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TRIBAL JUSTICE AND THE CONSTITUTIONAL PROMISE: REALISING SOCIAL, ECONOMIC AND POLITICAL JUSTICE FOR INDIGENOUS COMMUNITIES

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ABSTRACT

The Constitution of India has played a crucial role in balancing the interests of tribal communities by recognizing their unique social and cultural identities. It seeks to protect their rights, promote their welfare, and preserve their cultural heritage. It lays down several provisions that safeguard their educational, cultural, social, economic, and political rights. It aims to provide them with social, economic, and political justice. However, the realisation of these constitutional promises faces numerous challenges. This paper argues that real justice for tribal communities must go beyond legal protection but also respect for tribal culture, land and self-governance. In order to redress the social exclusion, economic deprivation and political alienation of the tribes, the framers of the Constitution had conceived an affirmative action through reservation. For the benefit of these tribal populations across the country, the Constitution has enshrined golden provisions for promoting and advancing the interests of STs. In pursuit of the constitutional goal of substantive equality, reservations/schemes/policies have been provided as a means of enabling them to realise, in the true sense, dignity, freedom, and liberty which the Constitution guarantees as to its basic philosophy. Despite all these efforts made to improve the socio-economic conditions of tribes, the continued marginalization of tribal people undermines the core values of the Constitution. This paper addresses the Constitutional vision of justice and examines the extent to which the promise of social, economic, and political justice for indigenous communities is realized.

Keywords: tribal justice, constitutional values, scheduled tribes, marginalization, indigenous communities

INTRODUCTION:

India, the largest democracy in the world, exemplifies the concept of “Unity in Diversity”. As a symbol of promoting the idea of “fraternity”, it bears the unwritten responsibility of ensuring social, political, and economic justice and stability for all its citizens by removing barriers of caste, creed, religion, and gender. This purpose has been upheld by the country's foundational law, the Indian Constitution. Tribal communities, often known as indigenous people, have experienced social, economic, and political marginalization since time immemorial. In India, tribal people constitute about 8.6%, i.e., around 10.4 crores of the overall population of the country.¹ Even though the Constitution of India acknowledges the special status of tribal communities and grants protection to them, they still continue to be at risk of exploitation.

MEANING & DEFINITION OF TRIBE:

A tribe is one who usually lives in hilly and geographically isolated areas. They have their unique cultural identity, which distinguishes them from the mainstream population.² The expression “tribe” originated from a Latin term “tribus”, which connotes “one-third”. Romans mainly identified it as a “political unit”, “distinct name”, and living in a “common territory” “under a common leadership”. D. N. Mazumdar defines Tribe as “a collection of families or group of families bearing a common name, members of which occupy the same territory, speak the same language and observe certain Taboos regarding marriage, profession or occupation, and have developed a well-assessed system of reciprocity and mutuality of obligations”.³

The definition of ‘Tribe’ has not been provided in the Indian Constitution. Also, it has not been defined in absolute legal terms in any other laws in India. The Indian Constitution defines “Scheduled Tribe” under Article 366(25) as “a group of persons who are scheduled in accordance with Article 342 of the Constitution”.⁴ As per Article 342, only that community will be regarded as ST to whom the President specified to be so by means of a public notification or by subsequent notification of Parliament.⁵ However, it doesn't provide the criterion for identifying any community as a Scheduled Tribe.

The Press Information Bureau, Ministry of Tribal Affairs, has provided certain criteria for

¹ Year End Review, Ministry of Tribal Affairs (PIB Delhi, 31 Dec 2022).

² M. P. Jain, *Indian Constitutional Law* (8th edn, Lexis Nexis 2021) 1506.

³ Anuja Mohapatra & Prafulla Kumar Jena, *Indian Society* (Kalyani Publishers, 2017) 122.

⁴ The Constitution of India 1950, art 366(25).

⁵ The Constitution of India 1950, art 342.

identifying a community to be a Particularly Vulnerable Tribal Group.⁶ Those are stated below:

1. “Pre-agricultural Level of Technology
2. Low Level of Literacy
3. Economic Backwardness
4. A declining or stagnant population”

CONSTITUTIONAL VISION OF JUSTICE

Justice means to provide every individual with what they are entitled to. In general, justice means treating every individual fairly. The term ‘justice’ is derived from the Latin term ‘justicia’, which means ‘righteousness’ or ‘equity’. The concept of justice has ancient roots in our Indian civilization. It is one of the most vital pillars of every country, essential for a society to function.

The Preamble sets out the guiding principles and values of the Constitution of India and ‘justice’ is one of such guiding principles. The Constitution makers made sure that it was included, as they were aware of the need to establish justice in the state. The Constitution of India promises to provide ‘social, economic and political justice’ to its citizens. It makes special provisions for the marginalized communities in order to ensure that justice is available to everyone effectively. The concept of justice enshrined in the preamble is also reflected in Arts. 14, 15, 16 and 17 of the Constitution of India.

There are three dimensions of justice- Social, Economic and Political. Each of these dimensions of justice is closely connected to the others. Without the presence of the other two, one cannot be achieved. In order to achieve social justice, the economic and political justice should be present. These are described as follows.

(a) Social Justice:

Social justice means maximizing benefits for a greater number of people and treating unequals equally. The all-encompassing term “social justice” refers to providing benefits, facilities, concessions, advantages, and special rights to people who need and deserve such assistance. The differences based on ‘caste, colour, race, religion, gender, place of birth, etc.’ shouldn’t prevent anyone from having access to the social

⁶ Press Information Bureau, Govt. of India, Ministry of Tribal Affairs (PIB, 04 July 2019).

conditions required for their growth.⁷ The practice of social equality serves as the foundation for the idea of social justice.⁸ Social justice is a part of basic structure of the Constitution of India.⁹ Dr. Ambedkar is one of the advocates of social justice in contemporary India. He asserts that the foundation of social justice is the equality, liberty, and fraternity of all people. Creating a just society is the core idea behind the concept of social justice.

(b) Economic Justice:

Social justice and economic justice are intertwined. The Constitution of India envisions socio-economic justice as enshrined under the DPSP. Economic equality for all members of society and the elimination of inequality in income, wealth and property are prerequisites for economic justice. No one should be treated differently on the basis of their financial situation. No one's economic status should be a reason to deny them any opportunities. Economic justice involves eliminating economic barriers, promoting economic equality and offering economic opportunity. It is always carried out with social justice as its guiding principle. Economic justice aims to eradicate poverty by increasing the nation's wealth and resources and allocating them fairly among all the sections of society.

(c) Political Justice:

When all people of a society enjoy equal political rights and participate in politics equally, this is known as political justice.¹⁰ It refers to a system free from political arbitrariness. There should be political fairness in the government's functions. No one should be given an advantage because of their political status. The Hon'ble Supreme Court in *Shri Raghunathrao Ganapatrao v. UOI*¹¹ made an effort to define the expression 'political justice' and observed that "Political justice relates to the principle of rights of the people, i.e., right to universal suffrage, right to a democratic form of Government and right to participation in political affairs".

⁷ S. Waseem Ahmad and M. Ashraf Ali, 'Social Justice and the Constitution of India' (2006) 67(4) IJPS 767-782.

⁸ Fr. James Joseph, 'Social Equity and Justice through the Education of Tribal People' (2018) 23(8) IOSRJHSS 30.

⁹ *Kesavananda Bharati v State of Kerala* AIR [1973] SC 1461.

¹⁰ Nirad Kumar Pradhan, 'Social Justice: A Case Study on Western Odisha' (2019) 16(9) JASRAE 681.

¹¹ *Shri Raghunathrao Ganapatrao v UOI* AIR [1993] SC 1267.

REALISING CONSTITUTIONAL VISION OF JUSTICE FOR TRIBAL COMMUNITIES:

The tribals have always remained a pivotal segment of India's rich heritage and culture. They delineate the diverse culture, traditions, and knowledge of the country¹², thereby revealing the beautiful tapestry of "Bharat". However, their meager population has kept them unfortified from the discriminatory practices, for which the Constitution makers thought it proper to append specific provisions that shall preserve their subsistence and aid in their merger with the mainstream society. The drafting committee was able to assess the prevailing social, political, and economic prejudice against the scheduled castes and scheduled tribes in the country. Such an assessment helped discern that the prior prevalent practices had become so deeply embedded in society that it was now necessary to eradicate the evil and ensure a secure life for the tribal community. These factors motivated the committee to append specific provisions for securing equal treatment for the tribes in all spheres of life, whether social, cultural, or educational.

I. REALISING SOCIAL JUSTICE FOR TRIBAL COMMUNITIES:

Social Justice is a powerful instrument to mitigate the suffering of the vulnerable sections of society. The primary goal of this notion is to help the weaker sections become more involved in society. Additionally, this idea of social justice prohibits unjust enrichment at the cost of marginalized groups.¹³ By addressing the historical injustices, the Constitution aims to build a more just society in which all people have equal access to rights, opportunities, and resources.¹⁴ It can be said to be 'corrective justice' as it provides disadvantaged communities access to opportunities that they had been denied for centuries.

For tribal people, 'social justice' includes the following:

- i. Absence of all kinds of discrimination,
- ii. Recognition of cultural identity,
- iii. Equal opportunities in every sphere of human life.¹⁵

The framers of the Constitution took several measures to safeguard the rights of the Scheduled Tribes. The Constitution of India guarantees several provisions to promote social justice for the indigenous communities, and the government has employed specific measures to improve

¹² Priyanka Nial, 'Analytical Study of the Impact of Globalisation on Tribals of India: A case study of Odisha with Special Reference to Kalahandi, Bolangir and Koraput (KBK)' (2017) 11 AGUIJPSR.

¹³ Sharat Chandra Arukonda, 'Perception of Dr. B. R. Ambedkar Social Justice in the Indian Constitution- A Perspective' (2023) 12(9)(1) IJMER.

¹⁴ Kairvi Singh & Dr. Shadav Farha, 'Social Justice in the Indian Constitution during 20th Century: A Historical Overview' (2022)4(3) AIRO.

¹⁵ Nirad Kumar Pradhan, 'Social Justice: A Case Study on Western Odisha' (2019) 16(9) JASRAE 681.

their social conditions through various welfare schemes.

A. Constitutional Provisions:

i. Article 14:

The foremost step taken by the makers to secure equal social status for the tribes was to guarantee them the “Right to Equality” under Article 14 of the Constitution. This article bestowed equality status upon the tribes and acceded to the government to implement special provisions for the edification of the position, so that they could stand on the same footing as others and enjoy an equal status as that of the other citizens.

ii. Arts. 15(4), 16(4):

Reservations have been in place in educational and employment settings for around 75 years. Undoubtedly, tribes have benefited from these provisions. This is made clear from the fact that they are now present at all levels of government service.

iii. Article 17:

Article 17 provides fundamental protection from the evil of untouchability by its absolute extermination from the Indian society.¹⁶

iv. Arts. 19(1)(d)(e):

The Constitution makers thought that exposing the indigenous communities to the outside world in an indiscriminate manner could be detrimental to them. Therefore, in the interest of scheduled tribes, the legislature imposed restrictions on the Fundamental rights guaranteed under Articles 19(1)(d)¹⁷ and 19(1)(e)¹⁸. It prevents outsiders from taking advantage of the tribal people by limiting the movement of people from developed areas to tribal areas. As a result, laws have been passed that forbid non-tribals from entering tribal territory without permission, from residing there permanently, and from transferring tribal land to non-tribals.

v. Article 21:

This Article guarantees “right to life” to every individual to lead a life of liberty and dignity¹⁹, without being obstructed by any external interference. It is also an intrinsic right of the scheduled tribe people to lead a harmonious life without living under the fear of being harassed, exploited, discriminated against, or looked down upon by any other fellow resident of the country or any authorities responsible for the smooth functioning of the country.

vi. Article 21A:

¹⁶ The Constitution of India 1950, art 17.

¹⁷ The Constitution of India 1950, art 19(1)(d).

¹⁸ The Constitution of India 1950, art 19(1)(e).

¹⁹ The Constitution of India 1950, art 21.

The Constitution has recognised the value of imparting education to the future of this country through Article 21-A, which mandates the provision of compulsory education to every child of the country ranging from six to fourteen years.²⁰ This provision is essentially applicable to the children belonging to the tribal community, to ensure that they get ample employment opportunities in the future to stabilise their position in society.

vii. Articles 23 and 24:

Article 23 deals with “Right against Exploitation,” that confers the stringent obligation upon all individuals and the state, not to coerce and force any of the citizens, to perform labour, nor to compel them to fall prey to trafficking.²¹ This provision, though, does not make a special mention of the “Schedule tribes”, but it can be deemed to be conducive to the tribal people, since a majority of labourers are found to belong to this community. Article 24 prohibits the employment of any child below the age of 14 years in any factory that indulges in performing hazardous practices.²² This provision holds a special position in safeguarding children belonging to the tribal community from being exploited and harassed at the hands of the owners of such factories, and securing a bright future ahead of them.

viii. Article 29:

India, being a state of diverse culture, language, traditions, and customs, needed to preserve these to keep intact its peculiarity. For achieving the goal, Article 29 was included within the body of the constitution, which permitted every citizen, including the scheduled tribes, a distinct right to conserve their script, cultural practices, and linguistic character.²³

ix. Art. 46:

The state is required to safeguard the weaker sections of society from social injustice and all kinds of exploitation, while also promoting their educational and economic interests of the Scheduled Tribes.²⁴

x. Article 338A:

Considering the welfare of the tribes is urgent and requires special care and attention, Article 338A was added to the Constitution through the 89th Amendment Act in 2003, establishing a specialised commission for the scheduled tribes at the national level, which shall regularly monitor matters related to the scheduled tribes and ensure that all legislation and schemes are effectively utilized by them.

²⁰ The Constitution of India 1950, art 21A.

²¹ The Constitution of India 1950, art 23

²² The Constitution of India 1950, art 24.

²³ The Constitution of India 1950, art 29.

²⁴ Lalringzuali, ‘Rights of the Tribals in India (With reference to Indian Constitution)’ (2016) 12(23) JASRAE.

B. Other Legislative Provisions:

- i. *The SC ST (Prevention of Atrocities) Act, 1989*
- ii. *The PESA Act, 1996:*
- iii. *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006: S. 5 lays down the duty of the forest rights holder to protect forests, biodiversity, and waterbodies.*

C. Social Welfare Schemes:

- i. *Eklavya Residential Schools,*
- ii. *Tribal Sub-plan, healthcare and livelihood programs*

II. REALISING ECONOMIC JUSTICE FOR TRIBAL COMMUNITIES:

Economic justice is a broad component of social justice. The primary goal of economic justice is fair and equitable access to resources and livelihood opportunities. These communities are economically uplifted when they have access to good education and fixed government jobs. The term “Social and economic justice” refers to the idea of distributive justice, which implies eliminating economic inequalities and redressing injustices brought about by interactions or transactions between socially unequal people.²⁵ Tribes have been pushed to the bottom of the social margin by a variety of deprivations, including poverty, illiteracy, health problems, and unemployment.

Economic justice, for tribal communities, includes:

- i. Rights respecting land and resources,
- ii. Protection against exploitation of moneylenders, traders, and outsiders
- iii. Livelihood and Employment opportunities
- iv. Fair Compensation and rehabilitation in case of displacement

For tribal communities, land is an essential resource that provides social structure, cultural identity, and a means of subsistence. Their cultural and social integrity are also compromised when their land rights are denied, in addition to their economic status. Regarding land-related matters, the Ministry of Rural Development, Department of Land Resources, is the central nodal ministry that oversees land reforms. According to Entry No. 18 of List-II of the 7th Schedule, states have exclusive legislative and administrative jurisdiction over land and its

²⁵ Yogesh Pratap Singh and Suvashree Panda, *Tribal Justice* (Eastern Book Company, 2021).

management.²⁶

The following legal and constitutional provisions have been put in place to address the issue of land acquisition and tribal displacement, as well as to protect and safeguard the land rights of Scheduled Tribes:

A. Constitutional Provisions:

i. Article 46:

The state is under an obligation to take steps to promote the educational and economic interests of the tribal communities.²⁷

ii. Articles 244 and 244-A:

Article 244 sheds light upon the applicability of the Fifth Schedule for the upliftment of the position of scheduled tribes.²⁸ As per the provision, the fifth schedule shall be referred to for achieving the effective administration of all the scheduled areas and the tribes residing within those areas within India. However, the fifth schedule shall have no applicability over the scheduled areas of Assam, Mizoram, Meghalaya, and Tripura.

iii. Article 275:

Special provision has been made for providing funds from the consolidated funds of India for the well-ordered management of tribal areas, for facilitating a better environment for the tribes, and strengthening their position in society. The Parliament shall decide the amount of grant-in-aid to be provided from the consolidated fund to the scheduled tribe areas of each state, and there is no mandate to fix a similar amount for each state. In addition, the Parliament is under a mandatory obligation to provide an ample amount of revenue for the initiation of schemes to uplift the tribes to an advantageous position. But this revenue is to be provided only after consulting with the government. Depending upon the level of development secured by the scheduled areas of the State, the parliament may vary the amount of grant-in-aid.

B. Legislative Provisions:

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

According to S. 4(5), unless otherwise specified, the members of a scheduled tribe or other

²⁶ Land Rights of Scheduled Tribes, PIB, Govt of India, Ministry of Tribal Affairs, (Nov. 22, 2021).

²⁷ The Constitution of India 1950, art 46.

²⁸ The Constitution of India 1950, art 244.

traditional forest dwellers shall not be forced to leave the forest land under their occupation until their recognition and verification process is complete.²⁹ S. 5 imposes the duty on the forest rights holder. The Gram Sabha shall ensure that whatever decision is taken by it relating to the use of community forest resources, like collecting wood, fruits, etc. are complied with.³⁰

ii. The National Rehabilitation and Resettlement Policy, 2007:

This Act protects against displacement by offering compensation to those who have been displaced by land acquisition purchases or any other form of involuntary displacement.

iii. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013:

This Act has been enacted to provide just and equitable compensation to the families whose land has been acquired or is anticipated to be acquired. It aims to guarantee a compassionate, participatory, informed, and transparent procedure for land acquisition with the least amount of disruption to landowners, in consultation with the Gram Sabha. Under section 48, this Act mandates the establishment of a 'National Level Monitoring Committee' for dealing with matters of rehabilitation and resettlement.³¹

III. REALISING POLITICAL JUSTICE FOR TRIBAL COMMUNITIES:

Political justice in respect of tribal communities refers to equal participation of tribals in political life. The goal of this approach is to incorporate Scheduled Tribes into the mainstream of national life. In India, the tribal communities participate in politics in several ways, as voters, candidates, members of political parties, and as elected members of different political institutions. The Constitution of India recognizes that the tribal communities require their own unique political and administrative structure. As a response to the need, Art. 244(2) and 275(1) were added. The provisions of the 6th Schedule provide for autonomous administrative systems in tribal areas. Legislative Representation of the concerns of marginalized populations was guaranteed by the reservation of seats in the political process.³² As a result, these communities now have more political participation and are more empowered.

The provisions relating to political justice for tribal communities are as follows:

²⁹ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, s 4(5).

³⁰ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, s 5.

³¹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, s 48.

³² Telore Babasaheb Haridas, 'Political and Constitutional Rights of Tribal Communities in Indian Constitution' (2024) 6(9) JSSH 173.

A. Constitutional Provision:*i. Article 164:*

Article 164 imposes an obligation upon the state to appoint a special minister titled as the “Minister in charge of the tribal welfare” for ensuring that the tribal areas of Chhattisgarh, Jharkhand, Madhya Pradesh, and Odisha are functioning effectively.³³

ii. Arts. 243D and 243T:

The Constitution prescribed specific provisions for reserving seats for STs in Panchayats³⁴ and at the Municipality level³⁵ to secure their position and ensure representation from all sections of the population. Additionally, it also prescribes provision for the reservation of 1/3rd of the total seats reserved for the women of that community to ensure that the tribal women are given an equal political protection and are not debarred from being adequately represented. Reserving seats for STs was essential to prevent them from feeling excluded from decision-making processes and to support their social upliftment.

iii. Articles 330 and 332:

To ascertain that the scheduled tribes are being satisfactorily represented in Central as well as the State level, the constitution makers have prescribed separate articles which direct for reservation of seats both in the Lok Sabha and State legislative assemblies for the representation of STs in every constituency. To remove every possible discrepancy, the Constitution has prescribed the proportion of seats that need to be reserved for scheduled tribes. In every state, the proportion of seats reserved for tribes to the total number of seats must be equal to the proportion of the population of scheduled tribes to the total population of the state. In accordance to the aforesaid rule, the number of seats reserved for the tribes in the Lok Sabha as well as the legislative assemblies varies considerably for each state.

iv. Article 339:

This provision was inserted considering potential future hardships faced by the STs. To ensure that any difficulties adversely affecting the tribes do not go unnoticed or unheard, the makers granted the President a crucial power to exercise discretionary authority to establish a commission at any time if deemed necessary for managing the administration of tribes.

B. Legislative Provision:*i. The PESA Act, 1996:*

³³ The Constitution of India 1950, art 164.

³⁴ The Constitution of India 1950, art 243D.

³⁵ The Constitution of India 1950, art 243T.

For the first time, it acknowledges tribal communities' traditional community rights over natural resources and grants them powers for self-governance. This Act was enacted for the political empowerment of tribal people. All Schedule V regions are under the administrative control of the states of Gujarat, Himachal Pradesh, Jharkhand, Maharashtra, Madhya Pradesh, Odisha, Rajasthan, Chhattisgarh, and Andhra Pradesh are now included in the Panchayati Raj System. The main objective of this Act is to spread democracy throughout tribal communities, allowing Adivasis to take part in village, block, and district decision-making.

ROLE OF JUDICIARY IN REALISING TRIBAL JUSTICE:

The judiciary is an important organ of the state. It serves as a guardian of fundamental rights. To establish justice in the nation and to realize the idea of justice outlined in the preamble, the judiciary has played a significant role. The Judiciary has adopted a progressive stance in safeguarding the rights of marginalized communities and promoting social justice. The Court expressed through its rulings that justice is a necessary component of a civilized society. Over time, the judiciary's role has evolved as well, and with judicial activism, the Courts have played an active role in realizing the concept of justice. However, the realization of justice faces several challenges and limitations.

From the idea of Socialism, the Court has evolved the concept of social justice and economic equality. The Apex Court states that, "the principal aim of socialism is to eliminate inequality of income and status and standards of life, and to provide a decent standard of life to the working people."³⁶

While defining Socialism, the Hon'ble Supreme Court, in **Samantha v. State of Andhra Pradesh**,³⁷ stated that "Establishment of the egalitarian social order through Rule of Law is the basic structure of the Constitution". The Apex Court declared that all lands that are leased by the govt. or by its agencies to the private mining companies, as invalid. But the land was transferred to the govt. or its agencies was sustained as the entrustment of public property. It was observed that- "Agriculture is the only source of livelihood for scheduled tribes, apart from the collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset, an imperishable endowment from which the tribals derive

³⁶ *D.S. Nakara v UOI* AIR [1983] SC 130.

³⁷ *Samantha v State of Andhra Pradesh* AIR [1997] SC 3297.

their sustenance, social status, economic and social equality, permanent place of abode, work, and living. It is a security and a source of economic empowerment. Therefore, the tribes, too, have a great emotional attachment to their lands. The land, on which they live and till, assures them equality of status and dignity of person and means to economic and social justice and is a potent weapon of economic empowerment in a social democracy.”

“Right to dignity” is an essential component of both “civil and political rights” and “social and cultural rights”, therefore, it is a fundamental right.³⁸ This concept was explained by the Supreme Court in **Francis Coraile Mullin v. UT of Delhi**³⁹, that “the right to life includes right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, and shelter and facilities for reading, writing, and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.”

While elucidating the symbiotic relationship of tribals with their land and environment, **Justice K. Ramaswami** observed that “the 5th and 6th Schedules constitute an integral scheme of the constitution with direction, philosophy and anxiety to protect the tribals from exploitation and to preserve natural endowment of their land for their economic empowerment to cognate social and economic democracy with liberty, equality, fraternity and dignity of their person in our political Bharat.”⁴⁰

A three-judge bench of the Supreme Court in **Orissa Mining Corporation v. Ministry of Environment, Forest & Ors.**⁴¹, held that a development project cannot receive forest approval without the informed consent of the Gram Sabhas, provided that the Gram Sabha has been properly consulted and has passed a resolution. The Court further stated that the Gram Sabha is also free to take into account the claims of the community, the individual, and the claims relating to culture and religion.

In the case of **Ram Charan v. Sukhram**⁴², the Supreme Court held that a tribal woman is entitled to an equal share in the ancestral property. The Court further held that the denial of

³⁸ Yogesh Pratap Singh and Suvashree Panda, *Tribal Justice* (Eastern Book Company, 2021).

³⁹ *Francis Coraile Mullin v UT of Delhi* [1981] 1 SCC 608, [1981] 2 SCR 516.

⁴⁰ *Samantha v State of Andhra Pradesh* AIR [1997] SC 3297.

⁴¹ *Orissa Mining Corporation v Ministry of Environment, Forest & Ors.*, [2013] 6 SCC 476.

⁴² *Ram Charan v Sukhram* [2025] INSC 865.

property rights to tribal women is violative of Articles 14 and 15 of the Indian Constitution. Although Scheduled Tribes are exempted from the Hindu Succession Act, 1956, this doesn't mean that tribal women are automatically excluded from succession. The Court has emphasized that the principle of 'justice, equity, and good conscience' must take precedence over any established prohibitive custom or codified legislation that prohibits women from inheriting property. It is a significant step toward social justice and gender equality among tribal communities.

In **Madhu Kishwar v. State of Bihar**,⁴³ the Court ruled against giving land to non-tribal people and emphasized the need to protect the tribal communities' land rights. Furthermore, a tribal woman who inherited her ancestral land was not allowed to alienate it to her children because the personal and customary laws didn't apply to them.

However, there are a number of instances where the courts have been harmful to the tribe's interests. Some of these cases are as follows: The Apex Court allowed the banks to sell the mortgaged property of tribals to non-tribals. It is a serious obstacle to tribal justice.⁴⁴

CHALLENGES IN REALISING THE VISION OF JUSTICE:

The Constitution of India provides several provisions for the protection and welfare of the Scheduled Tribes. However, there are several challenges in realising the vision of justice for tribal communities. These are described below:

1. Reservations and quotas are not being adequately implemented. In the area of higher education and services provided by the Central Govt. and State Govt., the position is far from satisfactory in terms of the quota. The rights guaranteed by the Constitution have been pursued by taking the necessary actions. But the quota allotted has not been filled due to the state's inability to fill the quota.
2. Even though the 5th Schedule gives special protection and autonomy to the tribal communities with respect to their land, it continues to be alienated, especially for mining, dams, and industrial projects. These cases suggest that the 5th Schedule is not being implemented effectively since the Tribal Advisory Councils are either ineffectual or disregarded in land acquisition and development decision-making processes. Tribal

⁴³ *Madhu Kishwar v State of Bihar* AIR [1996] 5 SCC 125.

⁴⁴ *UCO Bank v Dipak Debbarma* [2017] 2 SCC 585.

land is often sold or transferred to non-tribals through land grabbing or fraudulent means. This problem becomes worse due to a lack of proper land records and inefficient administration.

3. The issue is that tribal people continue to be denied their land rights due to the non-operationalization of these provisions.
4. There has always been a great concern over the issue of tribal land alienation. Tribal people's land rights are constantly in danger throughout the nation, even with progressive and protective laws. Since modernization and development have started to encroach on the tribal areas, this issue has become more alarming. For the tribal communities, losing their land means losing their means of livelihood and losing their culture and identity as well.⁴⁵ The alienation and dispossession of their land have significantly harmed the tribal people. Despite the government's efforts to improve the lives of many tribal people, the majority of them continued to be landless.⁴⁶
5. The rights of tribal communities over forest land are recognized by the Forest Rights Act, 2006. However, the said Act is not effectively implemented. Due to development projects and conservation initiatives, forest-dwelling tribal people are being forced off their lands, and many tribal communities still lack formal recognition of their land rights. Despite the requirement of this Act that title deeds be issued to tribals, the process is slow. For instance, when the Achanakmar Tiger Reserve was declared to be under Project Tiger, 245 Baiga people were evicted in 2009. Furthermore, the Forest Department of Odisha denies the Mankidia Community their right to habitat in the Similipal Tiger Reserve.
6. Even in cases when courts uphold tribal rights, rehabilitation is still a significant obstacle. The National Rehabilitation Policy, 2007, and the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013, mandate providing adequate compensation and resettlement to tribals in the Narmada valley for the Sardar Sarovar Dam. Yet the Narmada Bachao Andolan Case showed that the displaced tribal families were not given proper compensation or resettlement.⁴⁷
7. Despite the provisions relating to the political representation of tribals laid down in the Constitution, the tribal communities are often left out of the mainstream political process. The Tribal Advisory Councils were created to give tribes a voice in the

⁴⁵ 'In search of Justice: Tribal communities and Land Rights in Coastal Maharashtra' (2000) 60(32) EPW.

⁴⁶ Roshni P K, 'Marginalization, Globalization and Scheduled Tribes in Kerala' (2024) 9(12) IJSSER 5683.

⁴⁷ Lalringzuali, 'Rights of the Tribals in India (With reference to Indian Constitution)' (2016) 12(23) JASRAE.

governance of their areas; however, these are often found to be ineffective because of inadequate representation or government interference.

CONCLUSION:

India has undergone a radical transformation in the past several decades for becoming the world's largest democracy. However, tribal communities have been largely overlooked, regardless of the welfare schemes put forward by the government. Despite 75 years of working of the Constitution of India, the issue of social, economic, and political justice has not been resolved. They continue to face numerous challenges in remote areas. They have been subjected to social and political discrimination for ages, and many of them are still struggling to overcome it. India can make progress toward attaining the vision of constitutional justice for its tribal communities through sustained efforts.

