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TRIBAL LAND RIGHTS AND LAND ACQUISITION IN CONSTITUTIONAL RECOGNITION: THE PROGRESS AND CHALLENGES

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ABSTRACT

India has the second largest tribal people in the world spread across various parts of the country mainly in forests and hilly regions India holds the unique contrast of the being both the world's largest constitutional democracy and also one of its fastest growing economies in the world. Critical to the process of India's economic development is the state acquisition of land for infrastructure and industrial development and others. Recognition of the significance of land resources for tribal communities has grown in the recent decades and it has taken shape in various laws to protect tribal Rights.

This paper seeks to explore the evolution, current status and ongoing challenges related in the land rights of tribal communities in India. It begins by tracing the historical context in land alienation and the impact of colonial land policies. Then it was examines the constitutional and legislative measures introduced to protect tribal land rights with the particular emphasis on the 5th and 6TH Schedules of the Indian Constitution, the Forest Rights Act 2006, and the Panchayats (Extension to Scheduled Areas) Act 1976 (PESA). These laws were intended to recognize the traditional rights of tribal communities

Tribal communities in India have specific land rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act. 2006 (FRA). This Act grants Scheduled Tribes and other traditional forest dwellers the right to hold and reside on forest land for habitation and to use it for self cultivation.

The constitutional challenges faced by indigenous communities in india regarding tribal rights and land disputes. Despite constitutional provisions and international commitments, indigenous communities continue to encounter obstacles in protecting their ancestral lands and

preserving their cultural heritage. The paper critically analyses the implementation gaps in constitutional provisions explores the impact of development projects on indigenous lands, and evaluates the legal remedies available to safeguard their rights.

Keywords: Tribal rights, land disputes, indigenous communities, constitutional challenges, land ownership, development projects, legal remedies, International Labour Organization (ILO), customary laws, constitutional safeguards, Scheduled Tribes, Forest Rights Act, Panchayat (Extension to Scheduled Areas) Act (PESA), self-governance, sustainable development.¹

1. INTRODUCTION

The word 'Tribe' denotes a group of people living in primitive and ruthless conditions. These tribes are a social group living in a fixed territory having no such specialization of functions and the people living in these social groups are known as tribes or tribal people. Tribes also have several sub groups and collectively they are known as 'Tribal Society'. Tribes are the inhabitants of forests since pre history and even in this modern world this trend is followed by many people. Tribes constitute around 8.6 percent of the total Indian population, and of the total tribal population around 80 percent are found in Central India Many indigenous communities, also known as tribal or Adivasi communities, may be found in India, a multicultural country with a rich cultural legacy. These groups have strong ties to their ancestral lands, which are extremely significant culturally, spiritually, and historically in addition to providing a means of livelihood. However, indigenous people in India still deal with several obstacles, especially with regard to land disputes and the protection of their tribal rights, even in spite of international agreements and constitutional provisions intended to protect their rights.

The Indian Constitution recognizes the unique status and vulnerabilities of indigenous communities and seeks to protect their rights through various provisions. Article 244(1) of the Constitution empowers the President to declare certain areas as Scheduled Areas, where specific safeguards and protective measures are implemented to ensure the welfare and advancement of tribal communities. Additionally, the Fifth Schedule of the Constitution outlines the administration and governance of these Scheduled Areas, emphasizing the

¹ 0 India, Ministry of Tribal Affairs. Document Number TRI28-08-2017115159. New Delhi: Ministry of Tribal Affairs, 2017. Accessed April 1, 2025. <https://tribal.nic.in/repository/ViewDoc.aspx?RepositoryNo=TRI28-08-2017115159&file=Docs/TRI28-08-2017115159.pdf>.

preservation of tribal autonomy and their customary laws.

Despite these constitutional provisions, indigenous communities in India continue to face a multitude of challenges in protecting their land rights. Land disputes, often arising from competing interests between indigenous communities, non-tribal settlers, and state authorities, have become a contentious issue. The lack of clarity in defining tribal lands, inadequate implementation of protective measures, weak land titling systems, and legal ambiguities contribute to the persistence of land disputes and the erosion of tribal rights.

This research paper aims to critically analyse the constitutional challenges faced by indigenous communities in India concerning tribal rights and land disputes. It will examine the gaps in the implementation of constitutional provisions and relevant laws, assess the impact of development projects on indigenous lands, and explore the legal remedies available to protect the rights and interests of indigenous communities.

Furthermore, this paper will delve into the international obligations of India, particularly in light of the International Labour Organization (ILO) Convention No. 169 concerning the rights of indigenous and tribal peoples. It will assess India's compliance with these obligations and analyse the implications for indigenous communities in terms of land rights, self-governance, and cultural preservation.²

By shedding light on the constitutional challenges faced by indigenous communities in India and analysing the legal framework surrounding their rights and land disputes, this research paper aims to contribute to the ongoing discourse on indigenous rights and promote the development of a more inclusive and equitable legal framework in India. It seeks to provide valuable insights and recommendations for policymakers, legal practitioners, and advocates working towards the realization of indigenous rights in India.

2. HISTORICAL BACKGROUND

The historical context of tribal land disputes in India can be traced back to the colonial era when British rule brought about significant changes in land ownership and administration. The British introduced various land laws and policies that undermined the traditional land rights of

² The Orissa Mining Corporation Ltd v. Ministry of Environment & Forest, Supreme Court of India, Civil Appeal No. 2155 of 2013, April 18, 2013.

tribal communities. The zamindari system, forest laws, and land acquisition for infrastructure development led to the dispossession and marginalization of tribal communities. Tribal groups were forced by the people belonging to upper castes to perform menial jobs like small household works, sweeping, cleaning of excreta, leather works, removal of dead bodies etc.

2.1 Overview of Tribal Communities and their Connection to Land in India

Tribal communities in India are diverse and constitute a significant portion of the population. They have distinct cultural, social, and economic practices deeply intertwined with their connection to land. Land holds immense value for tribal communities, serving as the foundation of their livelihoods, cultural identity, and spiritual beliefs. Tribal communities often practice subsistence agriculture, gather forest produce, and engage in traditional occupations closely tied to the land. Land is not merely an economic resource for survival but also a source of community cohesion, intergenerational knowledge transmission, and cultural heritage preservation.

2.2 Prevalence of Land Disputes Faced by Tribal Communities

Land disputes have been pervasive and persistent challenges for tribal communities in India. These disputes arise due to various factors:

- a. **Encroachment by Non-Tribal Settlers:** Many tribal communities live in remote and resource-rich areas, making their lands attractive to non-tribal settlers, commercial interests, and government development projects. Encroachment often leads to displacement, loss of access to resources, and conflicts over land ownership.
- b. **Forest Conservation and Wildlife Protection Measures:** Forest conservation policies, such as the establishment of protected areas and wildlife sanctuaries, have resulted in the relocation of tribal communities from their ancestral lands. These displacements have led to conflicts between conservation objectives and tribal rights.
- c. **Infrastructure Development:** Large-scale infrastructure projects, including mining, dams, and industrialization, often result in the acquisition of tribal lands. Inadequate compensation, lack of consultation, and displacement without proper rehabilitation have fueled land disputes and social unrest.³

³ Thimmappa, "Statutory Rights to Fair Compensation," 35. 18 Ajay Dandekar and Chitrangada Choudhury, PESA, Left-Wing Extremism and Governance: Concerns and Challenges in India's Tribal Districts (Institute of Rural Management, Anand, Commissioned by Ministry of Panchayati Raj, Government of India, New Delhi, 2010), 5.

- d. **Ambiguous Legal Framework:** Ambiguities in land laws, particularly concerning tribal land rights and the recognition of customary practices, contribute to land disputes. Inconsistent interpretation and implementation of laws further exacerbate the problem.

2.3 Status of Tribal Population in India

The condition and Status of Tribal population in India are getting worst with time. The tribal population of India is highly dependent upon agriculture and forest-based livelihoods. Where agricultural production provides a source of income for 43% of non-tribals, it also provides a source of income for 66% of tribal people. However, the proportion of tribal farmers has decreased in the past few decades, and more people seem to have become farm employees. 3.5 million tribal people have given up cultivation and other similar pursuits in the last decade. According to census reports from 2001 to 2011, the proportion of tribal farmers decreased by 10%, whereas the proportion of working labourers raised by 9%.

This could indicate that direct farming is no longer profitable or that individuals may not have the means to cultivate. They are entering the labour force as they have no other option left.

Problems faced by Indian Tribal Societies

- Losing of rights and control over the natural resources.
- Lack of awareness and education.
- Displacement and migration compulsions.
- Diminishing of identification.

2.4 Land Alienation

Rights of tribals over forests is an inalienable and irrefutable historical fact. But the problem of alienation of land from the tribal to non-tribal is there from the time of British colonialism in India when the Britishers started interfering in the tribal region to exploit the rich tribal resources. Along with Britishers, money lenders, zamindars and traders started encroachments on tribal lands. As the tribal people had no legal rights over their land, it became easier for non-tribal people to acquire their land.

Forest policy of Britishers was inclined towards commercial purposes and was not for the tribal people, so it led to displacement of tribal people from forests. Britishers even reserved some forests with rich natural resources where only Government officials and authorized contractors were allowed to cut the timber which was used by the Britishers and the tribal people were kept

isolated even in their own habitat.

Tribal people are mainly dependent upon the forest products for their livelihood and many tribes including their women are involved in agriculture, hunting and food gathering. But when outsiders or non-tribes start interfering and exploiting the natural resources, the life cycle of tribal life is greatly disturbed. The tribes have gradually lost control over community resources such as forests. Tribal lands in the northern state of Uttar Pradesh revealed a nexus between traditionally influential nontribal landowners and corrupt government officials. The latter exercised their discretionary powers to favour non-tribes by transferring lands over which tribal communities may have had a valid claim. Even in a tribal majority state like Jharkhand in the north, the tribes are the worst affected in the entire population since the state government's mining operations and hydroelectric power projects exploit natural resources in the resource-rich tribal areas, thus making the tribes outsiders in their own land.[\[5\]](#)

Many people have tried to acquire the tribal lands by marrying the tribal women and there are ample proves that these people were non-tribal and belonged to upper caste and ruling class of coastal Andhra.

The tribal people have been living and cultivating on these land from ages and suddenly they are deprived of their land displaced. In Attappady, Kerala alone, over 10,796.19 acres land had been alienated from tribes between 1960 and 1980[\[6\]](#). Often law declares these unregistered lands as national parks, sanctuaries or reserved forests. In some forests the tribal people are not given access to forest produce and grazing of cattle is rendered illegal by the Government. These people live under the continuous threat of being ousted from their homes. They do not have any legal right and the only legal protection they have is the due process of law. Their demands for their rights is often subdued by the forest authorities and whenever they try to protest for their demands they are trampled to the extent that their right to life is taken away.

3. Constitutional Safeguards for Indigenous Communities

The Indian Constitution provides constitutional safeguards for indigenous communities, commonly referred to as Scheduled Tribes (STs), through various provisions. These safeguards aim to protect their distinct identity, culture, and socio-economic interests. In this analysis, we will critically examine the constitutional safeguards for tribal rights, focusing on the provisions under the Fifth and Sixth Schedules of the Indian Constitution, the Scheduled Tribes and Other

Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Forest Rights Act), and the role of the Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA) in protecting tribal land rights.

3.1 Constitutional Safeguards for Tribal Rights

Fifth Schedule: The Fifth Schedule of the Indian Constitution provides special provisions for the administration and governance of Scheduled Areas, which are predominantly inhabited by STs. It empowers the Governor of each state to regulate and protect tribal land, prohibit transfer of land from tribal individuals to non-tribals, and oversee the welfare and development of STs.

Sixth Schedule: The Sixth Schedule applies to certain tribal areas in the north eastern states of Assam, Meghalaya, Tripura, and Mizoram. It establishes autonomous district councils (ADCs) with legislative, executive, and financial powers to govern these areas. ADCs have the authority to make laws on various subjects, including land, forests, and social customs. They play a crucial role in preserving the tribal identity and promoting self-governance.⁴

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

The Forest Rights Act was enacted to recognize and vest forest rights and occupation of forestland in forest-dwelling Scheduled Tribes and other traditional forest dwellers. It provides for the recognition of individual and community rights over forestland, access to forest resources for livelihood purposes, and the conservation and management of forests. The Act aims to rectify historical injustices and empower tribal communities to protect their traditional rights and cultural heritage.

3.3 Role of the Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA) in Protecting Tribal Land Rights:

PESA Act is a law enacted by the Government of India to enable the Gram Sabhas of the tribal regions to self govern and protect their natural resources. PESA was made applicable to 9 states viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan and not to other Scheduled Areas including those in Manipur. PESA imposed restriction on the State Legislature and decentralized more power in the hands of the Gram Sabha or Panchayat. It may be observed that the powers that can be

⁴ C.R. Bijoy, Policy brief on Panchayat Raj (Extension to Scheduled Areas) Act of 1996 (UNDP, n.d.), accessed April 2, 2025, <https://www.undp.org/sites/g/files/zskgke326/files/migration/in/UNDP-Policy-Brief-onPESA.pdf>.

exercised by the Gram Sabha under this Act relate to the tribes' customs, traditions, religion, land and mineral resources.^[19] The act made the Gram Sabhas independent and competent to preserve and safeguard the customs and the traditions of the people and community resources. The act gave the power to the Gram Sabhas to commend the programmes, plans and projects made for the development of the tribal people and they should be consulted before making any acquisition of land in Scheduled Tribe areas for the development programmes. Overall this act provided the people the right to preserve their land and natural resources and recommendation of the Gram Sabha at appropriate levels for any developmental programme in the tribal area.

3.4 Welfare Programmes and Projects for Tribal People

Tribal population consist of 8.6% percent of the total population of India (2011 census). It is the duty of Government to take care of their interests and ensure them equal rights in the society. In India not only the Central Government, State Government or authorities are helping the tribes to ensure their rights but other voluntary organisations like The Bhil Seva Mandal, The Indian Red Cross Society, The Vishwa Hindu Parishad, The Bharatiya Adim Jati Sevak Sangh, The Rashtreeya Swayam Sevak Sangh, The Vanavasi Kalyanasharma, The Ramakrishna Mission and other various independent organizations are also working in this regard and have undertaken various steps.⁵

4. Constitutional Rights to Tribal People

The Constitution of India has provided special provisions to the tribal people to safeguard their interests.

1. Article 15 of the Indian Constitution^[11] states that the state shall not discriminate any citizen on grounds of religion, race, caste, sex, place of birth or any of them. This explains that every citizen of India is provided equal rights and opportunities without any discrimination.
2. Government of India has made reservation for the tribes in employment under Article 16(4) of the Constitution of India^[12].

⁵ Bhargav Gowda, "A Critical Analysis of Forest Rights Act, 2006 and Its Objective to Promote the Participation of Tribals in the Administration," Indian Journal of Law and Legal Research 2, no. 3 (2025), <https://heinonline.org/HOL/Page?handle=hein.journals/injlolw9&id=157&collection=journals&index=16>
Thimmappa, "Statutory Rights to Fair Compensation in Land Acquisition in India: A Review," International Journal of Law 9, no. 4 (2023): 34–40, accessed April 2, 2025, www.lawjournals.org.

3. The Government of India has reserved seats in The House of People (Lok Sabha) and The State Legislative Assemblies under Article 330 and 332 of The Constitution of India.
4. Article 19(5)[13] of the Constitution of India guarantees the tribal people right to own property and enjoy it in any part of the country.
5. Article 338[14] of The Constitution of India grants the right to appoint a Commissioner to look after welfare activities of tribes.
6. Article 46[15] of the Constitution of India states that, The State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
7. Under Article 275(i) of the Constitution of India the Centre Government is required to give grants-in-aid to the State Government for approved Tribal Welfare Schemes.

5. Balancing Development Needs with Tribal Rights

Balancing development needs with tribal rights is a significant constitutional challenge in India. The government's development agenda often involves infrastructure projects, industrialization, or resource extraction, which can potentially infringe upon the rights of indigenous and tribal communities to their ancestral lands and resources. Constitutions typically provide for the protection of fundamental rights, including the rights of indigenous and tribal peoples. However, conflicts arise when the government's development agenda clashes with the rights of these communities.

Courts play a crucial role in interpreting and applying constitutional provisions to strike a balance between development and tribal rights. They must carefully consider the principles of proportionality and reasonableness to ensure that the government's actions do not disproportionately harm the rights and interests of indigenous and tribal communities.⁶

6. Critical Analysis:

While the constitutional provisions and laws mentioned above provide a framework for safeguarding tribal rights, there are several challenges in their effective implementation. Some

⁶ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Act No. 2 of 2007, Parliament of India (2006). 11 "The Forest Rights Act (FRA), 2006," Ministry of Tribal Affairs, Government of India, accessed April 1, 2025, <https://tribal.nic.in/FRA.aspx>.

of the critical issues include:

6.1 Weak Implementation: Despite constitutional safeguards, there have been instances of inadequate implementation and enforcement of tribal rights. Lack of awareness, bureaucratic hurdles, and limited resources often hinder the effective protection of tribal rights.

6.2 Conflicts and Displacement: The rapid pace of development projects, including infrastructure and industrial activities, has resulted in conflicts over land and displacement of tribal communities. The balance between developmental needs and the protection of tribal rights remains a challenge.

6.3 Inadequate Recognition of Community Rights: The Forest Rights Act recognizes individual and community rights over forestland. However, there have been concerns regarding the recognition and vesting of community rights, leading to the exclusion of many deserving tribal communities.

6.4 Limited Autonomy: While the Fifth and Sixth Schedules and PESA aim to provide autonomy to tribal communities, the extent of self-governance and decision-making powers granted to them is often limited. The involvement of state and central authorities in tribal governance can constrain the exercise of their autonomy.

The Indian Constitution recognizes the right and safeguards of indigenous communities, but the effective implementation of these provisions remains a challenge. To ensure the meaningful empowerment and protection of tribal rights, there is a need for increased awareness, capacity building, and participatory decision-making processes involving tribal communities. Strengthening the institutions responsible for the implementation of these safeguards and addressing the existing gaps and challenges are essential for securing the rights and well-being of indigenous communities in India.

7. Challenges in Implementing PESA (Panchayats (Extension to Scheduled Areas) Act):

The Panchayats (Extension to Scheduled Areas) Act, commonly known as PESA, aimed to empower tribal communities by providing them with self-governance rights. However, its effective implementation has been hindered by several challenges:

7.1 Lack of Awareness and Capacity Building: Tribal communities often lack awareness of their rights under PESA, while government officials may not understand the Act's provisions. Capacity-building programs are necessary to educate both communities and officials.

7.2 Inadequate Devolution of Powers: PESA mandates the devolution of powers to Gram Sabhas, but in practice, this transfer of authority has been limited. Centralization of decision-making undermines the autonomy intended by PESA.

7.3 Conflicts with Other Laws: PESA can conflict with state laws, especially regarding land acquisition and resource management, leading to legal ambiguities and challenges in implementation.

7.4 Inadequate Financial Resources: Insufficient allocation of funds to Gram Sabhas hampers their ability to deliver services and undertake development activities as mandated by PESA.

7.5 Political Interference: Political interests may oppose the devolution of power under PESA, leading to resistance and hampering its effective implementation.

Addressing these challenges requires raising awareness, ensuring devolution of powers, resolving legal conflicts, providing adequate resources, and mitigating political interference.

8. Land Acquisition Laws and their Impact on Tribal Rights

Land acquisition laws have historically marginalized tribal communities, impacting their rights in various ways:

8.1 Loss of Ancestral Lands: Tribal communities often lose their ancestral lands due to land acquisition for development projects, disrupting their traditional way of life and cultural practices.

8.2 Displacement and Loss of Livelihoods: Land acquisition frequently leads to the forced displacement of tribal communities, resulting in the loss of livelihoods and social dislocation.

8.3 Violation of Free, Prior, and Informed Consent: Land acquisition processes often

disregard tribal communities' consent, violating their right to self-determination and meaningful participation.

8.4 Inadequate Compensation and Rehabilitation: Compensation and rehabilitation measures for displaced tribal communities are often insufficient, exacerbating their marginalization and impoverishment.

8.5 Environmental Impacts: Land acquisition for development projects can have adverse environmental consequences, disproportionately affecting tribal communities dependent on natural resources.

To protect tribal land rights, fair land acquisition processes, recognition of customary land rights, adequate compensation and rehabilitation, and meaningful participation of tribal communities are essential.

9. Several challenges persist in protecting tribal land rights

9.1 Historical Injustices and Land Alienation: Historical injustices, including colonization and land dispossession, have deprived tribal communities of their traditional lands, undermining their self-governance and cultural practices.⁷

9.2 Development Projects and Displacement of Tribals: Development projects often displace tribal communities, disrupting their livelihoods and cultural heritage.

9.3 Issues with Implementation of Protective Legislation: Despite protective legislation, enforcement remains inadequate due to limited awareness, bureaucratic hurdles, and resistance from vested interests.

9.4 The Concept of Ownership and Traditional Practices: Tribal communities' communal land ownership clashes with mainstream legal frameworks, leading to conflicts and legal uncertainties.

To address these challenges, awareness-building, meaningful participation, legal reforms, and sustainable development strategies are necessary to safeguard tribal land rights within the

⁷ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Act No. 2 of 2007, Parliament of India (2006). 11 "The Forest Rights Act (FRA), 2006," Ministry of Tribal Affairs, Government of India, accessed April 1, 2025, <https://tribal.nic.in/FRA.aspx>

broader legal framework.

Conclusion

Central Government and State Governments have shown a great deal of interest and have worked towards the development of tribes but the progress achieved so far is just satisfactory. Government of India has undertaken and implemented many tribal welfare programmes and policies but none of them have been effective and welfare of tribal people is a concerned issue as they constitute 8.6 percent of the total population of India and it is the duty of the Government to take care of every citizen and work towards their welfare. Government has failed to implement these policies due to lack of political will and inadequacy of administrative machinery, procedural delays and lack of proper monitoring. Today, tribal people are not even able to demand their rights due to poor response of the authorities. Moreover when they approach the authorities to claim their rights they are asked to produce certain documents which they generally do not have and thus they fall a prey to corruption.

We have the opinion that the government programmes and plans fail because of the lack of interest shown by the authorities and the undue haste shown in the policy implementation. We think that welfare of the tribes should be the main aim of the government and no politics should be played on this issue. Development is possible through education so, first of all the government should take steps in this direction because a country cannot develop unless its citizens are educated and well aware of their rights. Government should also try to make judicial proceedings faster and easily accessible for the tribes. Also for the proper implementation of the welfare schemes and polices for the tribal benefit the tribes should be made aware about them through awareness and training programmes, the authorities should be well trained in this regard and proper constitution of the Gram Sabhas should be there because they act as a connecting link between tribes and the authorities.

The issues and the problems of the Tribes cannot be neglected and isolated from the main development agenda of the Government. The Sixth five year plan document stated that “three decades of the development have not had the desired impact on the socially, economically, educationally handicapped section. Despite so many efforts made by the Government, the Tribal people are still deprived of a life which they are entitled to. We believe that Government and all the political parties should work together towards the welfare of the Tribes and should not be diplomatic on this sensitive issue.