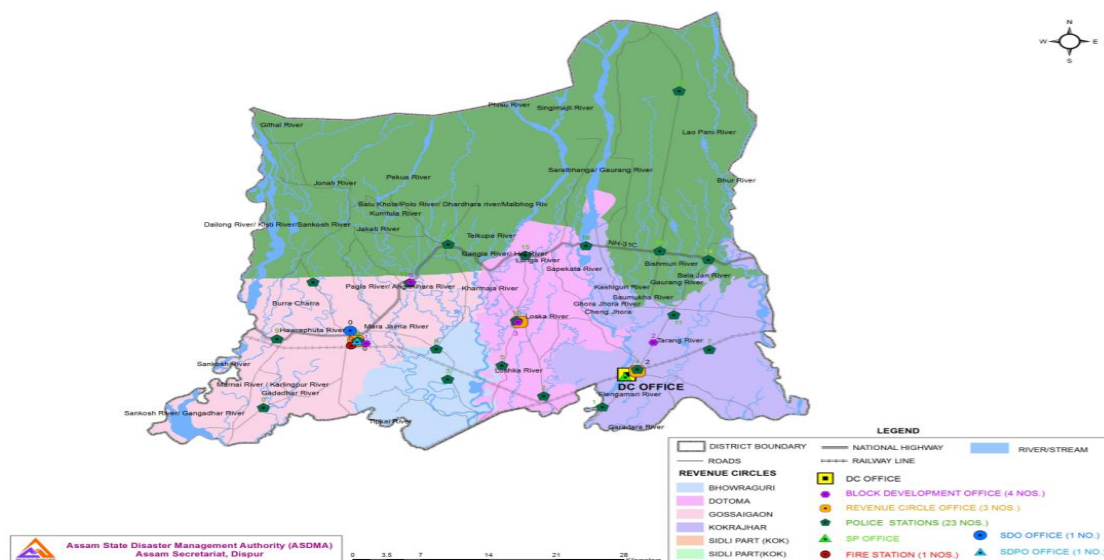
Source: - Provisional Population census of 2011, Published by Deptt. of Economics and Statistics, Bodoland.

There are 46 (forty six) numbers of Member of Council Legislative Assembly (MCLA) represents in the council from all the communities of BTAD for area development. These are including 40 (forty) elected through Universal Adult Francis and 6 (six) are nominated by Governor of Assam.

As per Memorandum of Settlement (MoS), 40 (forty) numbers of subject has been entrusted to the BTC authority. These are viz. Small, Cottage and Rural Industry, Animal Husbandry & Veterinary, Forest, Agriculture, Public Works Department (PWD), Sericulture, Education (Primary Education, Higher Secondary including vocational training, Adult Education, College Education (general), Cultural Affairs, Soil Conservation, Co-operation, Fisheries, Panchayat and Rural Development, Handloom

and Textile, Health & Family Welfare, Public Health Engineering (PHE), Irrigation, Social Welfare, Flood Control, Sports & Youth Welfare, Weights & Measures, Library Services, Museum & Archaeology, Urban Development – Town & Country Planning, Tribal Research Institute, Land & Revenue, Publicity/Public Relations, Printing & Stationary, Tourism, Transport, Planning and Development, Municipal Corporation, Improvement Trust, Districts Boards and other local authorities, Welfare of Plain Tribes and Backward Classes, Market and Fairs, Lotteries, Theatres, Dramatic Performances and Cinema Statistics, Food and Civil Supply, Intoxicating liquors, Opium and Derivatives etc. Labour and employment, Relief and Rehabilitation, Registration of Births and Deaths. The council has full legislative, executive, administrative and financial powers on the subjects transferred to it. But, all the laws made by council shall be submitted to the Governor of state for his assent to make it effect.

Map: 2 Map of Kokrajhar District



Map source: Assam State Disaster Management Authority website.

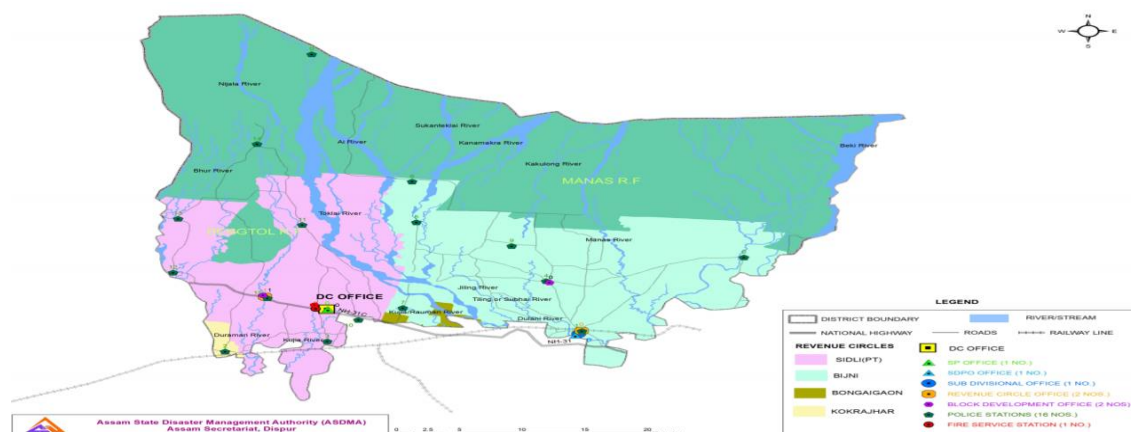
Population of BTAD according to 2011 census is 31, 51, 047 and of these 16, 00, 712 is male and 15, 50, 335 is female. Again 30, 10, 953 people live in rural area and 1, 40, 094 are in urban area. The following **table 1.4** shows the details of district wise distribution of population in four different districts of BTAD.

Table 1.4
District wise distribution of population in BTAD as per 2011 census

Districts	Persons	Percentage	Male	Female	Rural	Urban
Kokrajhar	887142	28%	452905	434237	832201	54750
Chirang	482162	15%	244860	237302	446825	35337
Baksa	950075	30%	481330	468745	937833	12242
Udalguri	831668	27%	421617	410051	794094	37574
BTAD (in total)	3151047	100%	1600712	1550335	3010953	140094

Source: Provisional Population Census of 2011, published by Deptt. Of Economics and Statistics, Bodoland.

Map: 3 Map of Chirang District



Map source: Assam State Disaster Management Authority website.

The total indigenous ST population of BTAD as per 2011 census is 10, 55, 731 which consists of 5, 28, 036 male and 5, 27, 699 female. The **table 1.5** will show the total population of four separate districts and indigenous Schedule Tribe population in each district with percentage of BTAD.

Table 1.5
District wise ST population in BTAD as per 2011 census

Sl. No.	Name of district	Total population of district	ST population	Percentage
1	Kokrajhar	8,87,142	2,78,665	31.41%
2	Chirang	4,82,162	1,78,688	37.05%
3	Baksa	9,50,075	3,31,007	34.84%
4	Udalguri	8,31,668	2,67,372	32.14%

Source: - Census of India 2011, published by Dept. of Economics and Statistics, BTC.

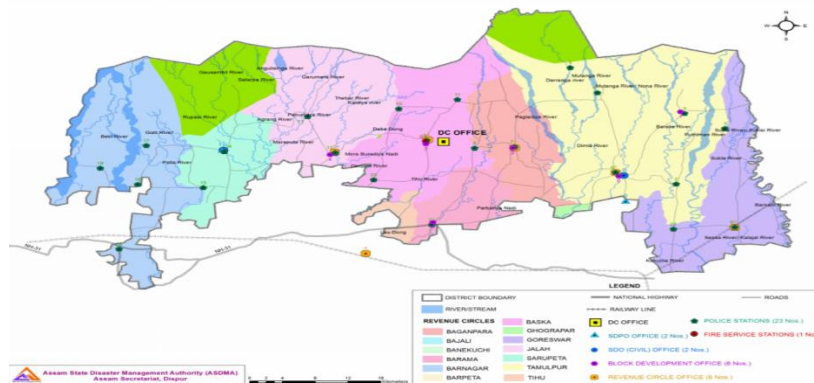
The literacy rate of BTAD is not satisfactory in comparison with the some other parts of Assam. As per 2011 census, the percentage of literacy rate is 67.82 percent in BTAD, whereas the state of Assam is 78.18 percent. The district wise literacy rate is 66.63 per cent in Kokrajhar, 64.71 per cent in Chirang, 70.53 per cent in Baksa and 66.60 per cent in Udalguri. The following **table 1.6** shows clear literacy rate of BTAD in district wise break up between male and female with their percentage.

Table 1.6
District wise literacy rate in BTAD as per 2011 Census

Districts	Number of literate person			Literacy rate in per cent		
	Person	Male	Female	Person	Male	Female
Kokrajhar	503178	283026	220152	66.63	73.44	59.54
Chirang	266380	149017	117363	64.71	71.35	57.87
Baksa	689866	333856	256010	70.53	78.55	62.23
Udalguri	481867	271529	210338	66.60	73.79	59.17

Source: - Census of India 2011, published by Dept. of Economics and Statistics, BTC.

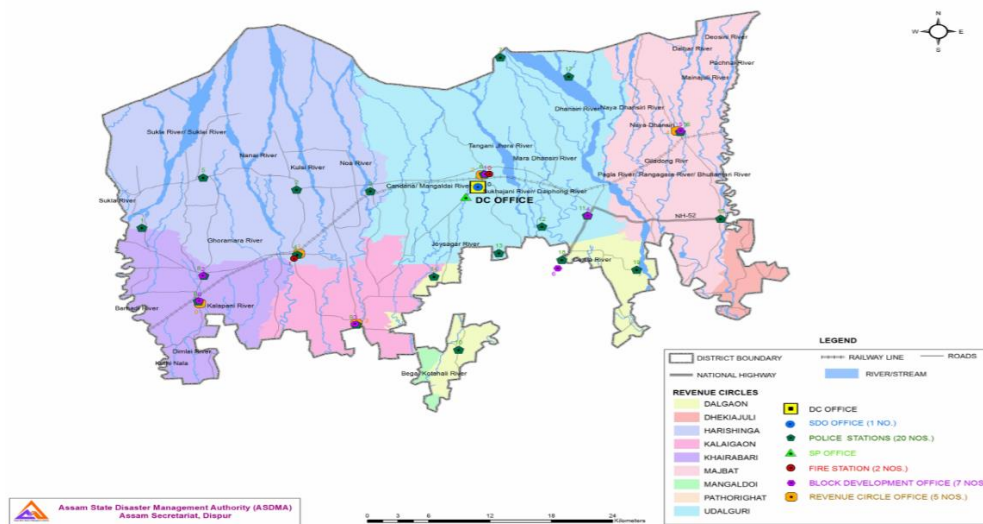
Map: 4 Map of Baksa District



Map source: Assam State Disaster Management Authority website.

The above table reveals that the literacy percentage of ST population especially female percentage are poor in comparison with male counterpart.

Map: 5 Map of Udalguri District



Map source: Assam State Disaster Management Authority website.

1.7 Bodo Community

The indigenous Bodo people is one of the most dominant tribes, mostly found in the northern part of the Brahmaputra valley and considered as early settlers of Assam and North East part of India as well. Apart from Assam, they are also found in some other regions like- Nepal, Bangladesh, West Bengal, Arunachal Pradesh, Tripura, Meghalaya, Nagaland and Manipur. Now, they have identified with different names and identity, though they are from the greater Bodo race. According to 1971 census, Bodos belong to a larger ethnic group called the Kacharies and was the 8th largest Schedule Tribe (ST) group in India. The Census of 2011 indicated that Kokrajhar, Chirang, Baksa and Udalguri of Assam are known as the main centres of the Bodo dominated area. The Bodos living all over the world are proud to call themselves as Bodosa i.e. son of Bodo. Though Bodos are demographically separated but has been following the same ethnicity, culture, tradition and language which make them distinct ethnic community from other people of the nation.

In ancient times, the great Bodo people led a nomadic life. They used to wander from one place to another in search of food, shelter and for fertile land. They were great lover of nature. They mostly lived in forest areas and they were great hunter too. Perhaps, for the demand of geographical or social entity, they were more comfort to lives in plain areas than the hilly one. Since then they used to live in forest areas. They were agrarian community and used to live on agriculture. A fertile land was everything for them. Due to the changing times and necessities, they settled permanently and used to harvest agriculture than shifting agriculture. Still today, the main livelihood of Bodo community is agriculture base. Apart from agriculture, they earn money by animal husbandry, manufacture of Indi cloth and weaving etc. Some small numbers of people are also being in other professions like service, business and contractors.

The origin of Bodo race has been identified as Indo-Mongoloids and migrated to India during the pre-historic era. Edward gait considered the Bodo people as the earliest inhabitants of entire Brahmaputra valley.³³ They occupied the plains areas of Assam for a long period of time and constituted the bulk of the population in Assam valley during

³³ Gait, E.A. (1967), A History of Assam. Delhi, p. 299.

the time of Mahabharata war, or even earlier than it.³⁴ Dr. Suniti Kumar Chatterji believes that they had migrated to Assam since 1000 BC and said “Budha, who is among the greatest thought, leaders and teachers of mankind, and who embodies in himself the principle of Ahimsa, Karma and Maitri of non-jury, Mercy and Charity, which are so characteristics of India was for ought we know of pure or mixed Indo - Mongoloid origin.”³⁵ B. Narzi maintains that the migration of the people to Assam started since 2000 BC.³⁶ However, the above observation indicates that Bodo people of Assam are one of the oldest inhabitants of Assam and their racial origin belong to the Indo-Mongoloid and linguistically belong to Tibeto-Burman family of Bodo - Naga sub group.

The history reveal that there were some Bodo Kings, who ruled the then kingdom Kamrup. Bodo king Mech Ali ruled the adjacent to the western border of Kamrup. The Mongolian Bodos ruled the north – eastern regions of India for 400 years. They ruled modern Assam, North Bengal and parts of East Bengal. The Kacharis or Bodos spread over the Kachar region. And they were known as the earliest inhabitants of Brahmaputra valley. The Kacharis of the Brahmaputra river calling themselves ‘Bodo’ or ‘Bodo fisa’ (Son of the Bodos) and ‘Dimasa’ or ‘Dima fisa’ (Sons of the great river) in the North Kachar hills. Many Bodos or Mech settled in the deep forest of Jalpaiguri but due to the natural calamities and land acquisition by the East India Company, they were forced to leave the place and settled to the eastern part of doors. And again they shifted permanently to the Goalpara district of Assam. Many Bodo villages were found out in Darjeeling and Jalpaiguri, that region has become metro cities of prtesent Siliguri. Approximately 90% of them belonged to the Bodo (Mech) and Koch communities. In 1787 AD some parts of Bengal was destroyed by flood where 75% of the entire forest lost its wealth including human being. Many arte facts, sculpture, mansions and temples were destroyed. Like the ‘Mai Raja’s caste’ in Chilpapata forest in Alipur sub-division was also utterly destroyed where ‘Chilapata’ is a corruption of ‘Chilafwtar’ i.e. outside the camp of Chilarai. ‘Mora Raja’ is also a corruption of the long Hindu name Narnarayan. The Bodos lived at the hills of Bhutan mountains, which place often attacked by tigers and snacks, and disease like malaria, dysentery and black fever. At that time, there was no any medical facilities were available. But the Bodos or the Mech lived there a healthy and happy life.

³⁴ Baruah, K.L. (1966), Early History of Kamrup. Guwahati, p. 14.

³⁵ Chatterjee, Suniti Kumar (2011), Kirata Jana Kriti. p. 183.

³⁶ Narzi, B. (1962), “Boro kachari” in Asomor Janjati, (ed.), P.C. Bhattacharjee, Guwahati, p. 54.

Bodos have their own distinctive language, culture and religion. Bodos basically speaks Bodo/Boro language and it has got recognized in the 8th schedule of Indian Constitution. Though the literature of the Bodos cannot compare with other developed literature like Bengali and Hindi, but it is struggling period to make its place in the vast literacy ground as language and literature always play main role in shaping one community, since a community gets its identity through language and literature as they considered as the backbone of the society. According to U.N. Brahma, the father of Bodos, “the Bodo language is certainly a scientifically acceptable language. The language and literature of the Bodos are the only keys to the existence and survival of Bodo community in this universe.”

Bodo tribes have their glorious history of success. They have been known for their honesty and docile. They are very simple and honest. Bodos are not only known for their honesty, they are also known for their nature of love from their prejudices, and they are not complex kind of nature. For them all are equal human being, whether male or female brought up by their God call Obonglaoree. The origin religion of Bodo people is Bathouism. But now, some section of the people converted into some other religion also like Hinduism and Christianity. However, now Bodos are follower of various religion.

As mentioned in the Mahabharata, some regions of present day Assam made up of ‘Pragjyotisha’ where Kiratas and Chinese lived. The Kiratas were very powerful then. They participated in the battle of Kurushetra led by legendary king Bhagadatta of the North-eastern kingdom of Pragjyotisha. The Kiratas were the ancestors of the Bodos. They fought on the side of Kauravas. Before coming to Christianity, this race began to enter matrimonial alliances and came contact with Aryan culture. There are some example of matrimonial alliances of Krishna and Rukmini, daughter of Mongolian Bodo King Bismaka, Anirudha and Usha, Bhim and Hidimba. Therefore, we can say that from the very beginning this community come under the influence of Aryans. The Mongolian tribes entered into north-east India through Patkai pass of Assam and Nathula pass of Sikkim.

It is also being observed from the written record of some historian that after the establishment of Political and Geographical boundaries, the homeland of the Bodos who were living in the western border of ancient Kamrup was transferred to the state of West Bengal. But the merging of the greater part of Eastern region with Assam and South

Eastern part with East Pakistan reduced the Bodos living in North Bengal to minority. Different people from different nationalities from the neighbouring states came and settled down after the 19th Century. Majority settlers were from present day Bangladesh. The first MP of North Bengal and MLA from duar regions after the independence were Bodos. Bodos were the name who gave name to rivers, mountains, hills, stream and villages in Assam and North Bengal. Thus, the name of rivers like Mechi, Diana, Tarsa, Sankosh etc. and places like Adabari, Siliguri, Makalbari, Gendrapara etc. are familiar to the name of the Bodos.

Assam Government established Belt and Blocks after the independence for the safety of the tribal community from other community. The Bodos have been alienated from many activities in different grounds. They have been suppressed and alienated from the mainstream Assam or India. Politically, socially and economically they are alienated. But now consciousness grew among them to safeguard their culture and tradition. They are still trying to put their identity and entity in the mainstream Assam. From the beginning, the existence and identities have been questioned, they have suffered lot of economic and political instability. But now they are raising their voice against this alienation.

Many organization have been formed among the Bodos to preserve and make known to their identity and rich culture heritage. The motive behind the formation of different organization is to protect and preserve the race and society, and to make strong foundation to the community as Bodos. The great and brave Bodo community trying their effort to make themselves free from oppression, to revive their culture and identity. The contribution of Bodo women in shaping better and organized community is immense. They are not less than man in building better society. There is no class and caste system among the Bodos. Bodos lost their political power back in the hands of so called intellectual higher community. They have been alienated and violated from their ancestral land and rights. Therefore, the Bodos, one of the largest tribe of north east in India striving to bring back their glory and lost identity and rights as well among them.

The first wave of consciousness among Bodo started with the socio-religious reform movement in 2nd decade of 20th century under the holy guidance of Gurudev Kalicharan Brahma. He deeply felt the concerned at the conversion of the Bodo into Hinduism by admitting themselves into Saraniya Caste which was placed at the lowest

rank of the Assamese Caste Hindu hierarchy, where they lost their Bodo identity and failed to earn any social responsibility. In the year 1907, he pronounced a new religion called 'Brahma' religion, a half-way house between Hindu and Bodo traditional religious belief.³⁷ The spread of western education brought renaissance among Bodo students, which inspired to form student organization for the first time in history of Bodo with the name and style 'Assam Bodo Chatra Sanmilan' in 1918 at Dhubri, the then Head Quarter of undivided Goalpara district. That student organization worked for the improvement of the language, culture, educational facilities and employment opportunities for Bodos.³⁸ After the independent of nation, the Bodo looked for constitutionally safeguard to the distinct identity, to enjoy all the rights and privileges under given provisions in the Constitution of nation and by carving out of Assam within Indian Territory. With the aim and objectives to unite the Bodo people on the basis of language and to work for its development, the Bodo Sahitya Sabha (BSS) was formed in 1952. Gradually, various phase of movements like Udayachal movement since late 1960s till mid of 1980s under the banner of PTCA, separate state Bodoland movement of late 1980s led by ABSU earlier but now both by ABSU and BNC can be seen for the cause of community.

1.8 Statement of the problem

The problem of the research work is "Status of Human Rights in the context of Bodo Community of BTAD, Assam since 2003 to 2014."

1.9 Rationale of the study

As a result of long movement of Bodo indigenous tribal people of Assam, the two historic agreements had made between the ABSU and Govt. of Assam i.e. BAC in 1993, and another one is between BLT with both Govt. of Assam and Govt. of India i.e. BTC in 2003. The Bodo people thought that the hopes and aspiration can be fulfilled through these agreements, but in practice it did not happened so. Therefore, still there is being heard and seen raises of voice to ensure human rights. Bodoland, one of the long pending

³⁷ Sonowal, Khema (2013), Why Bodo Movement? Guwahati: EBH Publishers (India), p. 69

³⁸ Ibid p. 70

movements of indigenous Bodo people under the banner of ABSU is still prevalent in the soil of Assam.

Due share of rights in human society is utmost important for peace, unity and integrity. If it fails to happen so, it becomes reason for raising descent voice or violence means to meet the share. Most of the indigenous people of Assam were about to lost their ethnic identity. But major changes in the sphere of education, political development, increase of population, constitutional provisions of nation and international laws strengthened their realization and demand to protect and promote the distinct identity. The very threat to the existence of identity has been translated in the form of reformation and several movements. The Bodo, one of the dominant indigenous people of Assam feel and considered as victim of deprivation of social, political and economic privileges of the state even after the attainment of BTC.

There are many reasons for human rights violation claim by indigenous people and all those are historical, social, political and economic in nature. In most specific way, those reasons are cultural assimilation or fear of losing ethnic identity in the process of formation of greater Assamese identity, displacement, land alienation, encroachment and illegal settlement by non-tribal people in tribal belt and block areas, waste government land, forest land and char areas, ethnic conflicts, Bangladeshi migrants, secret anti-tribal policy used by some section of Assamese leaders and intellectuals, unattended nature of government on the grievances of tribal people, exclusives development policy, backwardness of tribal dominated areas, economic exploitation, poor facilities in providing education, acute poverty, poor health facilities, severe unemployment, killing and punishment of innocent civilians in the name of extremist or militant and many more. Through various programs, policies and agendas have been initiated by the government like the schemes of Tribal Sub-Plan, the Tribal Development Corporation, Tribal development Authority, Integrated Tribal Development Project, Welfare of Schedule Tribes and Backward classes, Tribal Research Institute etc. mean for the development of the tribal people, but unfortunately all those have been witnessing measurably failed in practice to protect the interest of tribal people.

The land is the basic necessity for the survival of human being to protect and promote their distinct ethnic identity. The fear of losing land and identity connected with land have been one of the root cause for separate demand of Bodos and ethnic conflicts

that sometimes takes place in Bodo dominated areas of Assam. Land belong to the indigenous Bodos are not secured due to alienation, encroachment in tribal belt and block areas, illegal settlement in forest land, waste land and char areas by non-tribal in general as well as Bangladeshi migrants in particular. In the context of Assam, then Colonial British Government enacted the Assam Land Revenue Regulation in 1886. The Chapter X of said regulation provides for creation of tribal belt and blocks area under the Section 161 and prohibits transfer, exchange, lease, agreement or settlement any land in any area or areas constituted into belts and blocks from tribal to non-tribal. The state government of Assam has notified 49 tribal belt and block areas so far, but land rights of the tribal have been consistently violated by government themselves for their narrow vested political interest. As a result, numbers of non-tribal villages have come up and outnumbered the tribal population in those notified areas. Now, the question of survival with distinct identity and protection of rights of tribal people in general and Bodos in particular are matter of grave concern in regards to the limited population in those areas.

Bangladeshi migrants to Assam have been badly impacting on social, political and economic security of Bodos. High growth rate of population disturbing the demographic in the Bodo dominated areas for which encroachment and illegal settlement in the tribal belt and block areas, forest land, char areas etc. become concern of community security and human rights violation. The political security of native people in general and tribal people like Bodo of BTAD in particular is under big threat, since migrants are in a position to influence the results of the elections in a large number of constituencies about 32 per cent in Assam.³⁹ They are also mostly deciding factor in case of ST (P) reservation MLA and MP constituencies of state. There is also a large scale impact in the sphere of economy like decrease of agricultural land, unemployment, available of labours, cheap labour, threat to work culture of indigenous tribal people, imbalance in per capita income of state etc. Such kind of trends are grave concern to the survival of smaller ethnic group like Bodo and a big challenge for the protection of rights. But, there is lack of serious initiative in this regard for permanent solution of burning problem.

In spite of various policies, programs and agenda mean for development of tribal areas but practically most of the issues remain unsolved. As for example, though Bodo language has got recognition of 8th schedule language in India but practically has not

³⁹ See group of Minister Report on Reforming the National Security System, Chapter II, p. 6, Para 2.35

given importance in state yet, preservation of ethnic identity as Bodo is under threat due to migration, illegal settlement and land alienation, land belong to tribal people by giving special areas like Belt and Block are not protected properly. Moreover electricity facility, good communication system, health care centre, drinking water facility, good schools for education etc. are not reaching to most of the Bodo dominated areas. The government of Assam is aware about that, but it is unfortunate to say the keenness and seriousness does not see much positive to solve all those problems on the part of government. Due to misuse of funds, diversion of funds allocated to tribal welfare, the government and concern authority are not in a position to carry affirmative action programs, and developmental works are not taking place effectively. The Plain Tribes Development Department had approved a project worth Rs. 77, 83, 600 from which about 80 per cent was diverted for use in non-tribal area. From that project some amount Rs. 35, 83, 600 were used in construction of Community Assembly Hall at Sualkuchi, where do not see any tribal population.⁴⁰ The Bodo Sahitya Sabha alleged that an amount of Rs. 1, 20, 50, 000 was sanctioned for Tribal Welfare Project in August 2004, but the fund allegedly never found its way to the tribal communities.⁴¹ The state government of Assam is also failed to fill up some 29, 792 tribal backlogs reserved lying vacant posts.⁴² Such sort of acts and lacks on the part of government is clearly violations of human rights of indigenous people.

The innocent general people are being killed, arbitrarily arrested, tortured and abuses by branding extremist or suspecting link with extremist group at the time of happening incidents and combing operation for militant is unfortunate. Sometime inhuman acts like rape and assault to women are also being done by government police forces. Even today, in the name of National Democratic Front of Bodoland (NDFB) hundreds of innocent Bodo people are being killed, tortured and arbitrarily arrested. These all acts of police forces and by government in the name of militants on innocent Bodo people are completely unbearable and violation of human rights.

⁴⁰ Dissolve Tribal Development Project in The Assam Tribune, 5th January 2005 and recorded by India Human Rights report 2006 of Assam.

⁴¹ Ibid.

⁴² 29,792 backlogs post for ST yet to be filled up – Tribal body flays government indifference, The Sentinel, 17th December 2005 and recorded by India Human Rights Report 2006 of Assam.

1.10 Methodology of study

The research methodology can be presented in the following sub sections,

1.10.1 Method: - The descriptive, qualitative, survey and case study research method have employed in the study to assess the status of human rights in the context of Bodo Community of BTAD, Assam since 2003 to 2014.

1.10.2 Population: - The population of present study is exclusively emphasized on Bodo Community of four districts in BTAD, Assam.

1.10.3 Sample: - The research work is qualitative in nature. Hence, purposive sample was designed to collect from 800 individuals from the four districts of BTAD area with 200 in each districts, again with breakup of 100 male and 100 female in each district. During the time of field survey, special attention was given to meet at least 50 (fifty) numbers of individuals from every sub-divisions. Apart from meeting the individuals with questionnaire and interviews; focus group discussion and case study were also carried out with selected persons at different places in different period, where it was feel necessary.

1.11 Objective and scope of the study: - The objectives of research work are,

i) To assess and understand the status of human rights in the context of Bodo community.

ii) To find out and examine the fact regarding the human right concern issues of Bodo Community.

iii) To know the initiatives taken by Govt. of India, Govt. of Assam, Govt. of BTC, NGOs and other social organisations to ensure Human Rights.

iv) To recommend measures for the solution of human rights concern issues of Bodo community.

Scope: - As scope of study, this research work will help to understand and assess the practical burning human rights concern issues and status of indigenous Bodo community of BTAD, Assam under the aegis of international and national laws. The output or yield definitely will be considered as a vital information and recorded at the time of strategy detailing and positive usage of different programs for the more stupendous enthusiasm of the underprivileged section of people of the state.

1.12 Hypothesis of the study: - Formulation of Hypothesis is one of the most essential parts of research work, since it provides proper direction to carry out the research work. Keeping in mind the above objectives, this study will have following three hypotheses. These are,

i) The human rights of Bodo community in BTAD of Assam are being violated in various aspects.

ii) The protective provisions that mean for protection and promotion of indigenous peoples' rights are not being followed by concerned persons and departments properly.

iii) The lack of effectiveness in implementation of various programmes and policies taken by government time to time are the causes of concern for the problems like deprivation, backwardness and underdevelopment.

1.13 Organization of chapter

This research work consists of the following chapters,

Chapter I Introduction.

Chapter II Review of related literature.

Chapter III Protective provisions of human rights: Global and National context.

Chapter IV Data analysis and discussion on the status of human rights in the context of Bodo Community.

Chapter V Role of Government, NGOs and Social Organisations to ensure human rights.

Chapter VI Recommendation and Conclusion

1.14 Conclusion

The issues of human rights violation is most crucial and burning academic discourse across the globe. It is undeniable known fact to every conscious individual that the violations of rights as being human is the worst situation for an individual in his or her survival, since it causes a lot in every development of persons life. Despite of laws or provisions for the protection and promotion of human rights, but the violations of rights are taking place in every nook and corner of the world. Hence, realising the need to protect humanity and to ensure rights; many international bodies, concern national and state governments, NGOs, and social organisations are moving forward. The present research work is an attempt to assess the status of human rights in the context of Bodo Community of BTAD, Assam.

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