

School of Law, Governance and Citizenship

Ambedkar University, Delhi

Course Outline: Law and Politics of Indigeneity

Course Code: SLGC2LP211

Title: Law and Politics of Indigeneity

Cohort for which it is compulsory: None

Cohort for which it is elective: M.A. in Law Politics and Society

No of Credits: 4

Semester and Year Offered: 3rd Semester course for M.A 2nd year students (Monsoon Sem 2018)

Course Coordinator and Team: Ngoru Nixon

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Pre-requisites: None

Course Aim:

The term “Indigenous” has had gained global currency following the recognition and adoption of the rights of “indigenous peoples and tribal peoples” by International agencies notably the International Labour Organization (ILO) and the United Nations. Harping on the “historical injustices” experienced by the indigenous and tribal peoples through colonization and their concomitant position of marginality (socially, economically, politically and culturally) vis-à-vis the other population, the States within which the peoples in question live are enjoined to respect and promote their rights, freedoms, aspirations, needs, knowledge and practices etc. Meanwhile, India (among other countries) has refused to ratify the ILO Convention no. 169 which envisions self-identification and greater autonomy for “indigenous and tribal peoples” especially in decision-making processes affecting their sphere of lives. The refusal is based primarily on two grounds: i) the term “Indigenous Peoples” does not apply in the context of India where there is a blur between the claimants of “Indigenous Peoples” and the general population unlike in the

contexts marked by European expansion ii) the people forming the “Scheduled Tribes” are already given special privileges under the Constitution of India to secure their rights and their cultural identity/autonomy. On the contrary, the people known as “tribes” in India, like many of the “indigenous and tribal peoples” around the world have enthusiastically embraced the category of “Indigenous Peoples” to give fillip to and legitimize their larger politico- historical narrative and their struggle for self-determination.

The politics of indigeneity draws on the narrative of historical and contemporary marginalization to make a claim for the autonomy and rights of the ‘Indigenous Peoples’. In fact, the proliferation of scholarship on indigeneity in the recent times is impelled as much by the struggle and assertion of the indigenous peoples/ communities as by the discursing of the ‘Indigenous’ as signifying the limit of the universal narrative of modernity.

Evidently, the orientation of the course is such that not only would the students who have prior interest on “Tribal” issues/concerns and indigeneity identify with the course but also those who have interest in the larger field of postcolonial studies.

A brief description of the Course:

The course seeks to examine the key issues engendered by as well as informing the discourse on politics of indigeneity, underlined by the intersection between the “Indigenous” and the law/legal order. This exercise calls for an understanding of the historical context of the emergence of the problem of the “tribe/tribal” manifested brazenly in the ways how the anthropological imagery about people known as “tribes” is conceived/staged. Concurrently, the engagement also entails a reflection on how the discursing of the “tribe/tribal” and the policies/strategies of the colonial power/state as well as post-colonial state about the “tribe/tribal” inform one another.

While the major focus of the course will be on Indian context, attempt will be made to draw and engage with the relevant examples from the other contexts such as Australia, Canada and others in order to broaden and enrich the understanding of the issues at hand.

The course will have 6 Modules:

Module 1: What/Who is/are Indigenous (Peoples)? : Examining (the terms of) the Terminology/Debate. (2 Weeks)

Module 2: Discursing of the ‘Wild’ and the ‘Primitive’. (2 Weeks)

Module 3: Colonial/Post-colonial State and the Indigenous Peoples/Communities (2 Weeks)

Module 4: On the 'Difference' of the Indigenous (1 Week)

Module 5: The Politics of Indigeneity: Making Rights and Justice Claims. (3 weeks)

Module 6: Legal Order/Adjudication and the Indigenous. (2 weeks)

Law and Politics of Indigeneity

Important Readings

The following readings will be interspersed across the modules based on their significance to the theme of discussion.

Official Document/Act

India:

- India's Constituent Assembly Debates on the Fifth and Sixth Schedules.
- Fifth and Sixth Schedules of the Indian Constitution
- PESA Act 1996
- Forest Rights Act 2006
- Government of India Act, 1935.
- Government of India Act, 1919.
- Inner Line Regulation Act, 1873.

International:

- International Labour Organization (ILO) Convention No. 107, 1957.
- ILO Convention No. 169, 1989.
- ILO's *Indigenous & Tribal Peoples' Rights in Practice: A Guide to ILO Convention No. 169*
- United Nations Declaration on the Rights of Indigenous Peoples, 2008.

Committee Report (India)

- *Report of the four member Committee for Investigation into the Proposal Submitted by the Orissa Mining Company for Bauxite Mining in Niyamgiri*, August 16, 2010.
- *Report of the High Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities in India*. Government of India: Ministry of Tribal Affairs, 2014.

Cases

- Mabo and others v. Queensland (1992).
- Samatha v. State of Andhra Pradesh and others (1997).
- Orissa Mining Corporation LTD v. Ministry of Environment & Forest (2013).
- Standing Rock Sioux Tribe, et al. v. U.S. Army Corps of Engineers, et al.

Fictions (indicative list):

- Hansda Shekhar's *The Adivasi Will Not Dance*
- Gopinath Mohanty's *Paraja*
- Mahasweta Devi's *Imaginary Maps*
- Alexis Wright's *Carpentaria*
- Malsawmi Jacob's *Zorami- A Redemption Song*
- Easterine Kire's *When the River Sleeps*
- Easterine Kire's *A Terrible Matriarchy*
- Mamang Dai's *Legend of Pensam*
- Alan Duff's *Once Were Warriors*
- Sam Watson's *The Kadaitcha Sung*
- Patricia Grace's *Potiki*

Syllabus with List of Readings	
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Module 1:

**What/Who is/are Indigenous (Peoples)?:
Examining (the terms of) the Terminology/Debate**

(2 Weeks)

The first module seeks to engage the students in examining the concept of "indigenous people" with a focus on the Indian context. It does so by way of introducing the students to the background entailing the global articulation and adoption of the category of "indigenous peoples" and the terms of the ensuing debate it has had induced in India. The engagement with the discussion around the concept of "indigenous people" is also linked to the discussion on category of "tribe" in India since the peoples known as 'tribes' have enthusiastically embraced the category of "Indigenous peoples".

Weeks 1 & 2**Compulsory Readings:**

Anaya, James S. *Indigenous Peoples in International Law*. Oxford University Press, 2004.

Beteilie, Andre. "The concept of tribe of tribe with special reference to India." *European Journal of Sociology*, Vol. 27, No. 2 (1986).

Beteilie, Andre. "The Idea of Indigenous Peoples." *Current Anthropology*, Vol. 39, No. 2 (April 1998).

	<p>Galanter, Marc. <i>Competing Equalities: Law and the Backward Classes in India</i>. University of California Press, 1984. (Chapter 5- The section on “Scheduled Tribes”).</p> <p>Karlsson, Bengt G. and Tanka B. Subba. <i>Indigeneity in India</i>. Kegal Paul, 2006 (Extracts).</p> <p>Kingsbury, Benedict. “Indigenous Peoples’ in International Law: A Constructivist Approach to the Asian Controversy.” <i>The American Journal of International Law</i>, Vol. 92, No. 3 (July, 1998).</p> <p>Xaxa, Virginius. “Tribes as Indigenous People of India.” <i>Economic and Political Weekly</i>, Vol. 34, no. 24 (June 12, 1999).</p> <p>Additional Readings:</p> <p>Damodaran, Vinita. “Colonial Construction of the ‘Tribe’ in India: The Case of Chotanagpur.” <i>Indian Historical Review</i>, Vol. 33, No. 1 (January 1, 2006).</p> <p>Guha, Sumit. <i>Environment and Ethnicity in India, 1200-1991</i>. Cambridge University Press, 1999 (Chapter 1).</p> <p>Rycroft, Daniel J and Sangeeta Dasgupta. Eds. <i>The Politics of Belonging in India: Becoming Adivasi</i>. London and New York: Routledge, 2011. (Chapter 1).</p> <p>Sarfaty, Galit A. “The World Bank and the Internalization of Indigenous Rights Norms.” <i>The Yale Law Journal</i>, Vol. 114, No. 7 (May. 2005).</p>
<p>Module 2:</p> <p>Discoursing of the ‘Wild’ and the ‘Primitive’</p> <p>(2 Weeks)</p>	<p>In the second module, the discussion centers on how the people known as “tribes” have come to be burdened with the imagery of the “wild” and the “primitive”. The mode/strategy of articulation and inscription of such imagery of the “tribe” both in colonial discourse/legal order and nationalist thought in India will be delineated, in the meantime underlining the mode of othering of the “tribe”.</p>

<p>Weeks 3,4,</p>	<p>Compulsory Readings:</p> <p>Banerjee, Prathama. <i>Politics of Time: 'Primitives' and History-writing in a Colonial Society</i>. New Delhi: Oxford University Press, 2006 (Chapter 1).</p> <p>Banerjee, Prathama. "Culture/Politics: The Irresolvable Double Bind of the Indian Adivasi." <i>The Indian Historical Review</i>, Vol. XXXIII, No. 1 (January 2006).</p> <p>Bhukya, Bhangya. "The Mapping of the Adivasis Social: Colonial Anthropology and Adivasis." <i>Economic and Political Weekly</i>, September 27, 2008.</p> <p>Chandra, Uday. "Liberalism and Its Other: The Politics of Primitivism in Colonial and Postcolonial Indian Law." <i>Law and Society Review</i>, Vol. 47, No. 1 (2013).</p> <p>Pagden, Anthony. <i>The Fall of Natural Man: The American Indian and the Origins of Comparative Ethnology</i>. Cambridge University Press, 1982. (Extracts).</p> <p>Skaria, Ajay. "Shades of Wildness: Tribe, Caste, and Gender in Western India." <i>The Journal of Asian Studies</i>, Vol. 56, No. 3 (August 1997).</p> <p>Additional Readings:</p> <p>Bates, Crispin. "Race, Castes, and Tribe in Central India: The Early Origins of Indian Anthropometry." In <i>The Concept of Race in South Asia</i>, edited by Peter Robb. Delhi: Oxford University Press, 1995.</p> <p>Clifford, James. <i>The Predicament of Culture</i>. Harvard University Press, 1988. (Chapter 9 and 10).</p> <p>Fabian, Johannes. <i>Time and the Other: How Anthropology Makes its Object</i>. New York: Columbia University Press, 1983.</p> <p>Skaria, Ajay. <i>Hybrid Histories: Forests, Frontiers and Wildness in Western India</i>. Oxford University Press, 1999.</p> <p>Stocking Jr., George W. <i>Victorian Anthropology</i>. The Free Press, 1991.</p> <p>White, Hayden. <i>Tropics of Discourse: Essays in Cultural Criticism</i>. Baltimore and London: The John Hopkins University Press, 1978 (Chapter 7 and 8).</p>
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<p>Module 3:</p> <p>Colonial/Post-colonial State and the Indigenous Peoples/Communities</p> <p>(2 Weeks)</p> <p>Weeks 5,6,</p>	<p>Building on the second module, the third module begins by looking at how the subordination and marginalization of the “tribe” by the colonial power/state gets further perpetuated in post-colonial state. The module will also engage with the debate on the question of isolation versus assimilation of the ‘tribe’.</p> <p>Compulsory Readings:</p> <p>Devy, G.N. et.al. ed. <i>Indigeneity: Culture and Representation</i>. Orient BlackSwan, 2009. (extracts)</p> <p>Elwin, Verrier. “Beating a Dead Horse.” <i>Seminar</i> 14 (October, 1960). http://www.india-seminar.com/2001/500/500%20verrier%20elwin.htm</p> <p>Evans, Julie. et.al. <i>Unequal Subjects, unequal rights: Indigenous People in British settler colonies, 1830s-1910</i>. Manchester and New York: Manchester University Press, 2003. (Extracts).</p> <p>Furer-Haimendorf, Christoph Von. <i>Tribes of India: The Struggle for Survival</i>. University of California Press, 1982. (Extracts).</p> <p>Ghurye, G.S. <i>The Aborigines--“so-called”—and Their Future</i>. Poona: Gokhale Institute of Politics and Economics, 1943.</p> <p>Guha, Ramachandra and Madhav Gadgil. “State Forestry and Social Conflict in India.” <i>Past & Present</i>, No. 123 (May, 1989).</p> <p>Singh. K.S. ed. <i>Jawaharlal Nehru, Tribes and Tribal Policy</i>. Calcutta: Anthropological Survey of India, 1989.</p> <p>Additional Readings:</p> <p>Elwin, Verrier. <i>The Philosophy for NEFA</i>. Isha Books, 2009.</p> <p>Sivaramakrishnan, K. <i>Modern Forests: Statemaking and Environment Change in Colonial Eastern India</i>. Oxford University Press, 1999.</p>

<p>Module 4</p> <p>On the 'Difference' of the Indigenous</p> <p>(Week 1)</p>	<p>Module 4 looks at the recent scholarship on indigeneity which engages in the discoursing of the 'Indigenous' as signifying the limit of the universal narrative of modernity. In this regard, the focus will be on how the 'difference' of the indigenous people is posited vis-à-vis the dominant narrative.</p>
<p>Week 7</p>	<p>Compulsory Readings:</p> <p>Chakrabarty, Dipesh. "Minority histories, subaltern pasts." <i>Postcolonial Studies</i>, Vol.1, No. 1 (1998).</p> <p>Johnson, Miranda. "Sacred Claims and the Politics of Indigeneity in Australia." <i>Journal of Religious and Political Practice</i>, Vol. 4, Issue 1 (2018).</p> <p>Macklem, Patrick. <i>Indigenous Difference and the Constitution of Canada</i>. University of Toronto Press, 2001. (Chapter 7).</p> <p>Sarkar, Tanika. "Jitu's Santhal Movement in Malda, 1924-1932." In <i>Subaltern Studies IV: Writings on South Asian History and Society</i>, edited by Ranajit Guha. Oxford University Press, 1985.</p> <p>Additional Readings:</p> <p>Gelder, Ken and Jane M. Jacob. <i>Uncanny Australia: Sacred and Identity in a Postcolonial Nation</i>. Melbourne University Press, 1994.</p> <p>Guha, Ranajit. "The Prose of Counter-Insurgency." In <i>Subaltern Studies II: Writing on South Asian History and Society</i>, edited by Ranajit Guha. Delhi: Oxford University Press, 1983.</p> <p>Guha, Ranajit. <i>Elementary Aspects of Peasant Insurgency in Colonial India</i>. Durham: Duke University Press, 1999.</p> <p>Hardiman, David. "Adivasi Assertion in South Gujarat: The Devi Movement." In <i>Subaltern Studies III: Writings on South Asian History and Society</i>, edited by Ranajit Guha. Delhi: Oxford University Press, 1984.</p>

<p>Module 5:</p> <p>The politics of Indigeneity: Making Rights and Justice claims</p> <p>(3 Weeks)</p> <p>Weeks 8,9,10</p>	<p>The module will examine the politics of indigeneity involving making rights and justice claims against the exclusionary policy/politics of the state.</p> <p>Essential Readings:</p> <p>Baviskar, Amita. <i>In the Belly of the River: Tribal Conflicts Over Development in the Narmada River</i>. Oxford University Press, 2004. (Extracts)</p> <p>Karlsson, Bengt, G. <i>Unruly Hills: A Political Ecology of India's Northeast</i>. Berghahn Books, 2011. (Extracts)</p> <p>Havemann, Paul. <i>Indigenous People's Rights in Australia, Canada, & New Zealand</i>. Oxford University Press, 1999. (Extracts)</p> <p>Rycroft, Daniel J and Sangeeta Dasgupta. <i>The Politics of Belonging in India: Becoming Adivasi</i>. London and New York: Routledge, 2011. (Extracts).</p> <p>Shah, Alpa. <i>In the Shadows of the State: Indigenous Politics, Environmentalism, and Insurgency in Jharkhand, India</i>. Oxford University Press, 2015. (Extracts)</p> <p>Sundar, Nandini and T.N. Madan. ed. <i>The Scheduled Tribes and Their India: Politics, Identities, Policies and Work</i>. Oxford University Press, 2016. (Extracts).</p> <p>Additional Readings:</p> <p>Devalle, Susana B.C. <i>Discourses on Ethnicity: Culture and Protest in Jharkhand</i>. Sage Publications, 1992.</p> <p>Sundar, Nandini. <i>Subalterns and Sovereigns: An Anthropological History of Bastar (1854-2006)</i>. Oxford University Press, 2008.</p>
<p>Module 6</p> <p>Legal Order/Adjudication and the Indigenous (Week 2)</p>	<p>In Module 6, the focus will be directed at examining the intersection and tension between the indigenous and the hegemonic narrative of law. The gender question/implication will also be discussed.</p>

<p>Weeks 11 and 12</p>	<p>Compulsory Readings:</p> <p>Birrell, Kathleen. <i>Indigeneity: Before and Beyond the Law</i>. Routledge, 2016. (extracts)</p> <p>Brown, Brian Edward. <i>Religion, Law, and the Land: Native American and the Judicial Interpretation of Sacred Land</i>. Greenword Press, 1999. (extracts).</p> <p>Liddle, Celeste. "Intersectionality and Indigenous Feminism: An Aboriginal Woman's Perspective," <i>The Postcolonialist</i>, June 25, 2014. http://postcolonialist.com/civil-discourse/intersectionality-indigenous-feminism-aboriginal-womans-perspective/</p> <p>Parmar, Pooja. <i>Indigeneity and Legal Pluralism in India: Claims, History, Meanings</i>. Cambridge University Press, 2015. (Extracts).</p> <p>Pereira, Melvil, et. al. eds. <i>Gender Implications of Tribal Customary Law: The Case of North East India</i>. Rawat Publications, 2017. (Extracts).</p> <p>Reisman, W. Michael. "Protecting Indigenous Rights in International Adjudication." <i>Faculty Scholarship Series</i>, Paper 885 (1995). http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1878&context=fss_papers</p> <p>Additional Readings:</p> <p>Bora, Papori. "Between the Human, the Citizen and the Tribal: Reading Feminist Politics in India's Northeast." <i>International Journal of Politics</i>, Vol. 12, Issue 3-4, 2010.</p> <p>O'Faircheallaigh, Ciaran. <i>Negotiations in the Indigenous World: Aboriginal Peoples and the Extractive Industry in Australia and Canada</i>. Routledge, 2018.</p> <p>Povinelli, Elizabeth A. <i>The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism</i>. Duke University Press, 2002. (Chapter 4- Shamed States).</p> <p>Ritter, David. <i>Contesting Native Title: From Controversy to Consensus in the Struggle over Indigenous Land Rights</i>. Allen Unwin, 2009.</p> <p>Strelein, Lisa. <i>Compromised Jurisprudence: Native title cases since Mabo</i>. Aboriginal Studies Press, 2009.</p>



Assessment Methodology:

Rough break up:

Class participation/Presentation: 20%

Term paper: 25%

End Semester: 30%

Reading/Analysis of reports/cases/acts (written + presentation): 15%

Book Review: 10%