CHAPTER III
RIGHT TO PROPERTY AND INTERNATIONAL NORMS

Social order is the pre-condition of any society. In this order of social relations, one could easily find out the existence of different types of institutions. Property is one such institution. Moreover, property rights have been universally recognised as fundamental and inalienable. Many international organizations have played an active role in propounding the fundamental principles on which States can frame or enact their legislations to protect this right. Some of the international initiatives in this regard are discussed below:

3.1 Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights, 1948 (UDHR) is one of the milestones in protecting human rights all over the world. The General Assembly of the U.N.O. declares:

This Universal Declaration of Human Rights is a common standard of achievement for all people and all nations, to the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the people of territories under their jurisdiction.

U.D.H.R directly protects the property right of an individual, when it says *inter alia*: “everyone has the right to own property alone as well as in association with others; and no one shall be arbitrarily deprived of his property”.

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3.2 European Convention on Human Rights, 1950

This Convention also contains provisions for protecting property rights. It protects the peaceful enjoyment of possession of a person. Art. 1 of the First Protocol of the Convention states: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law”.

3.3 European Union (EU) Land Policy Guidelines, 2004

The European Union Land Policy Guidelines require that “land tenure” should be defined broadly as the ‘system of access to and control over land and related resources’, which includes the rules and rights that govern the appropriation, cultivation and the use of natural resources of a given space or piece of land. Strictly speaking, it is not land itself that is owned, but the rights and duties relating to it. The rights and duties held by individuals or families are themselves embedded in a set of rules and norms, defined and enforced by authorities and institutions that may be those of rural communities and/or of the State. No system of land tenure can work without a body endowed with the power and authority to define and enforce the rules, and to arbitrate conflict. Thus, a land- tenure system is made up of rules, authorities, institutions and rights. Land administration (maps, deeds, registers, etc) is only a segment of this system. Land rights are not strictly limited to private ownership, but can be a very judicious balance between individual rights and duties, and collective regulations; private or family ownership being one possible case.

4 Supra n. 2 at p.400.
5 http://www.justice.gov.uk/downloads/human-rights/human-rights-handbook-for-public-authorities.pdf (visited on September 10, 2012). Article 1 of the Protocol I reads: “Everyone has the right to the peaceful enjoyment of their possessions. Public authorities cannot usually interfere with a person’s property or possessions or the way that they use them except in specified limited circumstances.”
Rights are secure if they are not contested without reason and if, in the case of contestation, they can be confirmed by the legal or arbitration authorities (whether these be customary or governmental, or both). Securing land rights is thus largely a question of having effective institutions and the enforcement of rules for their management, and not merely the formal legal nature of any such rights.

Thus the EU land policy aims at achieving the objectives relating to the security and distribution of land rights, land use and land management, and access to land, including the forms of tenure under which it is held.

### 3.4 International Covenant on Civil and Political Rights, 1966

International Covenant on Civil and Political Rights, 1966 upheld the importance of peaceful enjoyment of house. With respect to individuals and groups, Article 17 ascertained fundamental right to enjoy the property peacefully. It is to prevent others from invoking the rights and freedoms for the purpose of destroying or limiting those rights and freedoms of the individuals. Article 17 not only implies a prohibition for persons and groups, but also for any State. Thus it is also intended to prevent the national authorities from making use of their powers under the Convention to limit the enjoyment of the rights and freedoms in order to destroy the essence of those rights and freedoms or to limit them to a greater extent than is provided for in the Convention.

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7 Article 17 (1) reads: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence nor to unlawful attacks on his honour or reputation. (2) Every one has the right to the protection of the law against such interference or attacks.”


3.5 **Instruments for the Protection of Indigenous (Tribal) People**

The Universal Declaration of Human Rights (1948)\(^\text{10}\), International Covenant on Civil and Political Rights (1966)\(^\text{11}\), International Covenant on Social, Economic and Cultural Rights (1966)\(^\text{12}\), the U.N Declaration against Racism and Racial Discrimination (1978)\(^\text{13}\) etc. bear upon the situation of tribal people though not explicitly.

The United Nations Declaration on Racism and Racial Discrimination (1978) endorses the right of tribal people to maintain their traditional structure of economy and culture and stresses that their land, land rights and natural resources should not be taken away from them\(^\text{14}\). The second World Conference to Compact Racism and Racial Discrimination also proposed that the government should recognise and respect the basic rights of tribal and indigenous people. Similarly, in 1982, a working group of the United Nations Commission on Human Rights declared that the tribes must be able to decide their own future development and a thorough re-thinking is required in the policy towards tribes and their lands.

The International Labour Organisation (ILO) has also adopted a Convention in this regard, which was the first of its kind in international law that addressed the tribal problems and recognised their collective and individual land rights. This Convention is referred to as the Convention Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Population in Independent Countries\(^\text{15}\). Later, in the wake of a spate of criticism, the International Labour Organisation reviewed the said Convention and adopted a new Convention: The Convention Concerning Indigenous and Tribal Peoples in Independent Countries\(^\text{16}\).

\(^{10}\) Adopted and proclaimed by the United Nations General Assembly Resolution 217 (III) of 10\(^{th}\) December 1948.
\(^{11}\) Adopted and opened for signature, ratification and accession by the General Assembly Resolution 2200 A (XXI) of 16\(^{th}\) December 1966.
\(^{12}\) Ibid.
\(^{13}\) Adopted and proclaimed on 27\(^{th}\) November by the General Conference of UNESCO, 1978.
\(^{14}\) Article 7, United Nations Declaration on Racism and Racial Discrimination (1978).
\(^{15}\) ILO Convention 107 (1957) adopted on 26\(^{th}\) day of June 1957.
3.5.1 ILO Convention on Indigenous Peoples Rights, 1957

As stated earlier, this was the first international effort to recognize the rights of indigenous or tribal people. The Convention was intended to adopt general international standards to improve the living and working conditions of these people\textsuperscript{17}.

The Convention mandates that the member States shall adopt special measures to protect the institutions, persons, property and labour of these populations\textsuperscript{18}. Due account shall be given to their cultural and religious values, forms of social control existing among them\textsuperscript{19} and their customary laws\textsuperscript{20}. They shall be allowed to retain their own customs and institutions\textsuperscript{21}. Their land rights are being recognised and declared under Part II of the Convention. Similarly, their right to ownership, both collective and individual, is recognised\textsuperscript{22}. Moreover, they shall not be removed from their habitual territories without their free consent\textsuperscript{23}. Even if they are removed from

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\textsuperscript{17} See, Preamble of ILO Convention 107 (1957): “Considering it desirable both for humanitarian reasons and in the interest of the countries concerned to promote continued action to improve the living and working conditions of these populations by simultaneous action in respect of all the factors which have hitherto prevented them from sharing fully in the progress of the national community of which they form part, and considering that the adoption of general international standards on the subject will facilitate action to assure the protection of the populations concerned, their progressive integration into their respective national communities, and the improvement of their living and working conditions...”

\textsuperscript{18} See, Article 3 which reads: “So long as the social, economic and cultural conditions of the populations concerned prevent them from enjoying the benefits of the general laws of the country to which they belong, special measures shall be adopted for the protection of the institutions, persons, property and labour of these populations”.

\textsuperscript{19} Article 4 (a), Supra n.15.

\textsuperscript{20} Article 7 (1): In defining the rights and duties of the populations concerned regard shall be had to their customary laws. Ibid.

\textsuperscript{21} Article 7 (2): These populations shall be allowed to retain their own customs and institutions where these are not incompatible with the national legal system or the objectives of integration programmes. Ibid.

\textsuperscript{22} Article 11: The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised. Ibid.

\textsuperscript{23} Article 12 (1): The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations. Ibid.
their land owing to an exceptional necessity, they shall be provided with lands of equal quality suitable for their present needs and future development\textsuperscript{24}. They are entitled to compensation for any resulting loss or injury. Their customary laws with regard to the ownership and use of land have to be respected\textsuperscript{25}. The Convention makes it clear that the term ‘land’ includes the concept of territories, which covers the total environment of the areas. There are also elaborate provisions with regard to indigenous peoples’ right to recruitment and employment; vocational training, handicrafts and rural industries; social security and health; education and means of communication, administration etc.

\textbf{3.5.2 ILO Convention, 1989}

This Convention was adopted to revise the earlier one. The main highlight of the present Convention was that it did away with the idea of integrating the indigenous peoples into the respective nation communities as declared by the earlier Convention. In addition, there was a shift from the concept of ‘population’ to ‘peoples’ in the latter Convention, which can be identified as accepting the indigenous peoples as a clearly identifiable social unit with a given relationship to a specific territory; it also recognises the land rights of the indigenous tribal people in a much wider amplitude than the earlier Convention.

Many of the rights guaranteed under the earlier Convention are retained in the present Convention too. The national governments are obliged to respect the special importance of the culture and spiritual values of the peoples concerned, of their

\textsuperscript{24} Article 12 (2): When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees. \textit{Ibid.}

\textsuperscript{25} Article 13 (1): Procedures for the transmission of rights of ownership and use of land which are established by the customs of the populations concerned shall be respected, within the framework of national laws and regulations, in so far as they satisfy the needs of these populations and do not hinder their economic and social development. \textit{Ibid.}
relationship with the lands or territories or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship. The right to ownership and possession of the lands traditionally occupied by the indigenous people is recognised; and the national governments are required to take measures to safeguard the right of these people to use even the lands not exclusively occupied by them. The governments shall take steps to identify and protect the traditionally occupied lands of the indigenous peoples. The national legal systems shall evolve adequate means to resolve their disputes.

The rights of the people to participate in the use, management and conservation of natural resources shall be safeguarded. The Government has to consult the indigenous peoples before sanctioning any exploration or exploitation of the natural resources pertaining to their lands; and they are entitled to the benefits out of such activities and compensation for damage, which they may sustain because of such activities.

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26 ILO Convention 169 (1989), Article 13 (1): In applying the provisions of this Part of the Convention, governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

27 Article 14 (1): The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect. Ibid.

28 Article 14 (2): Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession. Ibid.

29 Article 14 (3): Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned. Ibid.

30 Article 15 (1): The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources. Ibid.

31 Article 15 (2): In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities. Ibid.
The indigenous peoples shall not be removed from their lands, which they occupy. When such a relocation becomes a dire necessity, they shall be executed only with prior, free and informal consent of the indigenous peoples\textsuperscript{32}.

Moreover, procedures established by indigenous peoples for transmitting their land rights among themselves are to be respected. Unauthorized intrusion into their lands must be penalized\textsuperscript{33}.

The provisions of the international documents portray before us the international concern over the rights of these disadvantaged groups of people in the world today. Since the tribal people of India comprise such a disadvantaged section of people and are similarly placed like their counterparts all over the world, the international concern expressed through such Conventions should be taken note of.

3.5.3 United Nations Declaration on the Rights of Indigenous Peoples, 2007

The UN General Assembly has declared the year 1993 as the International Year for the World’s Indigenous Peoples; and the years 1995-2004 as the International Decade for the Indigenous Peoples.

Taking into consideration the fact that indigenous peoples have often been deprived of their human rights and fundamental freedoms, resulting in the dispossession of land, territories and resources, and emphasizing the need for their protection on the basis of national and regional peculiarities, historical and cultural backgrounds, the UN proclaimed the Declaration on the Rights of Indigenous People. The Declaration recognises inter alia the ‘right to self-determination’ of the

\begin{itemize}
  \item Article 16 (2). \textit{Ibid.}
  \item Article 17: (1) Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected. (2) Peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community. (3) Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them. \textit{Ibid.}
\end{itemize}
indigenous peoples; the right to be protected against genocide; and the collective as well as the individual right to maintain and develop their distinct ethnic and cultural identity.

The Declaration also recognizes their right to their own religion and language. Indigenous Peoples’ land rights have occupied a predominant position in the Declaration. The indigenous peoples’ rights to maintain their distinctive and

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34 Article 3, UN Declaration on the Right of Indigenous Peoples, 2007: Indigenous peoples have the right to self-determination. By virtue of that right they can freely determine their political status and freely pursue their economic, social and cultural development. See also, http://www.ohchr.org/Documents/Issues/I Peoples/UNDRIPManualForNHRIs.pdf (visited on January 25, 2013)

35 Article 7: (1) Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person (2) Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group. Ibid.

36 Articles 5 and 8: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State. Article 8: (1) Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. (2) States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration; (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them. Ibid.

37 Article 12: (1) Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains. (2) States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned. Ibid.

38 Articles 13: (1) Indigenous peoples have the right to revitalise, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons. (2) States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means. Article 14: (1) Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. (2) Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination. (3) States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language. Ibid.

39 See for instance, Articles 25 to 32: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and
profound relationship with their lands, territories and resources, which include the
total environment of the land, water, air and sea, which have traditionally been
occupied or used, have been positively declared in the Declaration.

Their collective as well as individual rights to own, control and use the lands
and territories they have traditionally occupied or otherwise used; as recognised by
the UN Declaration are given in the extract below:

3.5.3.1 Right against forced assimilation or destruction of culture

To ensure this right, the States shall provide effective mechanisms for the
prevention of, and redress for 40:

(a) Any action which has the aim or effect of depriving them of their integrity as
distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands,
territories or resources;

(c) Any form of forced population transfer;

(d) Any form of forced assimilation or integration; and

(e) Any form of propaganda designed to promote or incite racial or ethnic
discrimination.

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40 Article 8: (1) Indigenous peoples and individuals have the right not to be subjected to forced assimilation or
destruction of their culture. (2) States shall provide effective mechanisms for prevention of, and redress for:
(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their
cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their
lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of
violating or undermining any of their rights; (d) Any form of forced assimilation or integration; (e) Any form
of propaganda designed to promote or incite racial or ethnic discrimination directed against them. Ibid.
3.5.3.2 **Right to belong to an indigenous community or nation**

In accordance with the traditions and customs of the community or nation concerned; and without any discrimination, indigenous peoples and individuals have the aforesaid right\(^{41}\).

3.5.3.3 **Right against forced removal from lands or territories**

Relocation shall not take place without the free, prior and informed consent of the indigenous peoples concerned and after an agreement on just and fair compensation and, wherever possible, with the option of return\(^{42}\).

3.5.3.4 **Right to practice and revitalize cultural traditions and customs**

This right includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs\(^{43}\).

3.5.3.5 **Right to be consulted**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, 

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\(^{41}\) Article 9: Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right. *Ibid.*

\(^{42}\) Article 10: Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. *Ibid.*

\(^{43}\) Article 11: (1) Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature. (2) States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs. *Ibid.*
prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.44

3.5.3.6 Right to maintain and develop political, economic and social systems or institutions

Indigenous peoples shall be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples deprived of their means of subsistence and developments are entitled to just and fair redress.45

3.5.3.7 Right to the improvement of economic and social conditions

This right inter alia, includes the right to education, employment, vocational training and retraining, housing, sanitation, health and social security. States shall take effective measures and, wherever appropriate, special measures to ensure the continuing improvement of their economic and social conditions. Special attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.46

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44 Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. Ibid.

45 Article 20: Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Ibid.

46 Article 21: (1) Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security. (2) States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economical and social conditions. Article 22: (1) Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration. (2) States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination. Ibid.
3.5.3.8 Right to determine and develop priorities and strategies for exercising right to development

In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions 47.

3.5.3.9 Right to traditional medicines and to maintain health practices

This right includes the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services 48.

3.5.3.10 Right to strengthen spiritual relationship with land

Indigenous people have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard 49.

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47 Article 23: Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions. Ibid.

48 Article 24: (1) Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services. (2) Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right. Ibid.

49 Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard. Ibid.
3.5.3.11 Right to the lands, territories and resources

Indigenous people have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. They have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned\(^{50}\).

3.5.3.12 Right to a fair, independent and impartial legal process

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process\(^{51}\).

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\(^{50}\) Article 26 : (1) Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. (2) Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. (3) States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. \textit{Ibid.}

\(^{51}\) Article 27 : States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process. \textit{Ibid.}
3.5.3.13 Right to just, fair and equitable compensation for land

Indigenous people have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.\(^52\).

3.5.3.14 Right to conserve the productive capacity of land

Indigenous people have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous people for such conservation and protection, without discrimination. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.\(^53\).

\(^{52}\) Article 28: (1) Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. (2) Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress. \textit{Ibid.}

\(^{53}\) Article 29: (1) Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. (2) States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. (3) States shall also take effective measures
3.5.3.15 Right against military activities in their land

Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed to or requested by the indigenous peoples concerned. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities\textsuperscript{54}.

3.5.3.16 Rights relating to flora, fauna, seeds etc.

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions\textsuperscript{55}.

\textsuperscript{54} Article 30: (1) Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. (2) States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities. \textit{Ibid.}

\textsuperscript{55} Article 31: (1) Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. (2) In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights. \textit{Ibid.}
3.5.3.17 Right to determine priorities/strategies relating to the use of land

Indigenous people have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. States shall provide effective mechanisms for the just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.\(^56\)

The rights, discussed hitherto, directly or indirectly ensure the “right to land” of indigenous people. Evidently, far more than any other segment of humanity, the estimated 220 million most marginalized and deprived tribal people legitimately look forward to UN protection. When the international system addresses indigenous peoples’ rights in a better way, the question to be pondered is whether the tribal people in India, who form one third of the total indigenous peoples of the world, would get the benefits of the aforesaid international norms; especially in the realm of land acquisitions.

The succeeding chapter of the study is devoted *inter alia* to get answers for these questions on the basis of a comparative evaluation of the present land acquisition laws of different legal systems: *Common Law*, *Continental* and *Socialist*.

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\(^{56}\) Article 32: (1) Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. (2) States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. (3) States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact. *Ibid.*