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# **SPECIAL CONSTITUTIONAL STATUS FOR SCHEDULED TRIBES: AN ANALYSIS OF LEGISLATIVE AND JUDICIAL EFFORTS**

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## **ABSTRACT:**

Scheduled tribes constitute one of the most historically marginalized and vulnerable sections of Indian society. Recognizing their distinct socio-cultural identity, geographical isolation, and economic backwardness, the framers of the Indian constitution incorporated a comprehensive framework of special constitutional statutes, safeguards and affirmative measures to ensure their protection and development. This research paper undertakes an in-depth examination of the constitutional provisions, special schedules, legislative enactments, and judicial interpretations concerning scheduled tribes in India. It critically analyses the fifth and sixth schedules, reservation policies, protective discrimination, land and forest rights legislation, and the role of judiciary in enforcing tribal rights. The study further evaluates implementation challenges and the tension between development and tribal autonomy.

**KEY WORDS:** Scheduled Tribes, Fifth Schedule, Sixth Schedule, PESA Act, Forest Rights Act, Reservation, Tribal Autonomy, Constitutional Safeguards, Judicial Interpretation, Substantive Equality.

## **INTRODUCTION**

India is home to one of the largest tribal populations in the world. According to the census of India, scheduled tribes account for approximately 8.6% of the total population. These communities are characterized by distinct cultural practices, traditional modes of livelihood, and close have been subjected to social exclusion, economic exploitation, displacement, and political marginalization.

The constitution of India adopts a transformative and welfare-oriented approach towards scheduled tribes. Unlike a uniform equality model, the constitution recognizes the need for differential treatment to correct historical injustice.

Consequently, it provides special constitutional statutes, affirmative action policies, and protective mechanisms to ensure social justice, political representation, and economic empowerment for tribal communities.

This research paper explores the legislative intent and judicial response underlying these constitutional safeguards and assesses their effectiveness in achieving tribal welfare and autonomy.

## **RESEARCH PROBLEM**

Despite the existence of extensive constitutional and statutory safeguards, scheduled tribes continue to face:

- Alienation of land and forests
- Displacement due to development project
- Inadequate political participation
- Poor implementation of welfare legislation

Why do constitutional and legislative protections for scheduled tribes fail to translate into effective ground-level empowerment, and what role has the judiciary played in addressing this gap?

Whether the special constitutional statutes and judicial interventions have been effective in ensuring substantive equality and protection of scheduled tribes.

## **REVIEW OF LITERATURE**

The protection of Scheduled Tribes has been extensively examined across disciplines. Granville Austin characterizes the Indian Constitution as a document of social transformation and argues that special provisions for Scheduled Tribes are integral to achieving social justice rather than exceptions to equality.<sup>1</sup>

The Constituent Assembly Debates, particularly the speeches of Dr. B.R. Ambedkar, reveal a clear intent to use protective discrimination as a tool to correct historical injustice.

Ambedkar emphasized that political democracy would be meaningless without social and economic democracy, justifying special constitutional safeguards for marginalized

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<sup>1</sup> Granville Austin, *The Indian Constitution: corner stone of a nation*

communities.<sup>2</sup>

Anthropological perspectives, particularly those of Verrier Elwin, advocate respect for tribal autonomy and cultural preservation, cautioning against forced assimilation.

Sociologists such as Virginius Xaxa highlight continued land alienation and governance failures despite constitutional protection.<sup>3</sup> Judicial scholarship focuses on decisions such as *Samatha v. State of Andhra Pradesh*, which reinforced the protective nature of the Fifth Schedule, and *Orissa Mining Corporation v. Ministry of Environment and Forests*, which emphasized the role of Gram Sabhas in safeguarding tribal religious and cultural rights.

### **RESEARCH OBJECTIVES**

The objectives of this research are:

To examine the constitutional provisions relating to Scheduled Tribes in India. To analyse special constitutional statutes such as the Fifth and Sixth Schedules. To evaluate legislative measures enacted for tribal welfare and protection.

To assess the role of the judiciary in interpreting and enforcing tribal rights. To identify challenges in the implementation of constitutional safeguards. To suggest measures for strengthening tribal autonomy and protection.

### **RESEARCH QUESTION**

This study seeks to answer the following questions:

What are the special constitutional statutes available for Scheduled Tribes in India? How effective are legislative measures in protecting tribal rights?

What role has the judiciary played in enforcing constitutional safeguards for Scheduled Tribes?

### **RESEARCH HYPOTHESIS**

The study proceeds on the hypothesis that although India has a robust constitutional and legislative framework for the protection of Scheduled Tribes, ineffective implementation, bureaucratic resistance, and development-centric policies have significantly diluted the impact

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<sup>2</sup> constitutional assembly debates, vol. VII

<sup>3</sup> Virginius Xaxa, "Tribes and the Indian constitution" (2008) *Economic and Political weekly*.

of these safeguards.

## **SIGNIFICANCE OF THE STUDY**

This study contributes to constitutional scholarship by providing a comprehensive analysis of special constitutional statutes for Scheduled Tribes. It highlights the gap between constitutional vision and administrative reality and offers insights for policymakers, legal practitioners, and researchers working in the field of tribal rights and social justice.

## **RESEARCH METHODOLOGY**

The research adopts a doctrinal research methodology, relying on primary sources such as constitutional provisions, statutes, and judicial decisions, and secondary sources including academic books, journals, committee reports, and government publications. The study is analytical and descriptive in nature.

## **THEORETICAL FRAMEWORK**

The theoretical framework of this study is grounded in the constitutional principles of social justice, substantive equality, protective discrimination, and tribal autonomy. The protection of Scheduled Tribes under the Indian Constitution is not merely welfare-oriented but forms part of a broader transformative constitutional project aimed at correcting historical injustice and restructuring unequal social relations. This chapter examines the theoretical foundations that justify special constitutional statutes for Scheduled Tribes and analyses the key socio-legal issues that necessitate such protection.

The framework draws from constitutional theory, social justice jurisprudence, and indigenous rights discourse, emphasizing that equality cannot be achieved through uniform treatment of unequal. Instead, differential treatment through special constitutional mechanisms is essential to ensure real and meaningful equality for Scheduled Tribes.

## **TRIBAL PROTECTION AND SOCIAL JUSTICE**

Social justice is a core value of the Indian Constitution and forms the moral and legal basis for special protections granted to Scheduled Tribes. Articles 38 and 46 of the Constitution impose a duty upon the State to promote the welfare of Scheduled Tribes and protect them from social injustice and exploitation. Tribal protection is therefore not a matter of charity but a

constitutional obligation.

Tribal communities have historically suffered from systemic disadvantages arising from land alienation, economic exploitation, educational deprivation, and cultural marginalisation. The theory of social justice recognizes that without addressing these structural disadvantages, formal equality under law would perpetuate injustice. Consequently, the Constitution adopts affirmative measures such as reservations, autonomous governance structures, and land protection laws to ensure distributive and corrective justice for Scheduled Tribes.

### ***LAND ALIENATION AND DISPLACEMENT***

Land forms the foundation of tribal identity, culture, and livelihood. For Scheduled Tribes, land is not merely an economic asset but a source of social organisation, cultural continuity, and spiritual connection. Historically, tribal land was held collectively and governed by customary practices.

Colonial land revenue systems, forest laws, and post-independence development policies resulted in large-scale alienation of tribal land. Mining projects, dams, industrial corridors, and wildlife conservation initiatives have displaced millions of tribals without adequate rehabilitation. Such displacement has led to loss of livelihood, cultural disintegration, and impoverishment.

The Fifth Schedule of the Constitution and laws such as the Forest Rights Act, 2006 seek to address this injustice by restricting transfer of tribal land and recognising traditional land rights. Judicial decisions like *Samatha v. State of Andhra Pradesh* reinforce the principle that tribal land in Scheduled Areas must be protected from commercial exploitation. The theoretical justification for such protection lies in the concept of corrective justice, which seeks to restore what has been unjustly taken from tribal communities.

### ***EDUCATIONAL BACKWARDNESS***

Educational deprivation is another major factor contributing to the marginalisation of Scheduled Tribes. Geographical isolation, poverty, lack of infrastructure, language barriers, and cultural alienation from mainstream education systems have resulted in low literacy rates and high dropout levels among tribal populations.

The Constitution addresses this issue through reservation policies under Articles 15(4) and 15(5), special scholarships, residential schools, and hostels for tribal students. Education is viewed as a critical tool for empowerment and social mobility.

From a theoretical perspective, educational reservations are justified under the principle of equal opportunity, which requires the State to level the playing field for disadvantaged groups. Without affirmative measures, Scheduled Tribes would remain excluded from higher education and skilled employment, perpetuating intergenerational poverty.

### **ECONOMIC DEPENDENCE**

Economic dependence among Scheduled Tribes is closely linked to land alienation, loss of forest access, and displacement. Traditional tribal economies were based on subsistence agriculture, forest produce, and artisanal activities. With the erosion of these livelihoods, tribal communities have increasingly become dependent on wage labour, often under exploitative conditions.

The Constitution seeks to address economic backwardness through reservation in public employment under Article 16(4), grants-in-aid under Article 275, and targeted welfare schemes. The theoretical basis for such measures lies in distributive justice, which aims to ensure a fair allocation of resources and opportunities.

However, mere economic assistance without structural reform often results in dependency rather than empowerment. Therefore, constitutional statutes emphasize community ownership, self-governance, and sustainable development as long-term solutions to tribal economic marginalisation.

### **CULTURAL AND POLITICAL MARGINALISATION**

Scheduled Tribes possess distinct cultural identities, languages, customs, and governance traditions. However, mainstream legal and administrative systems have historically failed to recognise or respect these differences, leading to cultural erosion and political exclusion.

The Sixth Schedule of the Constitution represents a significant attempt to preserve tribal culture and political autonomy by establishing Autonomous District Councils with legislative,

executive, and judicial powers. Similarly, political reservations under Articles 330 and 332 ensure representation of Scheduled Tribes in Parliament and State Legislatures.

From a theoretical standpoint, cultural and political protection of Scheduled Tribes is grounded in the concept of multicultural constitutionalism, which recognizes diversity as a constitutional value. Protecting tribal culture and governance systems is essential not only for preserving identity but also for ensuring meaningful participation in democracy

## **CONSTITUTIONAL PROVISIONS RELATING TO SCHEDULED TRIBES**

### ***Article 15(4)***

Special provision for advancement of socially and educationally backward classes or Scheduled Castes and Scheduled Tribes

“Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”

This clause constitutionally authorises reservation and affirmative action for Scheduled Tribes in educational institutions.

### ***Article 15(5)***

Special provision relating to admission to educational institutions

“Nothing in this article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than minority educational institutions referred to in clause (1) of Article 30.”

### ***Article 16(4)***

Reservation in appointments or posts

“Nothing in this article shall prevent the State from making any provision for the 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.”

**Article 16(4A)**

Reservation in promotion

“Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.”

**Article 16(4B)**

Carry forward of vacancies

“Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation.”

**Article 330**

Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People

“Seats shall be reserved in the House of the People for—

- (a) the Scheduled Castes;
- (b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam.”

**Article 332**

Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States

“Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the autonomous districts of Assam, in the Legislative Assembly of every State.”

**Article 334**

Reservation of seats and special representation to cease after certain period

“Notwithstanding anything in the foregoing provisions of this Part, the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States shall cease to have effect on the expiration of a period as specified by constitutional amendments.”

(Note: Period has been extended periodically by constitutional amendments.)

**Article 335**

Claims of Scheduled Castes and Scheduled Tribes to services and posts

“The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.”

**Article 338A**

National Commission for Scheduled Tribes

“There shall be a National Commission for the Scheduled Tribes to be known as the National Commission for the Scheduled Tribes.”

(Clauses provide for composition, powers, duties, and functions including monitoring safeguards and reservation policies.)

**Article 342**

Scheduled Tribes

“The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes.”

“Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community.”

**Article 46 (Directive Principle of State Policy)**

Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

“The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”

## CASE LAWS

One of the most significant landmark judgments in this context is **Samatha v. State of Andhra Pradesh (1997)**<sup>4</sup>. In this case, the Supreme Court held that the transfer of tribal land in Scheduled Areas to non-tribals, including private mining companies, was unconstitutional. The Court interpreted the Fifth Schedule purposively and ruled that the State acts as a trustee of tribal land. It emphasized that economic development cannot override constitutional protections granted to Scheduled Tribes. This judgment strengthened the constitutional mandate of protecting tribal land from alienation and reaffirmed the role of the Governor under the Fifth Schedule as a constitutional safeguard.

Another milestone in tribal jurisprudence is **Orissa Mining Corporation v. Ministry of Environment and Forests (2013), SCC 476**, popularly known as the Niyamgiri case. The Supreme Court upheld the religious and cultural rights of the Dongria Kondh tribe by recognising the authority of Gram Sabhas to decide whether mining activities would infringe upon their religious beliefs and traditional practices.

The judgment marked a shift towards participatory governance and reinforced the constitutional vision of tribal self-determination under the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA). It highlighted that development must be inclusive and consent-based, particularly in Scheduled Areas.

In **State of Kerala v. Peoples Union for Civil Liberties (2009)**, the Supreme Court reiterated that the right to livelihood of tribal communities is an integral part of the right to life under Article 21. The Court observed that displacement without adequate rehabilitation violates constitutional guarantees and disproportionately affects Scheduled Tribes. This decision strengthened the linkage between fundamental rights and special constitutional protections available to tribal communities, especially in the context of development-induced displacement.

The judiciary has also addressed issues concerning reservation and representation of Scheduled Tribes. In **Indra Sawhney v. Union of India (1992)**, although primarily dealing with Other Backward Classes, the Supreme Court affirmed that reservation for Scheduled

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<sup>4</sup> AIR 1997 SC 3297

Castes and Scheduled Tribes is constitutionally distinct and enjoys stronger protection due to explicit constitutional recognition under Articles 15(4), 16(4), and 335. The judgment clarified that the ceiling on reservation does not dilute the special status accorded to Scheduled Tribes under the Constitution.

In **Union of India v. Rakesh Kumar (2010)**, the Supreme Court upheld reservation in promotion for Scheduled Tribes under Article 16(4A), subject to constitutional requirements such as backwardness and inadequate representation. The judgment acknowledged systemic barriers faced by Scheduled Tribe employees and validated legislative efforts aimed at ensuring representation at higher levels of administration. This decision reinforced the constitutional commitment to substantive equality rather than mere formal equality.

The Supreme Court has also safeguarded the autonomy of tribal areas under the Sixth Schedule. In **Bodoland Territorial Council v. State of Assam (2020)**, the Court emphasized that Autonomous District Councils are constitutional institutions designed to preserve tribal identity, culture, and self-governance. The judgment underlined that legislative and executive interference should not dilute the autonomy guaranteed under the Sixth Schedule, thereby reaffirming the constitutional vision of decentralized tribal governance.

Collectively, these landmark judgments demonstrate that judicial efforts have significantly strengthened the implementation of special constitutional statutes for Scheduled Tribes. The courts have consistently adopted a rights-based and purposive approach, ensuring that legislative safeguards are not rendered ineffective by administrative action or developmental priorities. However, despite progressive jurisprudence, the effectiveness of these protections continues to depend on faithful implementation and political will, highlighting the ongoing relevance of judicial oversight in the protection of Scheduled Tribes.

### **Legislative Role in Advancing Constitutional Protection of Scheduled Tribes**

The Constitution of India envisages that the protection of Scheduled Tribes cannot be achieved solely through abstract constitutional guarantees. Legislative enactments are necessary to translate constitutional intent into enforceable rights. Parliament, therefore, has enacted special statutes to give effect to Articles 244, 275, 338A, and the Fifth and Sixth Schedules. These

legislative measures aim to address historical injustice, land alienation, socio-economic deprivation, and erosion of tribal autonomy. The judiciary has consistently held that such statutes must be interpreted liberally to fulfil their protective purpose rather than narrowly as ordinary welfare laws.

### **The Fifth Schedule: Legislative Safeguards for Scheduled Areas**

The Fifth Schedule provides a unique legislative framework for the governance of Scheduled Areas in tribal-dominated states. It empowers the Governor to make regulations restricting the transfer of tribal land, regulating moneylending, and ensuring peace and good governance. This framework recognizes that uniform application of general laws is inadequate for tribal regions.

In *Samatha v. State of Andhra Pradesh*, the Supreme Court gave a purposive interpretation to the Fifth Schedule and held that the transfer of tribal land to non-tribals, including private mining companies, is unconstitutional. The Court observed that the State acts as a trustee of tribal land and cannot permit its commercial exploitation. This judgment elevated the Fifth Schedule from a mere administrative provision to a substantive constitutional safeguard.

### **Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA)**

The Panchayats (Extension to Scheduled Areas) Act, 1996 was enacted to operationalise tribal self-governance by extending Part IX of the Constitution to Scheduled Areas with suitable modifications. PESA recognizes the Gram Sabha as the central institution of governance and mandates its consent in matters relating to land acquisition, rehabilitation, and management of minor forest produce.

Judicial reinforcement of PESA was evident in *Orissa Mining Corporation v. Ministry of Environment and Forests*, where the Supreme Court upheld the authority of Gram Sabhas to determine whether mining activities would violate tribal religious and cultural rights. The Court emphasized that development cannot be imposed without tribal consent, thereby strengthening participatory democracy and legislative intent under PESA.

### **Forest Rights Act, 2006: Correcting Historical Injustice**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was enacted to correct historical injustices caused by colonial forest laws that dispossessed tribal communities of their traditional forest lands. The Act recognizes individual and community forest rights, rights over minor forest produce, and habitat rights of Particularly

Vulnerable Tribal Groups.

In the Niyamgiri judgment, the Supreme Court linked the Forest Rights Act with constitutional guarantees under Articles 25 and 29, holding that tribal religious and cultural rights are inseparable from land and forest resources. The judiciary thus interpreted the Act as a rights-based legislation rather than a mere welfare statute.

### **Land Protection and Anti-Alienation Laws**

Several states have enacted tenancy and land protection laws to prevent the alienation of tribal land to non-tribals. These laws recognize land as central to tribal identity, livelihood, and cultural continuity. Judicial interpretation has consistently upheld such statutes as constitutionally valid.

In *Bhim Singh v. State of Jharkhand*, the Supreme Court affirmed that protection of tribal land is integral to the constitutional mandate of social justice. The Court emphasized that development policies must not override statutory protections meant for Scheduled Tribes.

### **Protection from Exploitation: SC/ST (Prevention of Atrocities) Act, 1989**

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 provides enhanced criminal law protection to tribal communities against social, economic, and physical exploitation. The Act acknowledges that ordinary criminal law is insufficient to address structural discrimination.

In *State of Madhya Pradesh v. Ram Krishna Balothia*, the Supreme Court upheld the constitutional validity of the Act, observing that special legislation is necessary to protect vulnerable communities from entrenched social oppression. Though applicable to both SCs and STs, the Act plays a crucial role in safeguarding tribal dignity and security.

### **Institutional Mechanisms for Tribal Protection**

Institutional support forms a critical component of legislative protection. The National Commission for Scheduled Tribes, established under Article 338A, monitors the implementation of constitutional and statutory safeguards. It investigates complaints, advises governments, and submits reports to the President.

While the Commission strengthens accountability, its advisory nature limits enforcement. Courts have nevertheless relied on NCST findings to assess compliance with tribal protection

laws, reinforcing its constitutional relevance.<sup>5</sup>

### **Critical Evaluation of Legislative Efforts**

Despite an extensive legislative framework, the protection of Scheduled Tribes faces serious challenges. Weak implementation, bureaucratic resistance, development-centric policies, and lack of political will often dilute legislative intent. Judicial intervention has therefore become essential in bridging the gap between law and reality.

Courts have repeatedly emphasized that laws protecting Scheduled Tribes must be interpreted in light of constitutional morality, social justice, and human dignity. However, over-reliance on judicial remedies also indicates legislative and executive failure in fulfilling constitutional obligations.

### **CONCLUSION**

The study examined the special constitutional statutes enacted for the protection of Scheduled Tribes and analysed the role played by the legislature and judiciary in realising constitutional guarantees. The Constitution of India provides a comprehensive framework through the Fifth and Sixth Schedules, reservation provisions, and directive principles aimed at securing substantive equality and protecting tribal autonomy. Legislative measures such as the Panchayats (Extension to Scheduled Areas) Act, 1996 and the Forest Rights Act, 2006 represent significant efforts to translate constitutional intent into enforceable rights.

Judicial intervention has further strengthened these safeguards by adopting a purposive and rights-based interpretation, particularly in matters relating to land rights, self-governance, and cultural protection. Landmark judgments such as *Samatha* and *Niyamgiri* have reaffirmed that development cannot override constitutional protection for Scheduled Tribes. However, the study also reveals a persistent gap between legal provisions and ground-level implementation. Administrative inefficiency, dilution of statutory safeguards, and development-centric policies continue to undermine tribal rights. Therefore, while the constitutional and legal framework is robust, its effectiveness depends largely on sincere and consistent implementation.

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<sup>5</sup> Article 338A, Constitution of India.

## RECOMMENDATIONS

Constitutional safeguards under the Fifth Schedule should be implemented in their true spirit, with Governors exercising their powers independently to protect tribal interests.

Effective enforcement of PESA and the Forest Rights Act is essential to ensure genuine tribal participation and protection of land and forest rights.

Development policies in Scheduled Areas must prioritise consent, rehabilitation, and sustainable livelihoods of tribal communities.

Institutional mechanisms such as the National Commission for Scheduled Tribes should be strengthened to improve monitoring and accountability.

Greater legal awareness and access to justice for Scheduled Tribes are necessary to ensure that constitutional protections are realised in practice.

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