

Contribution for the GA report of the SRFORB on Indigenous peoples and the right to freedom of religion or belief by Adivasi ry and Adivasi Jan Van Adhikar Manch

1. Engaging the human right to freedom of religion or belief:

1. Indigenous peoples (IPs) practise, understand and express their diverse life-heritages, cultures of beliefs and worldviews by using locally adapted meanings and structures of significance which often differ from mainstream terms of laws and decisions.

That how modern state by its laws and governance conceptualises, registers and treats what are 'religions', **differs from indigenous tribal peoples' beliefs on what is sacred, spiritual**, etc. and does not secure equal freedom of belief. States classify and treat indigenous local beliefs rather as if they were part of some nationally recognised 'religion'.

In India some indigenous adivasi tribes claim to have their own religion as distinct from the religions recognised or identified by the state. (1)

But many other indigenous tribes see that the term 'religion' does not duly describe the different character of how they believe, sense or perceive world to happen around them. If an indigenous belief may not believe itself to be a part of recognised 'religion' - and if in many indigenous languages or life-heritages no concept like 'religion' even exists - the right and freedom of such indigenous belief can not depend on it being treated as such 'religion'.

When adivasis believe the Earth or forest whose life they live to be different than those as which the state decisions order the Earth and forest to be treated, the state does not treat adivasis' freedom of belief equally.

By assuming that one can reduce indigenous meanings to what can be translated to the prevailing meanings of European/mainstream languages - or that other meaning which can not be translated would consist of 'supernatural' 'religious' assumptions -, one ignores the indigenous local significance.

While adivasis have different beliefs on Earth, rivers, stones and other environment which continue the life of their ancestors, the state however treats and governs such ancestral territories as what they are for modern beliefs. And local spirits or sacred meanings with which adivasis live their locally adapted life do not get recognised or respected equally by what the national laws and administration recognise nationally as 'religions'.

Freedom of indigenous belief needs also freedom from what is meant by 'religion'.

2. Freedom of religion or belief protected by UDHR and ICCPR relate to the rights protected under the UNDRIP so that IPs are free to believe and manifest their beliefs compliant to their community's life-heritage or culture of beliefs.

Also as minorities they "shall not be denied the right, in community with the other members of their group, to enjoy their own culture" of their beliefs and "to profess and practise their own religion" (2) according to how these rights in case of "members of indigenous communities constituting a minority" also "may consist in a way of life which is closely associated with territory and use of its resources". "Traditional activities" on lands which a people has used must be protected "to maintain its culture, language or religion" and "to ensure the survival [...] of the cultural, religious and social identity".(3)

To secure these human rights for indigenous individuals equally, indigenous peoples have to be ensured also their collective "right to manifest, practise, develop their spiritual traditions, customs and ceremonies and related cultural sites" and to use/control related ceremonial objects in harmony with "their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters [...] and other resources". (4)

So, while the modern law and policies globalised through colonial oppression and assimilating commercialisation have undermined, subordinated and exploited indigenous cultures of beliefs, IPs have the rights to the freedom of their own spirituality or beliefs also as minorities, when their beliefs do not correspond the prevailing concepts of religion or cultures of belief or are not respected or even recognised to exist. (5)

"State recognition of a religion or belief is not a precondition for enjoying the right of religion or belief" and "discriminatory and compulsory registration requirements for persons belonging to marginalised religion or belief communities" are "infringing upon their freedom or religion or belief." (6)

3. There is a gap in protection of indigenous beliefs and spirituality. Diverse IP cultures of beliefs and spirituality have to be equally respected also in accordance with how they differ from what is meant by 'religion' in order to get IPs' "freedom of religion or belief" protected and promoted equally compliant to the UN obligations also under the national law.

Supreme Court of India ruled in 2013 duly on Particularly Vulnerable Tribal Group's freedom of religion and belief that:

- "Their right to worship the deity" of the mountain "to be protected and preserved" as "religious freedom guaranteed [...] under Articles 25 and 26 of the Constitution" requires to "guarantee the right to practice" "not only matters of faith or belief, but all those rituals and observations" integral to such belief. (7)

- State laws "shall be in consonance with the customary law, social and religious practices" of the tribal community so that its village council, Gram Sabha "shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution". (8)

- Whether the tribal communities "have got any religious rights i.e. rights of worship over" the mountain has "to be considered by the Gram Sabha", who "can also examine whether the proposed mining area [...] would in any way affect the abode of" the mountain deity or "their religious rights, especially their right to worship" the mountain as such "right has to be preserved and protected." (9)

- The Forest Rights Act "confers powers on the Gram Sabha to determine the nature and extent of each explicated "individual" or "community rights" which they have traditionally had and "any other traditional right customarily enjoyed". (10) The tribal village council is "free to consider all the community, individual as well as cultural and religious claims". (11)

So Supreme Court ruled on a mountain, which tribal communities worship as sacred deity (Niyamgiri) that it shall not be taken for mining without the approval of the tribal communities who live with the mountain as their divine life source.

But now India's Ministry of Environment, Forest and Climate Change proposes The Forest (Conservation) Act 1980 implementation rules to be changed so that approval for corporations to divert forest lands of tribal areas for industrial purposes can be given by the government before consent of tribal village council - no matter how sacred forests are to adivasis. (12) OHCHR and UN Special Rapporteurs have repeatedly urged adivasi consent to be required for taking their forest lands for other purposes but India tends to forget its human rights obligations. (13)

So it would require again peoples' movements and UN statements to get sacred mountains and forestlands of indigenous peoples protected also in cases like Rowghat or Nandraj mountains, worshipped as sacred for tribals but taken for mining without their consent.

2. Mapping lived experiences of indigenous peoples:

1. Laws, policies and practices discriminate against indigenous peoples' equal rights to enjoy their cultures and ways of believing, their spiritual traditions, customs and ceremonies, use and control of spiritual/cultural sites.

IPs are required to adopt belief to such registrations, private ownership titles, ration cards or other magical pieces of paper, which have power to rule over the Earth as alien to their culture. If IPs do not adopt such modern magical beliefs, they lose many rights.

In India adivasis are set also under requirements which discriminate against their life-heritages and pressure them to be assimilated, converted to hinduism or other 'religions'. Their rights are made conditional on 'caste certificates' or other registrations, classifications or categorisations which derive from beliefs of the dominant hindu heritage. This discriminates against peoples who have not believed in castes or other hindu beliefs.

Even adivasis' traditional rights to continue to live outside the caste system in forest can become conditioned by 'caste certificate' - although the law which recognises their forest rights does not set adivasis as 'castes' for the registration or implementation of such rights. This violates also their rights under the ICERD if they are forced to such descent based registration, the lack of which ("Lack of Evidence of Caste and Possession") - is used also to deny their legal rights. (14)

2. Adivasis face many obstacles for their cultures of belief/spirituality and they experience violence and hostility.

Jungle whose life the adivasis live with presence of their ancestors in such jungle, is neither 'nature' which the science is perceiving, nor aesthetic feeling of adivasis, nor anything 'supernatural', but forest who feels their experiences of how they live the life of the forest. On this the Baigas sing for example:

"We/I climbed a dogri (high mountain), we went to the forest and when we got tired of negotiating the difficult terrain, We climbed the dogri and from there we saw down below our beautiful green forest and implored it to feel our pathos and hear our pleas. Who will do that? Only the forest below!"

Such beliefs in how the forest feels experiences of adivasis who live the life of the forest have sustained the forest better than modern beliefs in forest as 'nature' or as industrially managed or aesthetic or supernatural object.

Obstacle is that the modern society and its 'science of nature' do not provide equal space for the sustainable ways how adivasis believe in forests but tend to exclude them from decisions over the forests.

Beliefs by which adivasis have lived and sustained life of the forest are discriminated and excluded by how prevailing science, religion or aesthetics treat beliefs and how the modern law and governance reduce the world to natural and cultural environment. The ways how modern society perceives and considers forests and makes decisions about it accordingly (as 'nature' by science or as consumed for aesthetic preferences of senses or felt by religious/spiritual perceptions, etc.) do not allow space for the beliefs by which adivasis have lived and sustained forest's life.

The historical injustices how sacred ancestral lands and forests have been taken away from adivasis have enabled these problems to grow and exacerbate since the colonial times. India has promised to correct this 'historical injustice' by recognising their traditional forest rights but the implementation has proceeded slowly.

3. Gender and other status like cultural differences regarding property shape these problems including violence and discrimination against Indigenous women, girls and LGBT+ persons in the name of a religion or belief system.

Adivasi women are often the main carriers and defenders of their communities indigenous life-heritages, beliefs and practices which differ from what the modern world means by religious beliefs and practices. As many men must go to wage work outside of their community, the women have been left to continue to defend the community life-heritage of forest life while so little land and forest have been left for adivasi life that adivasis can hardly survive with that.

The obstacles the women face with the right to freedom of religion or belief include that the modern world respects their beliefs of their forest life only as far as these correspond what is meant by 'religion' in modern law, state or society - which differs from the indigenous life-heritage.

Law does not identify or address many local indigenous beliefs or their traditional local rights but may use coercion against indigenous adivasi beliefs for example on use of wild forest plants or herbs. And when indigenous women resist such oppression they may face violence, torture or cruel, inhuman or degrading treatment or punishment.

So adivasi women who defend their sacred mountains like Rowghat or Nandraj and beliefs of their life-heritage, have faced violence by the police, armed forces and mining business. Some adivasi women have been murdered, some raped and others have been jailed like Hidme Markam who defended their sacred mountain and their rights to it. (15)

4. The commercialisation and homogenisation of indigenous peoples' cultures and uses of their traditional land and forest also displace, undermine or weaken indigenous spiritual use/significance of those areas and respective practices. "Development measures and projects that have been carried out have not sufficiently taken into account the way of life and specific forms of livelihood of numerous communities in India, in particular the scheduled tribes [...] thus affecting their right of everyone to take part in cultural life." (16)

5. State-sponsored violence and killings against adivasis continue with forced displacements and other imposition without FPIC. In some adivasi areas also reproductive control has been practised with problematic implications.

6. India's present government follows agenda of hate against those who are not hindus. Specific police and military units continue violence, displacement, torture, arrests and killings in adivasi areas.

7. More clear HR based restrictions would be needed against some traditional practices like witch-hunt and harassment of women.

3. Good practices:

1. Adivasi movement together with the international demands by the OHCHR and other UN agencies, NGOs etc. succeeded in cases of Niyamgiri in 2013 and Supreme Court eviction order in 2019 to prevent the displacement of adivasis from their sacred traditional lands and life-heritages.

The rights of tribal communities to determine their traditional local rights can be respected when the adivasis, UN mandate holders and civil society claim publicly adivasis' legal rights on their traditional lands.

2. Otherwise impacts on freedom of religion and belief of adivasis are not duly monitored or mitigated by the administration which also does not support adivasis to monitor the violations

3. India does not fulfil its obligations to regulate corporations to respect human rights and private business does not treat equally adivasi beliefs on lands, forests and waters.

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Notes and references

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