
NAVIGATING THE INTERSECTION OF SOVEREIGNTY AND HUMANITY: INTERNATIONAL JURISPRUDENCE ON INDIGENOUS AND MIGRANT RIGHTS IN ASSAM

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ABSTRACT

This article explores the intricate connection between Assamese regional law and international human rights law. Assam is molded by waves of migration, a patchwork of cultures, and tenacious struggles to preserve indigenous identities; it is more than just another Indian state. The stakes are high in this situation because authorities have to balance the fundamental rights owed to migrants with the collective rights of Assam's "original inhabitants." It's a difficult balancing act.

Declaration on the Rights of Indigenous Peoples, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights. These tools have a real impact on how India's constitution is understood; they are more than just lofty ideals. The Supreme Court of India has demonstrated extraordinary ingenuity by frequently citing Article 21 to protect livelihood and dignity by incorporating international standards into its rulings, despite the country's formal separation of international law from domestic law.

The essay goes beyond legal philosophy. It delves into concepts like "progressive realization" and "meaningful participation"—doctrines that encourage inclusive and equitable policies. The premise is straightforward: everyone wins when Assam bases its policy on universal principles rather than caving in to transient political pressures. The only viable solution appears to be a rights-focused strategy that recognizes both the collective land and cultural rights of indigenous people and just procedures for migration. This vision is the most promising approach to maintaining peace and upholding the dignity of every Assamese group that is at risk; it is not wishful thinking.

Keywords: International Human Rights Law, Assam, Indigenous Rights, Migrant Protection, Judicial Creativity, UNDRIP, Constitutional Law, Social Harmony.

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1. INTRODUCTION:

International human rights act as a form of global safety net, protecting everyone's fundamental freedom and dignity regardless of their origins or identity. It is not possible to grant or revoke these permissions. They are fundamental to what it means to be human and cannot be taken away. These regulations are crucial in Assam because of the state's intricate patchwork of communities and frequent cross-border travel. They simultaneously established a unified standard for protecting migrants and displaced people and upholding the rights of indigenous groups.

The history of Assam is intertwined with waves of social and political movements that aim to uphold constitutional rights for the longest-term residents and preserve indigenous identity. People have battled for decades to protect their land, language, and cultural rights out of concern that they might be eroded by foreigners or changing laws. However, the struggle for identity is not easy. As people question, "Who gets the land?" it causes intense disputes and societal divisions. Who is eligible for public assistance? How do you preserve long-standing customs without excluding newcomers or change? Much of the ongoing conflict in the area is motivated by these issues.

International law intervenes to resolve complex conflicts using a set of impartial guidelines based on justice and human dignity. It maintains that everyone is entitled to fundamental decency and stays out of local rivalries. At the core of this is procedural fairness: all legal procedures, whether they deal with citizenship or land, must be transparent, uniform, and impartial. These international standards serve as a buffer, ensuring that basic human rights endure even in times of intense political controversy.

But international law isn't here to override India's laws. It's more of a guide, helping governments and courts interpret local rules with a broader perspective. Indian judges look to international treaties to stretch the meaning of domestic protections so they measure up to global standards. This push for harmonization lets the legal system keep pace with modern complexities. So when courts make decisions in Assam, they're not only thinking about what's best for the local community—they're also weighing what the world expects when it comes to human rights.

The true goal here is to combine local customs with international standards to create long-

lasting peace and stability in Assam. Everyone feels more included if leaders uphold generally acknowledged standards of justice rather than merely pursuing immediate political gains. Ensuring that migrants are treated fairly and have equitable legal procedures is just as important as safeguarding the rights of indigenous populations to their heritage and territory. Assam is moving toward a future in which everyone, regardless of background, may rely on justice when both individual and group rights are upheld.

2. THE NORMATIVE FRAMEWORK OF INTERNATIONAL LAW:

International human rights law is a vast network of treaties, conventions, and declarations that nations pledge to uphold, not merely a collection of idealistic concepts. Imagine it as a global model for justice that calls on all countries to treat people with respect. These regulations genuinely influence domestic affairs, both in theory and in reality. International human rights standards, for instance, have an impact on how Indian politicians draft new laws and how courts interpret existing ones. When you compare these international standards with the Indian Constitution, you can see how they support those who require further protection, such as those who are abused or excluded. In areas like Assam, this is crucial. The guidelines are not only theoretical. This really matters in places like Assam. The rules aren't just abstract. They show up in real life when it comes to making sure indigenous communities and migrants aren't ignored or pushed aside, but actually get the fair treatment they deserve.²

3. FOUNDATION FOR UNIVERSALITY AND NON-DISCRIMINATION:

International law stands on a core principle: Universality. It sounds abstract, but it's really straightforward. Every person is born with certain basic rights—rights that don't care about your race, gender, religion, skin color, or the country on your passport.³ These rights aren't handed out by governments; they're yours because you're human. No authority can take them away.⁴

Alongside Universality, there's the rule of Non-Discrimination. This isn't just a suggestion; it's a demand. Everyone deserves equal treatment. No one gets pushed aside or singled out

² G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples art. 1 (Sept. 13, 2007) (affirming that indigenous individuals are entitled to all human rights recognized in international law).

³ G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 2 (Dec. 10, 1948) [hereinafter UDHR] (stating that everyone is entitled to all rights and freedoms "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status").

⁴ Id. At pmb. (referring to the "inalienable rights of all members of the human family").

because of where they come from or who they are.⁵ The law doesn't just talk about fairness; it works to root out bias. That way, human rights aren't just words—they're protections everyone can count on.

Take Assam, for example. Here's where these principles matter on the ground. It doesn't matter if you're part of an indigenous community or you arrived more recently as a migrant. The law insists that everyone gets the same fairness and respect, no exceptions.

4. HUMAN DIGNITY AND EQUALITY BEFORE LAW:

Human dignity is like the silent anchor holding up everything in law.⁶ It's the heart behind every rule, not just about keeping people alive but about making sure everyone has a decent life—care, a way to work, and basics that let them live with respect.⁷ This isn't just a vague idea; it's built right into the principle called Equality Before the Law. That's huge in international human rights.

Here's what it demands: the law treats everyone the same, no matter their background. Nobody gets to sit above the law—not politicians, not officials, nobody. And groups don't get any extra favors or perks that others miss out on. Everyone answers to the same standards, no exceptions.

Take Assam as an example. Whether someone belongs to an indigenous tribe or moved there from somewhere else, their dignity deserves protection. The law owes every person real fairness, no matter who they are.

5. THE RIGHTS OF PARTICIPATION AND GOVERNANCE:

Participation isn't just a bureaucratic checkbox — it means people actually shape the decisions that affect their livelihoods. For different groups in Assam, participation comes alive in distinct ways. Take indigenous communities, for instance. Their survival depends on holding onto their land and maintaining self-governance, so participation for them isn't negotiable. If a company

⁵ International Covenant on Civil and Political Rights art. 2, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (obligating each State Party to respect and to ensure to all individuals within its territory the rights recognized in the Covenant without distinction).

⁶ G.A. Res. 217 (III) A, Universal Declaration of Human Rights pmb. (Dec. 10, 1948) [hereinafter UDHR] (recognizing the "inherent dignity" of all members of the human family as the foundation of freedom, justice, and peace).

⁷ International Covenant on Economic, Social and Cultural Rights art. 11, Dec. 16, 1966, 993 U.N.T.S. 3 (recognizing the right of everyone to an "adequate standard of living... including adequate food, clothing and housing, and to the continuous improvement of living conditions").

or government plans a development project or wants to acquire land, they can't just notify the community and move ahead. Meaningful consultation must happen, and the community has the right to grant "free, prior, and informed consent" (FPIC) before any action begins.⁸

For migrant populations, participation serves as a shield against being ignored or railroaded by legal processes. It ensures migrants can access grievance mechanisms—that is, formal ways to express concerns or seek justice—and procedural safeguards, which promise fair treatment during hearings and in court.

Put simply, participation stops the government from acting over people's heads and forces it to work alongside them. It builds in protection against abuse and guarantees that everyone, whether indigenous or migrant, gets a seat at the table and some control over their own life.

6. COLLECTIVE V. INDIVIDUAL DIMENSIONS OF PROTECTION:

Traditional human rights laws were all about the individual — protecting one person at a time. But over the years, international law shifted. Now, it recognizes collective rights too: the idea that whole groups can hold certain rights together. This matters a lot for indigenous communities. They aren't just a collection of individuals. They're bound by common traditions, languages, and deep roots in ancestral lands. Their identity relies on staying woven together as a group, so the law steps in to defend their collective ownership of land, their cultural heritage, and their right to self-govern.

Migrants, though, are usually protected as individuals. The focus is on making sure each person gets fair treatment, safeguarding them from abuse or neglect by governments. But the law also acknowledges that migrants sometimes experience "group-based vulnerabilities." That happens when a political crisis or discriminatory system targets entire groups, not just scattered individuals. So, international law tries to fix both kinds of injustice — support for people hurt one-by-one, and remedies when whole communities bear the brunt.

7. ADDRESSING STRUCTURAL DISADVANTAGE AND VULNERABILITY:

Look at Assam. Indigenous communities worry that they're losing their traditional lands,

⁸ G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples art. 19 (obligating States to 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).

watching their population dwindle or change, and seeing their culture fade away in the face of outside influences. Migrants, especially those missing official documents, live with constant uncertainty. They never know if their legal status will hold, they risk detention, and they're often shut out from government welfare.

International human rights standards push governments to come up with clear, targeted policies to support these groups. It's not about creating new unfairness—it's about fixing the roots of inequality, so everyone gets the chance for safety. International law looks beyond simply treating everyone the same on paper—what's called "formal equality"—dignity, and opportunity because that alone rarely makes things fair in reality. Some groups live with deep, long-standing barriers built right into the structure of society. Lawmakers call these "structural disadvantages." So international law pushes for "substantive equality." That means governments can—and should—take focused steps to help groups that have been left behind for generations. Indigenous communities, migrants, refugees, women, and children often end up on the wrong side of this equation, facing overlapping problems like poverty, forced displacement, and political exclusion.

In Assam, these challenges play out differently for different groups. Indigenous communities worry most about losing land, seeing outsiders flood their regions, and watching their languages and traditions fade away. Migrant populations, especially those with incomplete paperwork, live in constant uncertainty. They risk detention, might not know if they even belong, and often don't get basic benefits from the state.

International human rights standards don't just recommend vague good intentions—they push governments to design real, targeted policies that address these specific disadvantages. The aim is to fix deep inequalities without making new ones, so, that everyone, at last, gets a fair shot at safety and opportunity.

8. INTERNATIONAL FRAMEWORK:

The Universal Declaration of Human Rights (UDHR) came into being in 1948, right after the horrors of World War II.⁹ It marked a turning point—here was a document telling the world that every human being is entitled to basic rights, simply because they exist. These rights aren't tied to what passport you carry or where you were born. For migrants, that's a lifeline: even

⁹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

without official papers, they're still recognized as people who deserve protection. And for indigenous communities, the UDHR stands behind their right to dignity and real participation in society, without being sidelined or mistreated.

Two decades later, the International Covenant on Civil and Political Rights (ICCPR) picked up where the UDHR left off.¹⁰ Adopted in 1966, the ICCPR didn't just state ideals—it told nations, “You're on the hook for this.” It spelled out concrete rights and made countries legally responsible for upholding them. Among its protections: the right to life, freedom, and security; real safeguards against arbitrary arrest or detention; a fair trial and decent treatment for anyone held in custody. The ICCPR also tackles the problems migrants face, insisting that countries can't simply kick people out on a whim. And for minorities and indigenous peoples, it guarantees space for their culture, religion, and language—basic freedoms that past generations repeatedly saw denied.

India's ratification of the ICCPR really changed how its courts think about rights. Treaties like the ICCPR don't automatically become law here, but judges regularly use them to interpret and strengthen the Constitution.¹¹ When they deal with cases about dignity or freedom, they check those global standards to make sure their decisions match international norms. This approach, often called “harmonious construction,” pulls Indian legal rulings closer to the world's highest standards—especially important for vulnerable groups like indigenous people and migrants in Assam, whose rights often hang in the balance.

As for the International Covenant on Economic, Social and Cultural Rights (ICESCR), it doesn't just sit next to civil and political freedoms—it fills in what those rights miss.¹² Where some rights stop the government from interfering, the ICESCR goes further and gives the state real duties. The government isn't just expected to stay out of your way; it's required to build systems and deliver services so people actually have what they need to live with dignity. This shifts the focus from simply protecting citizens to actively enabling them.

The Covenant lays out key foundations for building a just society and supporting human growth. First, it secures the Right to Health—governments must make healthcare reachable for

¹⁰ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

¹¹ Jolly George Varghese v. Bank of Cochin, (1980) 2 S.C.C. 360 (India) (discussing the effect of international conventions on domestic law)

¹² International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]

all, not just focusing on treatment, but also preventing illness and supporting both mental and physical health. Next comes the Right to Education. Education does more than teach skills; it empowers people to play an active role in economic and social life.

Then, there's the Right to Work and Social Security. This means everyone should have the chance to work in a job they choose and rely on support when they're unemployed, aging, or living with a disability. The Covenant also protects a basic Standard of Living. We're talking about the essentials: enough food, decent clothing, a safe place to live.

But here's something practical: the idea of progressive realization. International law gets that it's no small feat to guarantee full healthcare or housing for every single person overnight. It admits that big changes take time and resources. That's why the treaty includes the doctrine of progressive realization, allowing governments to move toward these goals steadily, with the resources they have.

Acknowledges that states may need time to reach the goal of full rights for everyone.

1. Demands that governments use the maximum of their available resources to make constant progress.
2. Prohibits "retrogressive measures," meaning a government cannot purposefully take away rights or services that were already provided.
3. Requires concrete and targeted steps, ensuring that the state does not remain inactive.
4. Application to Indigenous and Migrant Communities

In regions like Assam, these rules ensure that the most vulnerable are not left behind:

1. **Indigenous Protection:** The ICESCR protects the right of indigenous groups to participate in their own culture and maintain traditional livelihoods linked to their land.
2. **Migrant Protection:** Crucially, these rights apply without discrimination. Even if a migrant has an irregular or uncertain legal status, they are still entitled to the basic services needed for survival—such as emergency healthcare and primary education—to prevent exploitation and social exclusion.

Free, Prior, and Informed Consent (FPIC): This is a major rule that says governments should consult with indigenous people and get their honest agreement before starting any projects, like mining or building dams, on their land.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007, stands as a landmark in international law.¹³ For the first time, the world recognized that indigenous peoples deserve unique rights—rights shaped by their deep histories and distinct cultures. UNDRIP doesn't just look at the rights of individuals; it addresses the rights of entire communities.¹⁴

The declaration sets out several crucial protections. First, cultural identity. Indigenous peoples have a right to preserve their languages, traditions, and spiritual practices, free from pressure to assimilate or abandon who they are.¹⁵ Next, ancestral lands and resources. The declaration affirms their connection to the land—land they've cared for over generations. They own the right to manage and benefit from resources like forests, rivers, and minerals on their territories. And then there's self-determination. This principle says that indigenous communities should direct their own political, economic, and social paths, choosing for themselves how they live and govern.¹⁶

Even though UNDRIP is a “declaration” and not a strictly “binding treaty” (meaning countries aren't legally forced to follow every word), it carries huge persuasive authority. It acts as a global gold standard that judges and world leaders use when they are deciding how to treat indigenous groups fairly.

The Indian Context: Fifth and Sixth Schedules¹⁷

In India, many of the ideas found in UNDRIP are already built into the Constitution. This is especially true in regions like Assam:

¹³ G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007) [hereinafter UNDRIP].

¹⁴ Id. At art. 1 (affirming that indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms).

¹⁵ Id. At art. 8 (providing that indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture).

¹⁶ Id. At art. 3 (recognizing that by virtue of the right to self-determination, indigenous peoples freely determine their political status and freely pursue their economic, social and cultural development).

¹⁷ INDIA CONST. schedules 5–6 (providing for the administration and control of Scheduled Areas and Tribal Areas).

1. **Autonomy and Protection:** The Fifth and Sixth Schedules of the Constitution give tribal areas a level of self-rule.
2. **Traditional Institutions:** These laws protect tribal land from being taken away and allow communities to keep their own traditional systems of justice and leadership.
3. **Regional Survival:** In Assam, these protections are vital because indigenous communities depend entirely on their land and forests for their survival and way of life.

By following these standards, the government can ensure that development happens in a way that is fair and respects the unique identity of these communities

9. CONCLUSION:

India's stance on international law is what lawyers call "dualist." In simple terms, just because the government signs a global treaty doesn't mean those rules automatically work as law inside India. For any international rule to carry real legal weight in Indian courts, Parliament needs to pass its own law adopting it. This setup lets India stay in the driver's seat—it can learn from the world, but doesn't have to hand over the keys.

Still, it's not as though those treaties sit on a shelf collecting dust until Parliament acts. Courts, especially the Supreme Court, pay attention to these global agreements. Judges often turn to international human rights standards when they interpret the Constitution's rights—even if Parliament hasn't passed a matching law yet. They use these standards as tools, expanding on what's already in the Constitution.

Take Article 21 of the Constitution—the right to life. The courts didn't stop at just the bare words. Using ideas from international covenants, they've broadened "right to life" to include things like dignity, a clean environment, and the right to earn a living. It's a creative legal approach—one that blends India's own laws with global human rights thinking.¹⁸

In a place like Assam, where tensions run high, "harmonization"—basically making laws fit together—keeps things from falling apart. Assam faces tough questions: who counts as a citizen, how to protect tribal land, and how to deal with migration. When courts and officials

¹⁸ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India) (interpreting Article 21 to include the right to live with human dignity, drawing upon international human rights principles).

stick to international standards of fairness, their choices aren't just about what's politically convenient.

They ground their decisions in real justice, and that matters. People see the legal system as more trustworthy, more fair.

By using these standards, Assam manages to walk a tricky line. It can safeguard the identity of indigenous communities, but it doesn't forget the basic human rights of migrants and others on the margins. Even if someone's citizenship is under scrutiny, the law—guided by international and constitutional norms—demands they're treated decently and given a fair shot in court. Local governance that actually embraces global values helps Assam look ahead. It stays true to its own history but refuses to ignore the dignity of every person who calls the region home.

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