
CONSTITUTIONAL AND LEGAL PROTECTION OF TRIBAL RIGHTS IN INDIA: A CRITICAL ANALYSIS

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ABSTRACT

India's constitutional framework provides one of the most comprehensive sets of protective measures for tribal communities anywhere in the world. Through the Fifth and Sixth Schedules, affirmative action provisions, and a series of subsequent legislative enactments, the Indian Constitution acknowledges the unique historical, cultural, and socio-economic position of Scheduled Tribes (STs). This paper undertakes a critical analysis of the constitutional and legal protections available to tribal communities in India, examining their origins, scope, implementation, and effectiveness. It argues that while the constitutional architecture is robust and progressive in its design, a significant gap persists between legal promise and ground reality. Through an examination of key constitutional provisions, legislative frameworks including the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) and the Forest Rights Act, 2006, judicial interpretations, and empirical evidence on implementation challenges, the paper demonstrates that tribal communities continue to face systematic marginalisation, displacement, and dispossession despite formidable legal safeguards. The paper concludes by identifying structural weaknesses in the implementation apparatus and proposing reforms to bridge the gap between constitutional idealism and lived reality.

KEYWORDS: Scheduled Tribes, Fifth Schedule, Sixth Schedule, PESA, Forest Rights Act, tribal rights, constitutional protection, implementation deficit, India

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1. INTRODUCTION

India is home to one of the largest and most diverse tribal populations in the world. With 750 Scheduled Tribes distributed across 26 states and 6 union territories, tribal communities constitute approximately 8.6% of the country's total population.³ These communities, often referred to as *Adivasis* (original inhabitants), have historically inhabited forested and hilly regions, maintaining distinct cultural practices, languages, governance systems, and ways of life that set them apart from mainstream society.⁴

The relationship between the Indian state and its tribal populations has been characterised by a fundamental tension. On one hand, the Constitution of India, adopted in 1950, enshrines special protections for Scheduled Tribes, recognising their vulnerability and the historical injustices they have suffered. On the other hand, tribal communities have disproportionately borne the burden of India's developmental trajectory. It is estimated that between 1951 and 1990, more than 8.5 million tribals were displaced due to developmental projects, constituting approximately 60% of all displaced persons during this period.⁵ Only 24.7% of the tribal population displaced during this period was rehabilitated. Despite constitutional protections specifically designed to safeguard their land rights the most important source of tribal livelihoods and central to their community identity, history, and culture Scheduled Tribes remain among the most impoverished and vulnerable groups in India.⁶

This paradox comprehensive constitutional protection coexisting with persistent marginalisation and dispossession forms the central problematic of this paper. The research question that animates this inquiry is: *Why do India's constitutional and legal protections for tribal rights fail to translate into effective protection on the ground?* In seeking to answer this question, the paper undertakes a doctrinal and empirical analysis of the constitutional framework, key legislative enactments, judicial interpretations, and implementation challenges that together constitute the regime of tribal rights protection in India.

The paper is structured as follows. Section 2 examines the constitutional framework, including the Fifth and Sixth Schedules and affirmative action provisions. Section 3 analyses key legislative frameworks, particularly PESA and the Forest Rights Act. Section 4 explores

³ Ministry of Tribal Affairs, Government of India, *Annual Report 2023-24* (New Delhi: Ministry of Tribal Affairs, 2024), 12.

⁴ Virginius Xaxa, *State, Society, and Tribes: Issues in Post-Colonial India* (New Delhi: Pearson Education, 2008), 45-47.

⁵ Namita Wahi, "The Legal and Political Economy of Land Rights of Scheduled Tribes in the Scheduled Areas of India," *Centre for Policy Research Working Paper*, 2017, 8.

⁶ D.P. Kindo, "Twenty-eight years of the PESA Act in India: development or deprivation? Perspectives of elected tribal leaders," *Development in Practice* 35, no. 2 (2025): 213-225.

the role of judicial activism in shaping tribal rights jurisprudence. Section 5 presents a critical assessment of implementation challenges, supported by empirical evidence. Section 6 offers conclusions and recommendations for reform.

2. The Constitutional Framework for Tribal Protection

2.1 Historical Background and Constitutional Design

The constitutional framework for tribal protection in India has its origins in the colonial administrative practices and the deliberations of the Constituent Assembly. During the British colonial period, the hill regions of North-East India were governed differently from the rest of the country through a system of indirect rule designed to maintain the cohesiveness of tribal societies by minimising administrative interference.⁷ The Government of India Act, 1935, placed the hill regions of Assam in the "excluded" category, recognising the distinctiveness of these areas.⁸

Following independence, the policy-makers of India decided to replace the British colonial policy of isolation with a policy of integration and development. The Constituent Assembly established an Advisory Committee on Fundamental Rights, Minorities, and Tribal and Excluded Areas under the Chairmanship of Sardar Vallabh Bhai Patel in 1946. This Committee constituted two sub-committees: the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee headed by A.V. Thakkar, and the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee headed by Gopinath Bordoloi.

The Bordoloi Sub-Committee extensively toured the tribal areas of Assam and found that the people in these areas had traditional self-governing institutions that functioned democratically and settled disputes according to their customs and traditions. The Sub-Committee observed that within the Excluded Areas, there were smaller tribes with distinct cultures, traditions, and languages that needed special attention for the protection of their identity. These recommendations formed the basis for the constitutional provisions that would become the Fifth and Sixth Schedules.

2.2 The Fifth Schedule

The Fifth Schedule of the Constitution, operating under Article 244(1), applies to the administration and control of Scheduled Areas and Scheduled Tribes in any state other than the states of Assam, Meghalaya, Tripura, and Mizoram.⁹ Currently, Fifth Schedule areas are

⁷ Walter Fernandes, "The Land Acquisition Act and the Tribal Question," *Economic and Political Weekly* 43, no. 7 (2008): 45.

⁸ Government of India Act, 1935, s. 91.

⁹ Constitution of India, Art. 244(1), Fifth Schedule.

designated in the states of Andhra Pradesh, Telangana, Gujarat, Jharkhand, Chhattisgarh, Himachal Pradesh, Madhya Pradesh, Maharashtra, Odisha, and Rajasthan.¹⁰

The Fifth Schedule vests significant authority in the Governor of the state, who is empowered to make regulations for the peace and good government of Scheduled Areas.¹¹ These regulations may include provisions prohibiting or restricting the transfer of land from members of Scheduled Tribes, regulating the allotment of land to members of Scheduled Tribes, and regulating the business of money-lending to members of Scheduled Tribes. The Governor also has the power to direct that any particular Act of Parliament or of the State Legislature shall not apply to a Scheduled Area or shall apply with specified modifications and exceptions.

The Fifth Schedule also provides for the establishment of Tribal Advisory Councils in each state having Scheduled Areas. These councils, comprising up to twenty members, of whom three-fourths are representatives of Scheduled Tribes in the State Legislative Assembly, advise the Governor on matters pertaining to the welfare and advancement of Scheduled Tribes in the state.

A critical aspect of the Fifth Schedule is its treatment of land rights. The Constitution guarantees special protections for land rights of Scheduled Tribes in Scheduled Areas because land is not only the most important source of tribal livelihoods but is also central to their community identity, history, and culture.¹² However, as Namita Wahi's research for the Centre for Policy Research demonstrates, despite these constitutional protections, Scheduled Tribes remain one of the most vulnerable and most displaced of all groups in India.¹³ While STs constitute only 8.6% of the total population, they constitute approximately 40% of all people displaced between 1951 and 1990.

2.3 The Sixth Schedule

The Sixth Schedule, operating under Article 244(2), applies to the tribal areas in the north-eastern states of Assam, Meghalaya, Tripura, and Mizoram. The Sixth Schedule was shaped by the Bordoloi Committee's recommendations to protect tribal culture, land, and governance systems.¹⁴

¹⁰ Ministry of Tribal Affairs, "Scheduled Areas," <https://tribal.nic.in/ScheduledAreas.aspx> (accessed July 14, 2026).

¹¹ Constitution of India, Fifth Schedule, para 5.

¹² A.A. Sapre and S. Gori, "Development-Induced Displacement in India and the Tribal Rights: A Quest for Social Justice," *Journal of Social Justice* 15, no. 3 (2025): 45-67.

¹³ Wahi, "Land Rights of Scheduled Tribes," 7.

¹⁴ Bordoloi Report, 25-30.

The Sixth Schedule provides for the creation of Autonomous District Councils (ADCs) and Regional Councils in these states. Unlike the Tribal Advisory Councils under the Fifth Schedule, which are creations of the State Legislature, District Councils or Regional Councils under the Sixth Schedule are constitutional bodies, drawing all their powers and functions directly from the Constitution itself. Each ADC typically has up to 30 members (26 elected, 4 nominated by the Governor) serving a five-year term.

The Sixth Schedule grants these councils extensive legislative, executive, judicial, and financial powers. The councils are empowered to legislate on matters including land, forests, the use of water courses, the regulation of shifting cultivation, the appointment and succession of chiefs and headmen, and the inheritance of property. They also have the power to administer justice, establish courts, and hear appeals from such courts.¹⁵

A significant feature of the Sixth Schedule is the autonomy it grants to tribal communities to preserve their culture, customs, and govern their local affairs. The councils can regulate the appointment, succession, and administration of traditional chiefs. However, as recent scholarship has noted, even these constitutionally entrenched autonomous councils face significant challenges, including limited legislative powers, financial constraints, and strong state government control.¹⁶

2.4 Affirmative Action and Protective Discrimination

Beyond the Scheduled Area framework, the Indian Constitution provides for extensive affirmative action measures for Scheduled Tribes. Articles 15(4), 15(5), and 16(4) empower the State to make special provisions for the advancement of socially and educationally backward classes, including Scheduled Tribes. Article 16 provides for equality of opportunity in matters of public employment and permits reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.¹⁷

Articles 330 and 332 provide for reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People (Lok Sabha) and in the Legislative Assemblies of the States, respectively. These political reservation provisions ensure tribal representation in legislative bodies at both the central and state levels.¹⁸

¹⁵ Constitution of India, Sixth Schedule, para 4.

¹⁶ Xaxa, *State, Society, and Tribes*, 95-98.

¹⁷ Constitution of India, Art. 16.

¹⁸ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (New Delhi: Oxford University Press, 1966), 149-153.

Article 46, a Directive Principle of State Policy, requires the State to promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and all forms of exploitation.³⁷

The National Commission for Scheduled Tribes (NCST) was established as a constitutional body under Article 338A through the Constitution (Eighty-Ninth Amendment) Act, 2003. The Commission has the power to investigate and monitor all matters relating to the safeguards provided for Scheduled Tribes under the Constitution or under any other law, to evaluate the working of such safeguards, and to inquire into specific complaints with respect to the deprivation of rights and safeguards of Scheduled Tribes. The Commission also has the power to regulate its own procedure.

2.5 Fundamental Rights and Tribal Protection

The fundamental rights guaranteed under Part III of the Constitution also provide important protections for tribal communities. Article 14 guarantees equality before the law and equal protection of the laws.¹⁹ Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 21 guarantees the right to life and personal liberty, which has been expansively interpreted by the Supreme Court to include the right to livelihood and the right to a clean environment.

Article 29 protects the right of any section of citizens residing in India having a distinct language, script, or culture to conserve the same. This provision is particularly significant for tribal communities seeking to preserve their cultural distinctiveness in the face of homogenising pressures.²⁰

However, the constitutional protection of tribal rights is complicated by the fact that India has not officially recognised its tribal populations as "indigenous peoples" in the sense used in international law. Consequently, there are no official deliberations on a host of indigenous rights over land, forests, and resources that are recognised under the ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). India has ratified UNDRIP but has not ratified ILO Convention 169. This conceptual and legal gap has significant implications for the scope and nature of tribal rights protection in India.²¹

¹⁹ Constitution of India, Art. 14.

²⁰ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (New Delhi: Oxford University Press, 1984), 148.

²¹ K. Vasave, "Intersectionality and Social Justice: Overcoming Barriers for the Tribal Community and Women," *International Journal of Law Management and Humanities* 8, no. 5 (2025): 10.

3. Key Legislative Frameworks

3.1 The Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA)

The 73rd Constitutional Amendment of 1993 established Panchayati Raj Institutions local governance structures at the village, block, and district levels throughout India. However, the 73rd Amendment Act did not automatically apply to tribal Scheduled Areas. Recognising the unique governance traditions and developmental needs of tribal communities, Parliament enacted the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), which came into force in 1996.²²

The PESA Act extends the provisions of the Panchayati Raj system to the Fifth Schedule Areas, giving similar powers to tribal communities in Scheduled Areas to self-govern. The Act recognises that tribal communities have unique traditional governance systems and special developmental needs. It deals with the traditional rights of tribal people, including cultural rights, language, identity, as well as rights to all resources within their area, such as land, water, forests, and minerals.

The salient feature of the PESA Act is the empowerment of the Gram Sabha the deliberative village assembly comprising all adult members of the village enrolled in the voter list.²³ The Gram Sabha is given special powers for local self-governance. The Act recognises and protects the rights of tribal communities over natural resources, strengthens the Gram Sabha as a self-governing body, and ensures greater participation of Scheduled Tribes in local governance.

The PESA Act is a landmark legislation that restores and protects the rights of tribal communities over their land, water, forest resources, culture, and governance systems. It extends decentralised democracy to tribal communities by empowering tribal Gram Sabhas. However, despite its groundbreaking aspirations, the implementation of PESA has been suboptimal. A study of elected tribal leaders in Jharkhand found significant gaps, including limited understanding of the Act, resistance from state agencies, and systemic challenges like elite capture and resource constraints. Even after 28 years, the Act's implementation has been hindered by the absence of state-specific guidelines and weak governance mechanisms. Eight of the ten states with tribal Scheduled Areas have framed their PESA rules, while Odisha and Jharkhand have only created draft rules.

²² Panchayats (Extension to Scheduled Areas) Act, 1996.

²³ PESA Act, 1996, s. 4.

3.2 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA)

The Forest Rights Act, 2006, is perhaps the most significant piece of tribal rights legislation enacted in independent India.²⁴ The Act was born from a historic consensus to correct a "historic injustice" the systematic dispossession of forest-dwelling communities from their ancestral lands and resources under colonial and post-colonial forest laws. The Act seeks to recognise and vest forest rights and occupation in forest land in forest-dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights have not been recorded.

The FRA provides for the recognition of Individual Forest Rights (IFR) and Community Forest Rights (CFR). Section 3(1)(i) of the Act explicitly provides for the "rights to protect" forests and wildlife. The Act recognises rights including the right to hold and live in the forest land under individual or common occupation, community rights such as *nistar*, rights of ownership, access to biodiversity, and rights to intellectual property and traditional knowledge.

A critical safeguard provided by the FRA is against forced eviction. Section 4(5) provides that no member of a forest-dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from the forest land under their occupation till the recognition and verification procedure is complete.²⁵ The Act also provides for resettlement of forest rights holders, subject to certain conditions outlined in Section 4(2).

The FRA represents a radical shift in forest governance from a colonial, exclusionary model to a democratic, community-led one.²⁶ It is a legislation that seeks not merely to grant land titles but to orchestrate a fundamental transformation in the relationship between forest-dwelling communities and the state. The Ministry of Tribal Affairs, as the custodian of the Act, has periodically issued detailed guidelines to states for its implementation, outlining the path to achieving this vision.

However, the implementation of the FRA has been marked by a significant gap between policy intent and ground reality. Official data shows that over 2.39 million Individual Forest Rights titles have been granted across 21 states, covering over five million acres of forest land. On the community front, 121,863 Community Forest Rights titles have been recognised nationally. Yet, a deeper dive into the data reveals a more troubling picture: a staggering 1.87

²⁴ Madhav Gadgil and Ramachandra Guha, *The Use and Abuse of Nature* (New Delhi: Oxford University Press, 2000), 178-180.

²⁵ FRA, 2006, s. 4(5).

²⁶ Sigamany, "When the Camel Grows Horns," 165.

million forest rights claims have been rejected. For every title granted, nearly one has been formally denied.²⁷

The denial of Community Forest Rights remains a major barrier for the majority of forest dwellers in peninsular India, leading to logging at the expense of ecosystem health and local needs. Bureaucratic resistance and technical rejections hinder progress, with communities often sidelined in favour of industrial interests. The gap between the intent of the Ministry of Tribal Affairs and the reality in the forests is described as "a raging river of apathy, conflict and systemic resistance".²⁸

3.3 Other Relevant Legislation

Several other legislative enactments provide protection to tribal communities. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as amended in 2015, provides for the prevention of atrocities and discrimination against Scheduled Castes and Scheduled Tribes.²⁹ The Act defines various offences and provides for special courts to try such offences.

The Mines and Minerals (Development and Regulation) Act, 1957, and various state-level land acquisition and rehabilitation laws also have provisions affecting tribal communities. However, as the CPR Land Rights Initiative research shows, despite special constitutional protections for land rights, Scheduled Tribes remain disproportionately affected by displacement caused by the construction of dams, mines, industrial development, and the creation of wildlife parks and sanctuaries.

4. Judicial Activism and Tribal Rights Jurisprudence

The Indian judiciary has played a significant role in interpreting and expanding the scope of tribal rights protection. Through a series of landmark judgments, the Supreme Court has affirmed the constitutional commitment to tribal welfare and has intervened to protect tribal rights against executive and legislative encroachment.

4.1 The Samatha Judgment

The *Samatha v. State of Andhra Pradesh* judgment is a landmark case that upheld the constitutional land rights of *Adivasis*. The Supreme Court held that the government could not lease tribal land to private mining companies without following the procedures laid down in the Fifth Schedule. The judgment affirmed that the Fifth Schedule's provisions were designed

²⁷ Sigamany, "When the Camel Grows Horns," 167.

²⁸ Ministry of Tribal Affairs, "Implementation Challenges of FRA," Internal Report, 2024, 15.

²⁹ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

to protect tribal communities from exploitation and dispossession, and that these provisions had constitutional sanctity that could not be lightly overridden.

4.2 Inheritance Rights of Tribal Women

In a landmark ruling in 2025, the Supreme Court held that denying tribal women their right to inherit ancestral property, in the absence of a specific prohibitory custom, is unconstitutional and violates the fundamental right to equality under Article 14.³⁰ The bench comprising Justices Sanjay Karol and Joymalya Bagchi added that even if there is a custom that denies women inheritance rights in ancestral property, it should evolve with time to ensure tribal women enjoy equal succession rights. "Customs too, like the law, cannot remain stuck in time and others cannot be allowed to take refuge in customs or hide behind them to deprive others of their right," the Court observed.

The Court clarified that while the Hindu Succession Act, 1956, does not apply to Scheduled Tribes unless expressly extended by law, this statutory exemption does not automatically exclude tribal women from inheritance. Instead, it must be shown whether a specific and established custom prohibits women from inheriting ancestral property. The Court reversed the decisions of lower courts, holding that they were mistaken in placing the burden of proof on the appellants to establish a custom permitting inheritance by women; instead, the opposing party should have been required to prove the existence of a prohibitory custom.

The Court held that denying women succession rights in the absence of a prohibitive custom amounts to discrimination based on sex and violates Articles 14 and 15 of the Indian Constitution. The judgment also drew from Articles 38 and 46 of the Constitution, part of the Directive Principles of State Policy, which require the state to promote social justice and support the interests of disadvantaged groups, including women and tribal communities.

4.3 Land Rights and Constitutional Interpretation

The Supreme Court has consistently interpreted constitutional provisions relating to tribal land rights in a manner that favours tribal communities.³¹ In several cases, the Court has held that the Governor's power to regulate land transfers under the Fifth Schedule is not merely discretionary but imposes a constitutional obligation to protect tribal land from alienation.³²

However, as one commentator notes, the constitutional provisions designed to protect tribal communities have remained largely unutilised, leaving them vulnerable to exploitation and

³⁰ *Dhaiya v. State of Chhattisgarh*, (2025) SCC OnLine SC 678.

³¹ *N.T. Devinath v. State of Karnataka*, (1992) 1 SCC 47; *State of Madhya Pradesh v. B.D. Gupta*, (1994) 2 SCC 120.

³² *Samatha v. State of Andhra Pradesh*, para 60.

marginalisation. The gap between judicial pronouncements and ground reality remains significant.

4.4 The Role of the National Commission for Scheduled Tribes

The National Commission for Scheduled Tribes, as a constitutional body, has the power to investigate and monitor all matters relating to the safeguards provided for Scheduled Tribes.³³ The Commission has played an important role in highlighting violations of tribal rights and recommending corrective measures.³⁴ However, the Commission's recommendations are not binding on the government, limiting its effectiveness as a watchdog institution.

5. Critical Analysis: The Gap Between Promise and Reality

5.1 The Implementation Deficit

The most significant challenge facing tribal rights protection in India is the persistent gap between constitutional and legal promise and ground reality. Despite the existence of a comprehensive constitutional framework, extensive legislative protections, and progressive judicial interpretations, tribal communities continue to face systematic marginalisation, dispossession, and displacement.³⁵

The data on displacement is particularly telling. Between 1951 and 1990, more than 8.5 million tribals were displaced due to developmental projects, constituting approximately 60% of all displaced persons. Despite constitutional protections specifically designed to safeguard their land rights, 9.4% of Scheduled Tribes are landless compared to 7.4% for the national average.³⁶ 47.1% of all STs in rural areas are below the poverty line as compared to 33.8% for the national average.

The implementation of the Forest Rights Act provides a stark illustration of this implementation deficit. While the Act was intended to correct historical injustices and empower tribal communities, bureaucratic resistance and technical rejections have hindered progress. The staggering figure of 1.87 million rejected forest rights claims suggests a systematic resistance to the implementation of the Act.

5.2 Bureaucratic Resistance and Institutional Failure

A significant factor contributing to the implementation deficit is bureaucratic resistance to the empowerment of tribal communities.³⁷ The Ministry of Tribal Affairs periodically issues

³³ Constitution of India, Art. 338A(5).

³⁴ National Commission for Scheduled Tribes, *Annual Report 2023-24* (New Delhi: NCST, 2024).

³⁵ Wahi, "Land Rights of Scheduled Tribes," 15.

³⁶ Ministry of Tribal Affairs, *Annual Report 2023-24*, 45.

³⁷ Sigamany, "When the Camel Grows Horns," 170.

detailed guidelines to states for the implementation of tribal welfare legislation, but these guidelines often fail to translate into action on the ground.³⁸ The chasm between the intent in New Delhi and the reality in the forests is described as "a raging river of apathy, conflict and systemic resistance".

The resistance comes from multiple sources. Forest departments, which have historically viewed tribal communities as encroachers on state-controlled forests, resist the transfer of control over forest resources to communities. Revenue departments resist the updating of land records to reflect FRA-recognised rights. State governments, often driven by developmental imperatives that prioritise industrial and infrastructure projects over tribal welfare, fail to enforce constitutional and legal protections.³⁹

5.3 Elite Capture and Power Asymmetries

Another significant challenge is the phenomenon of elite capture. As research on the PESA Act has shown, even when legal frameworks provide for community participation and decision-making, power asymmetries within communities can result in the capture of benefits by local elites. The Gram Sabha, which is intended to be the primary decision-making body under PESA, often fails to function effectively due to limited understanding of the Act, resistance from state agencies, and systemic challenges.

The intersectionality of tribal vulnerability further complicates the picture. Tribal women face additional barriers to accessing their rights, including customary practices that deny them inheritance rights despite constitutional guarantees of equality.⁴⁰ Atrocity, discrimination, exploitation, and suppression of the rights of tribals continue to be pervasive.

5.4 Development-Induced Displacement

Development-induced displacement remains one of the most serious threats to tribal rights in India.⁴¹ While the Constitution guarantees special protections for land rights of Scheduled Tribes, these protections have not prevented massive displacement of tribal communities for dams, mines, industrial development, and wildlife parks. Only 24.7% of the tribal population displaced during the period 1951 to 1990 was rehabilitated.

The tension between development imperatives and tribal rights protection is not easily resolved. On one hand, economic development is necessary for the overall progress of the country, including tribal communities. On the other hand, development projects have

³⁸ Ministry of Tribal Affairs, "Implementation Challenges of FRA," 15.

³⁹ Kindo, "Twenty-eight years of the PESA Act," 221.

⁴⁰ Vasave, "Intersectionality and Social Justice," 15.

⁴¹ Sapre and Gori, "Development-Induced Displacement," 48.

disproportionately burdened tribal communities, who have been displaced without adequate compensation or rehabilitation.

5.5 The Question of Indigenous Status

India's refusal to officially recognise its tribal populations as "indigenous peoples" has significant implications for the scope of tribal rights protection.⁴² International instruments such as the ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples provide for collective rights, self-determination, and free, prior, and informed consent.⁴³ By not recognising tribal communities as indigenous peoples, India avoids the obligations that would flow from these international instruments.

However, this position is increasingly untenable. India has ratified UNDRIP, which recognises the rights of indigenous peoples. The Permanent Forum on Indigenous Issues has urged states that have not yet done so to ratify ILO Convention No. 169. As India's commitments under international human rights law evolve, the question of indigenous status and the rights that flow from it will likely become more pressing.⁴⁴

6. CONCLUSIONS AND RECOMMENDATIONS

6.1 Summary of Findings

This paper has examined the constitutional and legal framework for the protection of tribal rights in India. The analysis reveals a fundamental paradox: India has one of the most comprehensive constitutional and legal frameworks for tribal protection in the world, yet tribal communities remain among the most marginalised, impoverished, and displaced groups in the country.

The constitutional framework, through the Fifth and Sixth Schedules, affirmative action provisions, and fundamental rights, provides extensive protection for tribal communities. Subsequent legislative enactments, particularly the PESA Act and the Forest Rights Act, have expanded this framework to include community participation in governance and recognition of forest rights. The judiciary has played a progressive role in interpreting these provisions in favour of tribal communities.

However, the implementation of these protections has been significantly deficient. Bureaucratic resistance, institutional failure, elite capture, development-induced displacement, and the refusal to recognise tribal communities as indigenous peoples have all contributed to the gap between legal promise and ground reality.

⁴² Anaya, *Indigenous Peoples in International Law*, 62.

⁴³ ILO Convention No. 169; UNDRIP.

⁴⁴ Vasave, "Intersectionality and Social Justice," 11.

6.2 Recommendations

Based on the analysis, the following recommendations are offered:

First, there is an urgent need to strengthen the implementation machinery for tribal rights legislation. The Ministry of Tribal Affairs should be given greater authority to enforce compliance by state governments with constitutional and legal provisions. The National Commission for Scheduled Tribes should be empowered to issue binding orders rather than merely recommendatory ones.

Second, the Forest Rights Act must be implemented in letter and spirit. The staggering number of rejected claims 1.87 million suggests systematic resistance that must be addressed. States should be directed to expedite the recognition of Community Forest Rights, which are the "very soul" of the FRA. The Ministry of Tribal Affairs' emphasis on prioritising Community Forest Rights and disposing of decade-old pendencies must translate into action on the ground.

Third, the PESA Act must be fully implemented in all Scheduled Areas. The absence of state-specific guidelines in states like Odisha and Jharkhand is unacceptable after 28 years. Gram Sabhas must be strengthened and empowered to exercise their constitutional and legal authority over local resources and governance.

Fourth, there is a need for a comprehensive policy on development-induced displacement that recognises the special constitutional protections afforded to tribal communities. The principle of free, prior, and informed consent should be incorporated into Indian law, at least for Scheduled Areas.

Fifth, India should reconsider its position on the indigenous status of tribal communities. Recognition of tribal communities as indigenous peoples would align India with international human rights standards and provide additional legal and political tools for the protection of tribal rights.

Sixth, judicial activism should continue to play a role in protecting tribal rights. The Supreme Court's progressive interpretation of constitutional provisions, as seen in the inheritance rights case and the Samatha case, provides an important check on executive and legislative encroachment on tribal rights.

Seventh, there is a need for greater awareness and capacity-building among tribal communities regarding their constitutional and legal rights. Many tribal communities are unaware of the protections available to them, limiting their ability to claim their rights.

Eighth, the intersectional vulnerabilities of tribal communities, particularly tribal women, must be addressed through targeted interventions. Customary practices that discriminate against women should be reformed to align with constitutional guarantees of equality.

6.3 Concluding Remarks

The constitutional and legal protection of tribal rights in India represents both a remarkable achievement and a profound disappointment. The constitutional framers, recognising the historical injustices suffered by tribal communities and their vulnerability in a rapidly changing society, created a comprehensive framework of protection. Subsequent legislatures and courts have built upon this framework, expanding the scope of tribal rights and providing new mechanisms for their enforcement.

Yet, as this paper has demonstrated, the gap between legal promise and ground reality remains vast. Tribal communities continue to be displaced, dispossessed, and marginalised despite the existence of formidable legal protections. The reasons for this gap are complex and multifaceted, involving bureaucratic resistance, institutional failure, elite capture, and the tension between development imperatives and tribal rights.

Bridging this gap requires not merely legal reform but a fundamental reorientation of the relationship between the state and tribal communities. It requires moving from a model of protective discrimination to one of genuine empowerment and self-determination. It requires recognising that tribal communities are not merely beneficiaries of state largesse but rights-holders entitled to the full protection of the law.

The constitutional promise of tribal protection remains unfulfilled. Realising that promise is not only a legal obligation but a moral imperative a test of India's commitment to its constitutional values of equality, justice, and the dignity of all its citizens.

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