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## **BOOK REVIEW: ENVIRONMENTAL JUSTICE AND THE RIGHTS OF INDIGENOUS PEOPLES: INTERNATIONAL AND DOMESTIC LEGAL PERSPECTIVE**

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Dr. Laura Westra is a Professor Emerita of Philosophy in the University of Windsor. She has done Ph.D. in Law from Osgoode Hall Law School, York University, Canada. She has authored 18 books related to environmental laws and human rights. One such is “Environmental Justice and the Rights of Indigenous Peoples: International and Domestic Legal Perspective,” published in 2016 which acclaimed to be an authoritative monologue in the related field.

In 1854, a letter was written by the Native American Chief Seattle of the Dunwamish tribe to Franklin Pierce, the then President of the United States in response to an offer to purchase the Dwamish lands, which is presently the state of Washington. An excerpt from the letter says “How can you buy or sell the sky - the warmth of the land? The idea is strange to us. Yet we do not own the freshness of the air or the sparkle of the water. How can you buy them from us? We will decide in our time. Every part of this Earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing, and every humming insect is holy in the memory and experience of my people. The sap that runs through the trees carries the memories of the red-skinned man.” Even after 164 years the words of the Seattle Chief are relevant. Truly the words are ‘like the stars - they do not set.’ More than 300 million people across the globe comprises of world’s indigenous population. Principle 22 of the Rio Declarations on Environment and Development says that the States should recognise and duly support the identities, culture and interest and enable effective participation in the achievement of sustainable development of the indigenous people. Despite such declarations, the ever-growing pressure on their lands, environment and impact on way of life as a result of change in climate and effect of globalization, rights of these indigenous people are still not functionally established in the international fora as it was supposed to be. Moreover, these

people are victims of ‘cultural genocide’ as the word has been rightly coined by Raphael Lemkin.

No right can stand in isolation. All rights are interrelated. It holds true especially for the rights supported by the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, ‘without the later, the former would have little meaning for most people.’ (Cancado Trindale, 1985). Establishing interrelated rights is the approach to interpret human rights in the 21<sup>st</sup> century. With this approach development has taken place. Firstly, the emerging importance of individual rights and secondly, the increasing trends in creating awareness of interrelationship between human rights and environmental laws. It is imprinted through the Stockholm Declaration that “man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.” Moreover, Principle 14 states that indigenous peoples have the right ‘to control their lands and natural resources and to maintain their traditional way of life.’

The timing of Laura Wester’s intellectual contribution in exploring the complex interface between eco-biological integrity and the rights of the indigenous people in the era of globalization is highly appreciable. It has given critical insights into international and comparative study of human rights jurisprudence with specific objective of ensuring inclusive and sustainable growth. Her discourse in furthering the understanding between environmental degradation and human rights of indigenous people is with pragmatic approach. The World can no longer carry on ‘business as usual’ when the basic rights of the vulnerable are being crushed and destroyed due to a ‘disconnect’ between development and protection of environment. The author assesses two most common phenomena for advancing the collective aspirations of indigenous people - the cultural identity and right to self-determination, both of which are not adequate to measure the realities. She asserts that both the phenomena are inadequate to meet threat to air, land and water which are very basics for existence of those indigenous people.

The author wanted to emphasise that time has come to supplement the two prevailing phenomena for human rights analysis and political action by adding a third phenomenon: biological or ecological integrity. Laura Westra in doing this pro-actively to build a multi-disciplinary approach to amalgamate law, health, environment and social science research. Moreover an extensive study has been made to understand implications of transnational corporations on the anthropogenic changes of the indigenous peoples. As responsible citizens

of the world, we must all confront human injustices that exist within our borders while simultaneously addressing fundamental environmental threats from within and outside. Laura Westra provides us with very timely reminders of these pressing issues while offering new ideas on how we should respond. Using examples from case analysis across the World, she demonstrated how lack of legal safeguards put these indigenous people defenceless. Time and again, in the face of the governments and big business houses, they have very little access to consult with, in going ahead with rehabilitation, mining planes and many more issues. We must take it as a warning to all of us from those who live most closely in tune with nature and are the first to feel the impact when environmental damages goes unchecked. This book will help to connect these crucial dots of the disproportionate negative ecological footprint of a globalized economy on the Arctic and its subject, the people.

The book is divided in four parts. The first part deals with international laws and its relation with indigenous people. Several international conventions have been referred to understand the existing legal protection that is available to the aboriginals. International instruments act as a catalyst to understand the fundamental unity of the conception of human rights, as they all ultimately inhere in the human person. Along with the existing models of ‘self-determination’ and ‘cultural integrity’ the author argued that the third model of ‘biological’ or ‘ecological integrity’ is the basis of two models and are significant for their survival. Meaning of biological or ecological integrity have been defined and analysed in depth. Need for a universal cosmopolitan approach towards protection of rights of indigenous people has been emphasised. The term ‘indigenous people’ has been defined considering the historical background of international conventions and covenants. The author has rightly pointed out that how far available international legal instruments are worthy to protect the rights of the indigenous people. Thus, there is a ‘protection gap’ between human rights legislation and problems faced by indigenous people. Merits and demerits of ‘cultural integrity model’ and ‘self-determination model’ are illustrated with examples. The author proposed the use of a third model i.e. ‘biological or ecological model’ for better implementation of protection mechanism of indigenous peoples. This part imprinted the basic necessity of blending ecological and biological integrity to enforce protection of indigenous people.

The second part reviews some selected case laws from across the world in order to show the recurring themes brought to the courts in those complaints. Laura Westra emphasizes the relationship between the ‘right to land and self –determination’. Theoretically this lead to a

conflict between the presence and enforcement of human rights and state sovereignty. It is individually and collectively often requires protection in and from the state. It is observed that in many cases the State becomes both an ‘enemy’ and a ‘potential ally’, hence indigenous people’s rights are at one and same time part of both a national and global struggle. The author argued that all attacks on human person through uncontrolled polluting activities should be considered as criminal offence and which must give rise to civil liability. This is to impose obligations on both individuals and States of an ‘erga omnes’ character. Determining the character of ‘erga omnes’ is very important. Thus, the author laid emphasis on differentiating ‘consent’ from ‘consultation’. She argued that both consent and consultation need to disclose all pertinent information presented in terms and in language that are to be understandable by the people who are actually affected. Thus, the role of the World Bank Group and IMF in protecting the interest of the indigenous people is discussed extensively.

Part three bears the crux of the whole research done by Laura Westra. The word ‘Genocide’ has been tried to be understood from the angle of rights of the indigenous people. Taking examples from ‘political genocide’, ‘social genocide’, ‘cultural genocide’, ‘economic genocide’, ‘biological genocide’, ‘physical genocide’, ‘religious genocide’, and ‘moral genocide’ The author want to establish that the indigenous people’s biological and physical integrity of groups is clearly dependent on both their individual and communal dimensions. Hence, genocide is a primary example of an obligation ‘erga omnes’. She coined a new dimension of ‘corporate genocide’ which are premeditated and with intentions. The author raised a very timely question that why activities that irreversibly affect health, reproductive capabilities and normal organ functions of individuals within a group are not worthy to be interpreted under the heading of genocide. The case of the Arctic people of Nunavut has been studied and analysed to get the answer of whether self – governance is the only solution or not. Self –governance is one of the two pillars of aboriginal rights, together with cultural integrity.

Part four discusses the responsibility and accountability of both State and non-state actors for the irreversible results of their hazardous acts. It has been rightly pointed out that how a State violates international law as a matter of State policy. The author argued that the crux of the problem for aboriginal people is that absolute equality amongst equals is not sufficient, as equality in their case need to be qualified. To understand obligations of the non-state actors ‘negligence’ is treated as mens rea. Connections between the results of corporate activities, consequences that are not desired as a deliberate goal of actions, are the responsibility of the

corporations. Laura Westra rightly observed that indigenous people cannot move, they cannot make decisions about the activities that affect them, they cannot even say ‘no’ to the process of consultation and even cannot say ‘no’ to the outcome of the process. Corporate actors should be open to criminal prosecution for breaches of human rights, rather than attempting to view them as beneficiaries of human rights law. She argued that lack of normative justification is the root cause of most of the problems encountered by the indigenous people as the industrialized nation moves onto their territories. The author has reviewed the international instruments for protection of indigenous people and find out the gaps which is becoming a hindrance for actual protection of their claims. Severity of this gap emerges from the possibility of ‘joint’ rights between individuals and corporations, even though; the analogy breaks down in practice. The author supported the concept of Earth Charter for its uniqueness as it represents both soft law and the non-governmental organizations.

The book represents a thoughtful and valuable addition to an ever growing and crucial field of study. Across the globe more than 370 million people are said to be indigenous people, who possess unique vibrant cultures, political systems, values and immense traditional knowledge about their homelands and the environmental changes that have been rapidly increasing. They are the people who are devastated by colonization and industrialization. As responsible citizens of the World, we must all combat all forms of human injustices. Laura Westra’s book ‘Environmental Justice and the Rights of Indigenous People’ provides us a very timely reminder of these highly sensitive issues while proposing new ideas as to how we should respond. I sincerely believe that this book is a valuable contribution to the fraternity which think and try to act for the cause of indigenous people across the globe.