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TRIBAL RIGHTS AND LEGAL PROTECTION IN INDIA

-Pracheeta Beck

Tribal communities tend to have a unique relation to their territory, forests, traditions and natural resources. Despite constitutional measures and protective legislation, many Scheduled Tribes face issues like displacement, alienation, exploitation, lack of education and health services and insufficient political participation. The Indian Constitution and judiciary provide means to addressing land rights violations, community exploitation, access to education and healthcare, and tribal participation in decision-making. This article explores the constitutional protection, statutory safeguards, and judicial measures designed to respect tribal rights in land, forests, and governance, as well as the implementation challenges and the need for community participation. The article concludes by stating the importance of effective implementation and tribal autonomy in achieving sustainable development

India is home to numerous tribal communities with unique languages and lifestyles. These communities have made invaluable contributions to the country's cultural heritage and wealth of knowledge about the forests and ecosystems. However, tribal people and their ancestral lands have been subject to exploitation, neglect, and displacement. Land rights are not just about access to resources or financial compensation. Tribal people must be able to freely practice their religion and cultural traditions, utilise community resources, and participate in political processes. For many tribal communities, the forest represents a source of food and livelihood, shelter, medicines and spiritual belief. The Indian Constitution recognises the need for protecting tribal people and their resources. The Parliament of India has also enacted several laws aimed at protecting tribal lands and promoting tribal welfare. Tribal rights, however, remain vulnerable to violations. Therefore, the research will examine the key constitutional, legislative, and judicial measures and explore the challenges in implementation and tribal participation. The study will also consider the importance of tribal autonomy and community-led initiatives. The research will conclude with the need for effective legal protection of tribal rights.

The Indian Constitution grants various Fundamental Rights and Directives and special powers to the administration of tribal areas to protect Scheduled Tribes. The Constitution mandates equality before the law *(Article 14)*[1] and prohibits discrimination *(Article 15(4))*[2]. The Constitution also allows for reservations in employment *(Article 16(4))*[3] for socially and educationally backward classes and Scheduled Tribes. The Right to Life and Personal Liberty *(Article 21)*[4] and the Directive Principles of State Policy *(Article 46)*[5] require the state to take care of the educational and economic interests of the weaker sections of society and protect them from social injustice and exploitation. These rights and directives recognise the fact that equality and non-discrimination may not be sufficient in overcoming historical disadvantages. Therefore, the state is obliged to take special measures for the empowerment of Scheduled Tribes and other disadvantaged groups. The Constitution also allows for the President to notify the tribes or tribal communities to be included or excluded from the list of Scheduled Tribes in a particular state or union territory *(Article 342)*[6]. Such designation is significant since it confers certain benefits and protections on the designated tribal groups.

The Constitution provides for special administration for Scheduled Areas and tribal areas *(Article 244)*[7]. *The Fifth Schedule* covers general principles relating to the administration of Scheduled Areas and Scheduled Tribes in states not specified in the *Sixth Schedule*. The Constitution also provides a separate administrative system for tribal areas within Assam, Meghalaya, Tripura, and Mizoram *(Article 244)*. *The Fifth Schedule*[8] gives the President the power to appoint advisory councils and empowers the Governor to make rules for the peace and good governance of the Scheduled Areas in consultation with the appropriate tribal advisory bodies. The *Sixth Schedule*[9] empowers the Governor to provide for autonomous district councils and regional councils in the four states mentioned above. Such councils have the powers to make laws and regulations concerning various matters within their jurisdiction.

Various statutes provide for the protection of tribal rights, including forest rights, local self-governance, and protection against atrocities and land alienation. The Scheduled Tribes and

[1] INDIA CONST. arts. 14.
[2] INDIA CONST. arts. 15(4).
[3] INDIA CONST. arts. 16(4).
[4] INDIA CONST. arts. 21.
[5] INDIA CONST. arts. 46.
[6] INDIA CONST. art. 342.
[7] INDIA CONST. art. 244.
[8] Scheds. V.
[9] Scheds. VI.

Other *Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*[10] grants forest dwelling Scheduled Tribes and other traditional forest dwellers various individual and community forest rights (Section 3). The Forest Rights Act (FRA) of 2006 acknowledges individual and community ownership and rights over forest land and forest produce. Individual rights are granted for lands tillable or habitable and community rights are granted for the use of forest produce (Section 6). Gram Sabha plays a crucial role in determining forest rights (Section 5). While the FRA seeks to recognise the traditional and customary rights of forest-dwellers, the implementation process remains a challenge due to the lack of awareness, documentation, and timely processing of claims and disputes. Tribal people and their community rights often face challenges such as the denial of claims based on insufficient evidence of occupation or use of particular land or forest area.

The *Panchayats (Extension to the Scheduled Areas) Act, 1996*[11] (PESA) seeks to extend the provisions concerning Panchayats in Part IX of the Constitution to the Fifth Schedule Areas with certain modifications and exceptions. PESA acknowledges the importance of the Gram Sabha and seeks to protect tribal customs, community resources, and dispute resolution mechanisms concerning land and forest resources. PESA provides for the special provisions concerning Gram Sabha, Panchayats, and resources, as well as consultation procedures on specific matters and protection of rights over minor forest produce and against land alienation. The Act also provides for the appointment of special officers and empowers the Governor to make regulations concerning the Panchayats and Gram Sabha in their respective states. While PESA grants significant powers to tribal people and their local government, the exercise of these powers may be hindered by the lack of uniform state laws, awareness of legal rights, and devolution of authority.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 provides for the protection of Scheduled Tribes and Scheduled Castes from atrocities and specifies punishments for such crimes. The Act defines various offences and specifies punishments for such acts of cruelty, harassment, and humiliation and provides for special courts or exclusive jurisdiction and relief for the victims. The land alienation issue is of particular importance to tribal people since it may entail not only the loss of property but also cultural identity and community life. Prevention of Atrocities Act, 1989 covers various forms of wrongful

[10] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, No. 2 of 2007, §§ 3, 6, INDIA CODE (2007).
[11] The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, No. 40 of 1996, §§ 4–5, INDIA CODE (1996).

deprivation of land, including wrongful possession and interference with land rights where the statutory requirements are fulfilled. Effective implementation of the measures set out in this Act remains crucial for the protection of tribal rights.

The Supreme Court of India has been instrumental in interpreting tribal protection laws, reviewing tribal land rights cases, and determining the applicability of various constitutive and statutory provisions. In *Samatha v. State of Andhra Pradesh*[12] , the Supreme Court ruled on the constitutional issues concerning restrictions on alienation of land in the Scheduled Areas in Andhra Pradesh in relation to mining leases. Subsequently, the Court ruled that the land belonged to STs and was duly allocated with regard to tribal protection laws. The Court acknowledged that protection of tribal land is a constitutional goal and that any development of natural resources in tribal areas must be considered in the context of land rights protection legislation. It may be argued that this judgment reflects the Court's acknowledgment of the constitutional and moral significance of tribal land to tribal communities and its commitment to upholding tribal protection laws. In *Orissa Mining Corporation Ltd. v. Ministry of Environment & Forests*[13] , the Supreme Court ruled on the constitutional and legal issues concerning the proposed bauxite mining project and the rights of tribal and forest-dweller communities in the Niyamgiri Hills in Odisha. The case involved the rights of the Dongria Kondh tribe, whose cultural and religious practices were intrinsically linked to the Hills. The Court ordered the Gram Sabhas of the affected areas to examine the claims concerning community, cultural, and religious rights under the FRA and report to the Court in relation to the forest clearance process concerning the mining project. The Court emphasised the importance of consulting Gram Sabhas and taking their views into account when determining forest rights claims. It also recognised the relevance of the Gram Sabha's determination of the impact of the proposed project on the traditional religious practices of the local tribal communities. The judgment affirms the judiciary's appreciation of the customary and constitutional rights of tribal people and the need to consider these rights when making decisions about the use of forest and natural resources. In *Nandini Sundar v. State of Chhattisgarh*[14] , the Supreme Court ruled on the deployment of special police officers and the recruitment of inadequately trained local people for counter-insurgency operations in Chhattisgarh. The Court ruled that the use of such personnel violated various constitutional

[12] Samatha v. State of Andhra Pradesh, (1997) 8 S.C.C. 191 (India).
[13] See Orissa Mining Corp. Ltd. v. Ministry of Env't & Forests, (2013) 6 S.C.C. 476 (India) (considering forest rights, cultural and religious claims, and the role of Gram Sabhas).
[14] Nandini Sundar v. State of Chhattisgarh, (2011) 7 S.C.C. 547 (India).

rights, including the right to life and equality, and failed to meet the State's duty to protect its citizens. The case illustrates the Court's commitment to tribal protection in the context of law enforcement and tribal security. Despite the fact that the case did not concern tribal land rights directly, it highlights the Court's concern for tribal people and its willingness to condemn the violation of tribal rights by state authorities.

Despite the constitutional and legislative framework designed to protect tribal rights, various obstacles hinder the enjoyment of these rights. First, tribal people, particularly Scheduled Tribes, remain highly vulnerable to land alienation, which may entail not only economic loss but also cultural loss. Mining, dam construction, industrialisation, and other large-scale developments displace tribal people and undermine their traditional lifestyles. Rehabilitation and resettlement packages that compensate for the loss of property or resources may fail to consider the cultural significance of the displaced site. Second, there are various implementation gaps which prevent tribal people from exercising their legal rights. Delays in granting forest rights, non-enforcement of PESA, and lack of inter-agency collaboration can hinder tribal protection. A legal right remains theoretical if the procedures for claiming it are complicated or inaccessible. Third, lack of legal awareness impedes tribal people's ability to assert their rights and seek remedies. Language barriers, geographic isolation, lack of legal support, and the need for documents may prevent tribal people from engaging with the administration or the judiciary. Women and other vulnerable groups experience multiple barriers in accessing justice. Fourth, development objectives may conflict with tribal protection legislation. While natural resources are often of economic importance to the State, large-scale commercial exploitation may infringe on the rights of tribal and forest-dweller communities. Projects requiring forest land or resources must comply with applicable laws and consider the rights of forest-dependent people.

Finally, tribal governance structures and formal administration often fail to coordinate effectively. Tribal people and their leaders can be inadequately informed of their legal rights and obligations or unaware of the procedures for asserting these rights. Consultations can be held as a formality rather than an opportunity for tribal people to influence decision-making. Tribal rights, particularly forest rights, require community coordination and participation in the implementation of projects or policies affecting them.

Various measures can be taken to ensure tribal people enjoy their legal rights. First, the Forest Rights Act and the PESA must be effectively implemented, particularly through appropriate

procedures and personnel. Forest rights claims must be assessed in a timely manner, and reasons for denial must be provided to claimants in accordance with the law. Courts and local authorities must ensure that tribal people can exercise their legal rights and remedies. Second, Gram Sabha must be provided with the information necessary to make informed decisions on matters affecting the community. Consultations must be held in good faith and not as a formality. The relevant administering authority must comply with the legal requirements concerning consultation, recommendations, and approval. Third, measures must be taken to ensure tribal people have access to justice and legal remedies. Courts and local authorities must be equipped with the staff and resources necessary to facilitate tribal claims. Legal aid, awareness, complaint mechanisms, and investigations of crimes must be available to tribal people, particularly in remote areas. Fourth, tribal people, particularly those displaced from their ancestral land, must be provided with rehabilitation and resettlement packages of adequate scope. These packages should include not only financial compensation or alternative housing but also education, healthcare, and livelihood opportunities. Cultural and religious sites and sacred groves must be preserved and incorporated into community planning. Finally, tribal women and vulnerable groups must be empowered and encouraged to participate in local decision-making and utilise the legal resources available to them. Tribal development must not entail the destruction of tribal identity, culture, and traditions. Legal protection must promote tribal autonomy. Community-led development and tribal self-governance must be facilitated.

Tribal rights represent a cornerstone of India’s constitutional and legal framework of equality and social justice. Constitutional safeguards, statutory protections, and judicial remedies contribute to the protection of lands, forests, and cultural heritage of tribal communities. Yet, the enforcement of these measures remains a challenge. The article concludes with the need for effective legal protection of tribal rights. Constitutional rights such as equality and non-discrimination, the right to life and personal liberty, and socio-economic and cultural rights, as well as the statutes such as the Forest Rights Act, the PESA, and the Prevention of Atrocities Act, and the proactive approach of the judiciary in interpreting and enforcing tribal protection laws are of paramount importance in ensuring tribal rights are upheld. However, there is a need for effective and accountable governance and for tribal communities’ active participation in decision-making. Only then can tribal rights truly contribute to tribal empowerment, social justice, and equality.