

Constitutional Safeguards for Tribal Rights: Assessing the constitutional provisions and recent legal developments in protecting the rights and resources of indigenous communities

Abstract- Protecting tribal rights is essential to social justice and equity, particularly in nations with varied indigenous populations. Constitutional safeguards were established to protect native groups' resources and rights. This research paper examines those safeguards, focusing on the legal systems that uphold them and the latest developments in this area. The rights of indigenous peoples are often threatened due to historical marginalization, encroachment on their ancestral lands, and pressures from economic development and modernity. Thus, in light of contemporary concerns, it is crucial to evaluate the constitutional provisions intended to safeguard their rights, cultures, and identities as well as to carefully review how effective these measures are. Tribal rights have faced both possibilities and challenges as a result of recent legal developments, including historic rulings and legislative revisions. This has led to a critical analysis of the ways in which these changes impact indigenous groups' everyday lives. With a focus on the necessity of solid legal structures that safeguard the rights of tribal communities, this study attempts to examine the link between constitutional law and indigenous rights. By advocating for stronger legal protections and a wider recognition of the unique position of tribal communities, this research aims to broaden the discourse on indigenous rights and perhaps contribute to the creation of a more equitable society.

Keywords: Tribal Rights, Scheduled Tribes (STs), Legal Development

CONSTITUTIONAL PROVISIONS

The Indian Constitution has several provisions that safeguard the social, economic, political, and cultural rights of Scheduled Tribes (STs). These provisions, which are dispersed throughout the Constitution, provide self-governance, resource control, affirmative action, and the preservation of their distinct identities.

i) Affirmative Action and Equal Opportunity

Article 15(4)- The State can set up specific arrangements for the development of people who belong to the socially and educationally backward classes (SEBCs), as well as Scheduled Castes (SCs) and Scheduled Tribes (STs), under Article 15(4)¹. This is an enabling clause that gives the government the ability to carry out affirmative action initiatives. Tribal populations get benefit from reservations in higher education because they are among the most underprivileged and underrepresented in terms of access to education. Under the purview of Article 15(4), the national and state governments have implemented a number of programs aimed at assisting STs. These include financial aid, free tutoring for competitive examinations, scholarships, and hostels for tribal students. By emphasizing the educational empowerment of tribal groups, such efforts seek to uplift them. The implementation of development initiatives that address the wider socioeconomic issues that indigenous communities face in addition to schooling is justified by Article 15(4)². For example, governments can launch health, nutrition, and livelihood programs tailored to tribal regions and needs, enhancing their overall development. Public employment opportunities and government positions are reserved for socially and educationally disadvantaged groups, including Scheduled Tribes (STs), according to Article 16(4). The Scheduled Tribes usually find themselves excluded from mainstream socioeconomic activity because of their isolation, lack of infrastructure, and cultural differences.³ This article is crucial for ensuring that underrepresented groups, including STs, who have historically had poor representation in government services, can obtain public positions in

¹ Constitution of India 1950, Art 15(4)

² Nikhlesh Chand, 'Tribal Rights In India And Justice' (*Social Laws Today*, 28 November 2020)

<<https://sociallawstoday.com/rights-of-tribal-communities-in-india/>> accessed 25 October 2024

³ Jagdish Baral, *Tribal People and Empowerment in India* (Venus Publications 2022)

order to foster social mobility and, in turn, socioeconomic empowerment. Owing to past discrimination, lack of access to education, and geographic isolation, Scheduled Tribes have historically had low employment rates in the public sector. Article 16(4) breaks the cycle of poverty and marginalization for tribal groups by guaranteeing their representation in public employment through which they get access to healthcare, education, and financial stability.⁴ Improving governance in tribal areas is an additional indirect advantage of increased tribal representation in public jobs. Tribal groups can influence policies and programs that are more considerate of the interests of their own communities when they are represented in the government workforce.

ii) Promotion of Educational and Economic Interests

Article 46- According to Article 46 of the Indian Constitution, which is part of the Directive Principles of State Policy (DPSP), the State is required to protect the weaker groups in society—such as Scheduled Castes (SCs), Scheduled Tribes (STs), and others—from social injustice and exploitation while promoting their economic and educational interests⁵. It emphasizes the necessity of taking additional measures to ensure historically marginalized indigenous people have access to economic opportunities, education, and protection from exploitation, particularly with regard to labour and land. Article 46 uses legislative safeguards, affirmative action guidelines, and targeted welfare programs to promote social fairness and aid in the socioeconomic development of native populations.

The Bombay High Court decided in the case of *Kailas & Others v. State of Maharashtra*⁶, which involved a tribal man who was charged with a crime, that the judiciary must handle tribal cases with cultural sensitivity and awareness in accordance with article 46, encouraging a flexible approach that recognizes and respects tribal customs, particularly in the legal system.

⁴ Aashima Kakkar, 'Landmark Judgments on Equality of Opportunity in Public Employment under Article 16' (*Law Insider*, 7 July 2021) <<https://www.lawinsider.in/columns/landmark-judgments-on-equality-of-opportunity-in-public-employment-under-article-16>> accessed 25 October 2024

⁵ Constitution of India 1950, Art 46

iii) Administration of Scheduled Areas

Article 244(5th Schedule)- The Fifth Schedule covers Scheduled Areas in states other than Assam, Meghalaya, Tripura, and Mizoram. It establishes a special governance structure and designates a Tribes Advisory Council (TAC) to provide guidance to the Governor on matters pertaining to the welfare of the Scheduled Tribes.⁷ The Governor may enact rules for the good government and peace of the Scheduled Areas, including amending legislation established by the State Legislature and Parliament to better suit the interests of the indigenous communities. By restricting the transfer of tribal land to non-tribals and providing safeguards against the exploitation of tribal landowners, the Fifth Schedule addresses a major problem of land alienation in tribal areas.⁸

The Supreme Court emphasized that any development in these areas must directly benefit the tribal inhabitants, who have special rights over their land and natural resources, in a landmark decision in *Samatha v. State of Andhra Pradesh*⁹. It permitted the use of tribal land by public sector projects, but only under strict standards that guaranteed the welfare and advancement of the local tribal communities. This decision upheld tribal people's right to maintain sovereignty over their ancestral lands and strengthened Article 244 of the constitution's provisions for them. Since then, the Samatha verdict has created a significant precedent that prohibits the commercial exploitation of tribal territory and altered rules pertaining to land purchase in Scheduled Areas.

6th Schedule-The Sixth Schedule includes the tribal areas of Assam, Meghalaya, Tripura, and Mizoram. These tribal territories are granted greater autonomy through the establishment of Regional Councils and Autonomous District Councils (ADCs).¹⁰ These councils have the power to pass laws on a variety of subjects, such as land management, forestry, agriculture, social customs, and water resources. By ensuring that indigenous groups run their own affairs and keep authority over their resources and traditions,

⁶ AIR 2011 SUPREME COURT 598

⁷ Constitution of India 1950, 5th Schedule

⁸ 'Scheduled Areas in India' (*Drishti IAS*, 13 October 2023) <<https://www.drishtiias.com/daily-updates/daily-news-analysis/scheduled-areas-in-india>> accessed 25 October 2024

⁹ AIR 1997 SUPREME COURT 3297

¹⁰ Constitution of India 1950, 6th Schedule

this encourages self-governance. Tribal councils are financially independent and have the power to make their own decisions since they can manage local resources and impose certain taxes.¹¹

iv) Grants-in-Aid for Tribal Welfare

Article 275(1)- Article 275 ensures governments have the resources to implement development programs that are specifically suited to the needs of Scheduled Tribes, providing a crucial source of money for their welfare and advancement.¹² These programs are designed to address the particular difficulties that tribal people encounter, including getting access to healthcare, education, and sustainable livelihoods. States are supposed to enhance these areas' governance structures through funding distribution, guaranteeing that tribal regions enjoy the same degree of administrative effectiveness and public services as non-tribal areas. Much of the money allocated under Article 275 is used to carry out initiatives aimed at protecting indigenous people from exploitation, particularly with regard to employment prospects, land rights, and access to natural resources.¹³ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (commonly known as the Forest Rights Act) is one such law that benefits from Article 275 grants.

The case *Re: The Kerala State Co-operative Bank Ltd. v. State of Kerala*¹⁴, addressed the financial inclusion and banking services of Kerala tribal people. In order to guarantee that tribal populations can obtain banking services and advantages and so increase their economic empowerment, the High Court decided that financial institutions must implement inclusive procedures.

v) Political Representation

Article 330 & 332- The Indian Constitution's Article 330 guarantees Scheduled Tribes (STs) representation in the Lok Sabha, while Article 332 sets aside seats for STs in State Legislative Assemblies.¹⁵ By giving STs seats in the Lok Sabha and state legislative assemblies, the laws ensure not only more inclusive and representative policymaking but also the political empowerment of tribal people. This reserve allows tribal leaders to directly participate in legislative debate, influence the drafting of laws, and advance the interests of their people, particularly in areas like land preservation, resource management, education, and healthcare.¹⁶ One important statute that representatives of tribal groups can fight to reform is the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA), which directly affects the rights and welfare of tribal people.

vi) National Commission for Scheduled Tribes (NCST)

Article 338(A)- To protect the rights and interests of Scheduled Tribes (STs) in India, the National Commission for Scheduled Tribes (NCST), created by Article 338A of the Indian Constitution, is crucial. This provision assigns the NCST the responsibility of monitoring government programs and policies that assist indigenous people in order to monitor, protect, and promote their wellbeing.¹⁷ Through the commission's evaluation of government policies, plans, and initiatives, it guarantees that tribals are included in development initiatives. In the event of land alienation, displacement, exploitation, or non-implementation of government plans, the commission is vital in resolving concerns pertaining to the infringement of tribal rights. The NCST serves as a watchdog to make sure that neither public nor private organizations abuse the rights of tribal people by looking into complaints.¹⁸ The Scheduled Tribes

¹¹ 'Sixth schedule' (Unacademy)

<<https://unacademy.com/content/karnataka-psc/study-material/polity/sixth-schedule/#:~:text=It%20undermines%20the%20principles%20mentioned,debate%20regarding%20the%20sixth%20schedule>> accessed 26 October 2024

¹² Constitution of India 1950, Art 275(1)

¹³ Manish Kumar Mahto, 'Empowering Tribal Communities: A Comprehensive Analysis Of Rights And Development Initiatives In India' (*JusCorpus* 6 July 2023) <[https://www.juscorpus.com/empowering-tribal-](https://www.juscorpus.com/empowering-tribal-communities-a-comprehensive-analysis-of-rights-and-development-initiatives-in-india/)

[communities-a-comprehensive-analysis-of-rights-and-development-initiatives-in-india/](https://www.juscorpus.com/empowering-tribal-communities-a-comprehensive-analysis-of-rights-and-development-initiatives-in-india/)> accessed 26 October 2024

¹⁴ 2021 SCC OnLine Ker 2845

¹⁵ Constitution of India 1950, Art 330, 332

¹⁶ Utkarsh Anand, 'Legislative and judicial contours of SC/ST quota in Lok Sabha and assemblies' *Hindustan Times* (New Delhi, 3 October 2023)

¹⁷ Constitution of India 1950, Art 338A

¹⁸ 'The National Commission for Scheduled Tribes' (*Vikaspedia* 26 October 2021) <[https://vikaspedia.in/social-welfare/scheduled-](https://vikaspedia.in/social-welfare/scheduled-tribes/)

and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, which gives tribal people residing in forested areas land and resource rights, is largely enforced by the commission.

v) Control of the Union over the Administration of Scheduled Areas

Article 339- Article 339 highlights the significance of tribal welfare as a national priority by requiring the creation of commissions and the issuance of directives by the central government.¹⁹ Examining topics such land alienation, economic growth, healthcare, education, and social participation of tribal populations are all part of this. The commission established by Article 339(1) evaluates the effectiveness of tribal governance and the Fifth and Sixth Schedules' Scheduled Area regulations. This evaluation ensures that tribal regions are managed in a way that safeguards the tribal groups' sovereignty, land rights, and cultural identity while also shielding them from exploitation.²⁰ The capacity of the national government to give directives to state governments guarantees that the welfare of Scheduled Tribes and the administration of tribal lands are handled consistently throughout the nation. By guaranteeing that every state upholds the constitutional protections afforded to Scheduled Tribes, it contributes to the development of a consistent framework for the defence of tribal rights. The commission's reports are crucial in creating policies that are unique to tribes and guaranteeing that the Tribal Sub-Plan (TSP) and other government programs accomplish their goals.²¹ A periodic evaluation of the management of tribal territory is required by Article 339 to make sure that the objectives of advancing tribal welfare, defending tribal land rights, and enhancing living conditions are being met.

vi) Specification of Scheduled Tribes

Article 342- The legal foundation for designating tribal communities as Scheduled Tribes, which guarantees them the right to particular constitutional protections and privileges, is found in Article 342.²² Tribal groups would not be entitled to the protections offered by a number of constitutional provisions, including Article 15(4) (reservation in education), Article 16(4) (reservation in employment), and Article 330 (reservation of seats in legislatures), etc., without this official recognition.²³ The significance of this acknowledgment lies in the fact that it provides access to affirmative action programs that target the historical marginalization and disadvantages of indigenous communities, guaranteeing them preferential treatment in domains such as political representation, employment, and education. Development projects, mining, and industrialization often put tribal groups at risk of being uprooted.²⁴ Article 342 confers legal rights to forest area that some groups have traditionally inhabited, enabling them to take advantage of safeguarding measures like the Forest Rights Act, 2006. By granting indigenous communities' constitutional legitimacy, Article 342 contributes to the preservation of their unique cultural identities. This acknowledgment highlights the importance of protecting tribal languages, rituals, and traditions, all of which are frequently in danger of disappearing as a result of outside influences or mainstream absorption.

STATUTES REGARDING TRIBAL RIGHTS

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

tribes-welfare/the-national-commission-for-scheduled-tribes> accessed 26 October 2024

¹⁹ Constitution of India 1950, Art 339

²⁰ 'Empowerment of Socially Disadvantaged' (*India Budget*)

<https://www.indiabudget.gov.in/budget_archive/es/2003-04/chapt2004/chap113.pdf> accessed 26 October 2024

²¹ 'Socio-Economic Development Of Scheduled Tribes' (*National Commission for Scheduled Tribes*) <<https://ncst.nic.in/sites/default/files/Socio-economic%20development%20for%20STs.pdf>> accessed 26 October 2024

²² Constitution of India 1950, Art 342

²³ 'INTRODUCTORY' (Department of Personnel and Training) <<https://documents.doptcirculares.nic.in/D2/D02adm/Introductory.pdf>> accessed 27 October 2024

²⁴ Asis Manna, Manikanta Paria and Amit Adhikari, 'Problems and Government Initiatives for Tribals in India: Some Issues' (*ResearchGate* February 2023) <https://www.researchgate.net/publication/381639618_Problems_and_Government_Initiatives_for_Tribals_in_India_Some_Issues> accessed 27 October 2024

Often referred to as the Forest Rights Act, this historic law in India addresses the historical injustices that have long been experienced by groups that live in forests, especially Scheduled Tribes (STs) and other traditional forest inhabitants. In order to prevent eviction and shield them from outside pressures like massive land acquisitions for infrastructure, mining, or industrial developments, the FRA grants legal status to the forest areas that indigenous people and forest dwellers have historically used and occupied. The Act guarantees the protection of indigenous groups' livelihoods by giving them ownership and access to forest resources. The FRA ensures the preservation of their identity by protecting their right to uphold religious and cultural customs related to forests. The Act established a strong system in which appeals can be filed at the state, district, and subdivision levels once claims are validated at the village level. This multi-tiered system guarantees equitable application of the law and enables grievances to be handled effectively.²⁵

In the *Niyamgiri Hills case*²⁶, the Supreme Court of India issued a historic decision upholding the Dongria Kondh tribe's claims to their sacred land. The Niyamgiri Hills are sacred to the tribe, and a mining company named Vedanta Resources sought to extract bauxite from them. The Supreme Court ruled that the Gram Sabhas (village councils) of the affected tribal villages had the authority to decide whether mining should be allowed based on their cultural and religious rights under the Forest Rights Act, 2006. In a historic decision, the Court recognized the importance of tribal consent and communal rights over land, granting the Gram Sabhas the power to unanimously reject the mining project and protect their territory from exploitation.

ii) PANCHAYAT (EXTENSION TO SCHEDULED AREAS) ACT, 1996 (PESA)

The Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), a significant piece of legislation, attempts to apply the principles of the Panchayati Raj system to Scheduled Areas where a significant portion of the population is composed of Scheduled

Tribes (STs). Areas that are predominantly inhabited by tribal tribes and that require special protection and regulation due to their distinct social, economic, and cultural characteristics are known as Scheduled Areas. PESA promotes political involvement and safeguards the cultural integrity and customs of tribal people by acknowledging the power of Gram Sabhas and giving them jurisdiction over local government. By stopping unlawful land transfers and giving communities the authority to manage and control their own resources, PESA plays a critical role in defending tribal land rights. Tribal members gain a sense of agency and ownership as a result. By giving indigenous groups, the ability to influence local development, it promotes inclusive and pertinent governance. Additionally, the need that the Gram Sabha be consulted prior to land purchase in tribal areas serves as a safeguard against forced relocation brought on by mining operations, dam construction, or industrial developments.²⁷

In the case of *Mohan Lal v. State of Punjab*²⁸, indigenous groups were evicted from their lands by force without adhering to the correct legal procedures. The Supreme Court ruled that the land rights of tribal communities must be acknowledged and protected, emphasizing the necessity of abiding by the law before being evicted and ensuring that tribal people have access to justice for matters concerning their resources and land.

iii) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA Act) is a crucial piece of Indian law that works to prevent atrocities and protect the rights of members of Scheduled Castes (SCs) and Scheduled Tribes (STs). The Act offers a legislative framework to shield Scheduled Tribes from discrimination, abuse, and physical violence. It acts as a deterrent by guaranteeing that those who perpetrate crimes against tribal people or communities will suffer harsh penalties. The POA Act gives victims legal remedies and makes it illegal to occupy or destroy tribal land.

²⁵ Dr. Manjula S. R., *Tribal Communities In India With Reference To Forest Rights Act Of 2006* (1ST edn, Notion Press 2020)

²⁶(2013) 6 SCR 881

²⁷ R. R. Prasad, 'Critical Issues for Effective Implementation of the Provisions of the Panchayats

(Extension to the Scheduled Areas) Act, 1996' (*E-Magazine Odisha* 2016) <<https://magazines.odisha.gov.in/Orissareview/2016/Feb-Mar/engpdf/79-83.pdf>> accessed 27 October 2024

²⁸ (2010) 2 SCC 118

Tribal victims are guaranteed swift reparation through the creation of special tribunals for the trial of atrocity crimes. These courts overcome the typical delays of the ordinary court system by concentrating only on cases under the POA Act. For tribal people, who can have additional obstacles in obtaining justice because of poverty, ignorance, or remoteness, this is especially crucial. Tribal communities are empowered to engage in the nation's wider social and economic life without fear of violence or prejudice because to the POA Act, which addresses social isolation and guarantees access to public spaces, educational institutions, water resources, and markets. Sexual violence and other gender-based atrocities frequently target tribal women more than other groups. The POA Act protects tribal women against sexual harassment, rape, and other crimes and guarantees that those who violate them would face harsh legal consequences.²⁹

iv) Bonded Labour System (abolition) Act, 1976

India passed the historic Bonded Labour System (Abolition) Act, 1976, to put an end to the practice of bonded labour, a kind of forced labour in which individuals are made to work in terrible conditions in order to repay a debt or loan. The Scheduled Tribes (STs) were also impacted by this system since they were frequently caught in debt and poverty cycles that resulted in generations of exploitation. By voiding any contracts for bonded labour and wiping out the debts related to such exploitation, the Act gives Scheduled Tribes (STs) legal protection. Tribal lands are frequently linked to bonded labour agreements, in which tribal members are compelled to commit their work or property as security for loans. The Act prevents the unlawful taking of tribal land or its use as leverage in exploitative labour practices by guaranteeing that any such arrangement is null and void. Tribal people's socioeconomic circumstances are improved by the government's provision of land, housing, and jobs to bonded workers who have been released. These steps guarantee that emancipated tribal labourers can support themselves without reverting to exploitative cycles.³⁰

Tribal and marginalized communities are particularly affected by bonded labour, a problem that the

Supreme Court addressed in *State of Kerala v. Peoples Union for Civil Liberties (PUCL)*³¹. The Court affirmed that such practices violate human dignity and fundamental rights and ordered the Kerala state government to locate, free, and rehabilitate bonded labourers. In addition to requiring the state to take proactive measures to guarantee the welfare of tribal groups impacted by bonded labour, it emphasized the importance of upholding the Bonded Labour System (Abolition) Act, 1976. The ruling highlighted the government's obligation to defend the rights of vulnerable groups to freedom and dignity and to shield them from exploitation.

CONCLUSION

To sum up, the defense of tribal rights in India involves a complex fusion of laws, policies, and constitutional protections that work together to defend the distinct social, cultural, and economic identities of Scheduled Tribes. The Indian Constitution ensures that indigenous communities have equitable access to employment and educational opportunities by establishing the foundation for affirmative action, anti-discrimination laws, and welfare advancement through articles like 15(4) and 16(4). Articles 46, 244, and 275 highlight the state's responsibility to enhance the socioeconomic conditions of Scheduled Tribes, including providing funding for the creation of Scheduled Areas. By showcasing the government's dedication to redressing past injustices and systemic imbalances, these clauses strengthen indigenous groups' right to a dignified existence and fair treatment in society. Alongside these constitutional provisions, laws such as the Forest Rights Act (FRA), the Prevention of Atrocities Act, and the Panchayats (Extension to Scheduled Areas) Act (PESA) provide essential protections for land rights, resource access, and self-governance, all of which are consistent with Article 46's overarching goal of ensuring tribal welfare. These laws allow indigenous tribes to fully participate in local governance, promote tribal sovereignty in resource management, and provide protection from exploitation. When taken as a whole, these legislative frameworks and constitutional mandates guarantee that the rights, resources, and identity of tribal groups are actively promoted in addition to being protected, making tribal welfare a

²⁹ Awasthi, *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) SCST Act, 1989* (5th edn, Premier Publication Company 2023)

³⁰ Justice D. Murugesan, *Handbook on Bonded Labour* (National Human Rights Commission 2018)

³¹ (2009) 8 SCC 46

fundamental tenet of India's efforts to achieve social justice and inclusive development.