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Constitutional and Legal Safeguards for Indigenous Communities in India: A Critical Analysis of Rights, Realities, and Reforms

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ABSTRACT

India constitutes a significant repository of a vast and heterogeneous populace of indigenous groups, commonly designated as Adivasis or Scheduled Tribes, who have historically preserved distinct cultural identities alongside profound connections to the natural environment. The Indian Constitution, in conjunction with various legislative measures, delineates a framework of protective mechanisms to safeguard these groups' socio-economic, cultural, and political entitlements. These mechanisms encompass provisions for affirmative action, self-governance within Scheduled Areas, protecting land and forest rights, and ensuring access to education and employment opportunities. Nonetheless, notwithstanding the existence of these legal and constitutional frameworks, indigenous communities persistently encounter systemic marginalisation, forced displacement because of developmental initiatives, suboptimal implementation of welfare schemes, and exclusion from the decision-making processes that influence their existence and territories. This paper critically examines the constitutional and legal protections established for indigenous communities in India, scrutinising the discrepancies between the formal acknowledgement of rights and the empirical realities of enforcement. It investigates the roles of the judiciary, policy reforms, and institutional mechanisms in confronting these obstacles, while also evaluating the ramifications of contemporary legislative advancements such as the Forest Rights Act of 2006 and the Panchayats (Extension to Scheduled Areas) Act of 1996. Through

this comprehensive analysis, the paper seeks to underscore the necessity for a more inclusive, participatory, and rights-centric governance approach that upholds the dignity, autonomy, and sustainable development of India's indigenous populations.

KEYWORDS

Indigeneity, Constitutionalism, Marginalisation, Governance, Empowerment

INTRODUCTION

The residents of ecosystems—including wildlife, plant life, and indigenous communities—are presently facing considerable hardships. These challenges are exacerbated by modern wildlife conservation strategies, which often view indigenous populations as adversaries to environmental protection initiatives. Worldwide, and especially in India, there is a prevalent myth that ecological conservation and the rights of indigenous peoples are fundamentally contradictory goals. This perspective endures despite global reports, including those from the United Nations, recognising the essential part that indigenous communities play in the preservation and sustainable management of natural ecosystems. In India, conservation efforts have often neglected the needs and rights of forest communities, frequently disregarding their entitlements to access and utilise forest resources. There is an urgent necessity to reconcile environmental conservation initiatives with the safeguarding of indigenous rights to ensure that both are effectively maintained. India's tribal population is highly diverse, and each group has unique cultural characteristics and living conditions. For example, the socio-economic realities of indigenous communities in central and western India are markedly different from those in the northeastern states or the Andaman Islands, which necessitate specific policy solutions.¹

The connection between constitutional rights and the quest for social justice is evident in various statutes and court rulings. Judicial systems have often relied on constitutional tenets to address social disparities and protect the rights of marginalised communities. Policies such as affirmative action have played a crucial role in promoting social fairness by providing opportunities to groups that have historically encountered disadvantage. However, achieving genuine social justice is still a

¹ Nadisha Vazirani, Conservation & Rights of Indigenous People-A Legal Perspective, Vol.3 Issue 1, GLSLJ, 84-94 (2021)
<https://glslawjournal.in/index.php/glslawjournal/article/view/42>

formidable task, signalling the necessity to examine existing legal frameworks and implement more inclusive approaches. Despite the constitutional protections available, challenges like restricted access to the legal system, deep-rooted discrimination, and a lack of resources for underserved communities persist, hindering advancement. The interconnectedness of social justice matters often compounds the intricacies of these issues. Current legislation usually faces criticism for its inefficacy and limited influence, highlighting the pressing need for thorough reform. Enhancing legal and institutional structures, increasing public awareness, encouraging inclusive policy-making, and ensuring the practical application of rights are critical steps toward substantial progress. Establishing a nurturing environment that addresses the unique needs of marginalised groups and guaranteeing equitable representation at all levels of governance are crucial for promoting social justice. Cooperation among various stakeholders can significantly contribute to achieving these objectives.²

Since its independence, India has generally made positive progress in acknowledging and addressing the requirements of its tribal population, which exceeds 100 million across 18 states. In certain areas, particularly in the Northeast, indigenous groups constitute the majority, while in other regions they inhabit designated Scheduled and Tribal Areas. A blend of central and state laws creates a strong legal framework designed to protect the interests of these communities. The rights of indigenous groups in India—known as Adivasis or Scheduled Tribes—are enshrined in the Constitution and further supported by various legal provisions to preserve their cultural identity and socio-economic prosperity. This article explores the legal protections available to these communities, emphasising constitutional guarantees, statutory laws, and significant judicial decisions that influence the current legal environment.³ Nevertheless, there are still notable gaps in the implementation of these protections. Inadequate enforcement of existing laws, a lack of legal awareness among indigenous populations, and conflicts arising from infrastructure and development initiatives obstruct the practical realisation of their rights. This article assesses these persisting issues and proposes potential reforms to enhance the defence of indigenous rights. This article thoroughly explains the present status of indigenous rights in India by investigating how

² Dr. Babudhan Tripura, Dr Vijayalakshmi, Jyotish Kumar Gupta, Dr. Moses Kharbithai & Shameera T, Constitutional Rights & Social Justice in India: An Analysis, Journal of Namibian Studies (16 June 2025, 11:08 AM) <https://namibian-studies.com/index.php/JNS/article/view/4174>

³ Aryan Mohindroo, Rights of Tribals and Indigenous Persons in India, Nyaaya (February 14, 2022, 06:07 PM) <https://nyaaya.org/guest-blog/rights-of-tribals-and-indigenous-persons-in-india/>

constitutional principles, legislative measures, and court rulings interact. It emphasises the initiatives being undertaken to address the challenges these communities face.⁴

Indigenous communities have historically faced widespread prejudice, the loss of their ancestral lands, and marginalisation, despite being the original inhabitants of their regions. Over time, legal frameworks have slowly emerged to recognise and protect their rights, particularly regarding land ownership, cultural identity, and self-governance. Both national constitutional laws and international treaties have played a crucial role in promoting Indigenous rights. However, the extent of enforcement of these legal protections varies significantly across different regions. Land rights are intricately linked to the identity, livelihood, and cultural integrity of Indigenous peoples. Their lands often possess deep spiritual and ancestral significance, making legal acknowledgement of land ownership essential. Nonetheless, the impacts of colonisation and displacement have resulted in the widespread loss of Indigenous territories. Countries like Canada, Australia, and Brazil have pursued actions such as land restoration programs, formal treaties, and legal recognition to rectify these historical injustices. Still, land conflicts continue, frequently arising from clashes with governmental initiatives, corporate interests, and efforts to extract natural resources.

Preserving cultural heritage is another critical aspect of Indigenous rights. Global influences, assimilation policies, and inadequate legal frameworks threaten traditional practices, languages, and knowledge systems. While some national legislation recognises the rights of Indigenous communities to maintain and promote their cultural heritage, challenges persist in ensuring legal safeguards and the passing down of this heritage through generations. In certain nations, Indigenous languages are granted official status and support, whereas in others, they are at risk of disappearing due to the lack of government action. Legal disputes over sacred sites and the protection of traditional knowledge highlight the ongoing struggle for cultural continuity. The right to self-determination allows Indigenous groups to oversee their affairs and choose their development trajectories. This principle is supported by international standards and, in some cases, is embedded in national constitutions. The real-world application of self-governance, however, varies considerably. For instance, countries such as Canada and New Zealand have established Indigenous governance structures that provide

⁴ Mamta, Upholding the Rights of Indigenous People in India: Legal Frameworks and Judicial Precedents, Lawful Legal (September 23, 2024, 06:08 PM) <https://lawfullegal.in/upholding-the-rights-of-indigenous-people-in-india-legal-frameworks-and-judicial-precedents/>

greater independence, while others impose legal and administrative restrictions limiting Indigenous power. Acknowledging self-determination also involves navigating intricate legal and political challenges, including defining the extent of Indigenous authority within national frameworks and balancing state sovereignty with Indigenous self-rule.⁵ Indigenous heritage is determined by Indigenous communities' traditions, beliefs, languages, and viewpoints. It includes diverse elements such as customs, experiences, knowledge systems, spiritual beliefs, familial ties, cultural expressions, artefacts, and sacred locations that hold significant importance for these communities. This heritage, transmitted through generations, is crucial for enhancing the overall well-being of Indigenous peoples.

The cultural legacy of Indigenous groups is a vital aspect of a nation's identity and development. Safeguarding cultural sites, artistic expressions, and traditional practices is essential for maintaining cultural continuity and fostering national growth. The rich heritage of India represents centuries of interactions with different civilisations and influences, notably due to historical invasions. Efforts to preserve this cultural wealth are coordinated at the national, state, and local levels. These government entities play a key role in protecting and maintaining the country's heritage assets. India has implemented several laws to protect its Indigenous and cultural heritage. Article 49 mandates the State to safeguard monuments, objects, and places deemed of artistic or historical significance from harm, defacement, or illegal export, particularly those recognised as nationally significant.⁶ Article 51A(f) underscores the responsibility of every citizen to protect the nation's vast cultural heritage.⁷ Article 51A(g) urges citizens to preserve the natural environment, which includes forests, rivers, lakes, and wildlife, while fostering compassion for all living beings.⁸

India's formal recognition of heritage conservation began in the 19th century amidst cultural revival. The Bengal Regulation XIX of 1810 and the Madras Regulation VII of 1817 were among the first laws to grant governmental supervision over historic structures. However, they did not extend to privately owned buildings. The introduction of Act XX in 1863 aimed to safeguard architecturally and historically significant structures. The Indian Treasure Trove Act of 1878 was designed to protect artefacts with

⁵ R Priyanka, The Rights of Indigenous Peoples Legal Protections for Land, Culture & Self-Determination in Constitutional Framework, Vol 5 Issue 4, IJLR, 312-329 (2025) <https://ijlr.iledu.in/wp-content/uploads/2025/04/V5I436.pdf>

⁶ The Constitution of India, Art. 49

⁷ The Constitution of India, Art. 51A (f)

⁸ The Constitution of India, Art. 51A (g)

archaeological importance that were discovered inadvertently.

The Ancient Monuments Preservation Act of 1904 allowed the government to take action regarding the care of privately owned heritage sites. Subsequently, the Antiquities Export Control Act of 1947 established regulations for the licensed export of antiquities, with the Director-General having the final say on whether an object qualifies as an antiquity. The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act of 1951 reaffirmed the importance of monuments safeguarded under previous laws. More sites were designated nationally significant under the States Reorganisation Act of 1956. The Ancient Monuments and Archaeological Sites and Remains Act of 1958 set forth provisions for protecting and regulating archaeological excavations and conserving monuments, carvings, sculptures, and related items. An amendment to this Act in 2010 established the National Monument Authority, tasked with evaluating and categorising protected sites while advising the central government on conservation strategies.

The Antiquities and Art Treasures Act of 1972 was enacted to regulate the movement and preservation of movable cultural property, including antiquities and artworks. This law was intended to combat illegal trade and ensure public access to valuable artefacts. The accompanying 1973 Rules laid out comprehensive enforcement procedures. This Act also revoked the previous 1947 legislation. India's dedication to cultural preservation was further reinforced by its participation in the UNESCO World Heritage Convention, which advocates for the global protection of the cultural and natural heritage of exceptional value.⁹

WHO ARE THE INDIGENOUS GROUPS?

In various regions across the globe, indigenous populations are known by different titles such as "First People" or "Native People." These communities are recognised as the earliest residents of specific areas. Throughout history, international organisations have made multiple attempts to define the term "indigenous people" within international legal frameworks. Notably, the International Labour Organisation (ILO), the United Nations (UN), and the World Bank have each introduced definitions grounded in their respective contexts.

In 1957, the ILO endorsed Convention No. 107, which aimed to

⁹ Sneha Singh, Protection of Indigenous Heritage, iPleaders (16 June 2025, 05:50 A.M.) <https://blog.iplayers.in/protection-of-indigenous-heritage/>

safeguard and integrate indigenous, tribal, and semi-tribal groups. However, as global perspectives shifted and the acknowledgement of indigenous rights grew, the ILO modified its stance. In 1989, Convention No. 169 was established, following recommendations from international authorities and an expert committee. This revised convention characterised indigenous peoples as those in sovereign states who are descended from populations that historically occupied a specific area during the time of colonisation or the establishment of current national borders, and who continue to uphold, fully or partially, their own cultural, social, economic, and political systems, regardless of their legal status.

Through its "Study on Discrimination against Indigenous Populations," the United Nations initially introduced a working definition. Due to some lacking components, a more detailed version was subsequently developed. According to this definition, indigenous peoples are communities or nations that have preserved a historical connection with societies before colonisation or invasion in their territories. They identify themselves as separate from the dominant groups. They are dedicated to safeguarding, nurturing, and transmitting their ancestral lands, cultural identity, and heritage to future generations, under their customs, institutions, and legal traditions.

The World Bank, in its Operational Directive 4.20, recognised the intricacies and diversity within indigenous communities, making it challenging to create a single, standardised definition. Instead, it identified specific characteristics commonly associated with indigenous groups. These features include social and cultural traits that differ from mainstream society, often leading to marginalisation and disadvantages during development. Terms such as "indigenous peoples," "tribal groups," "indigenous ethnic minorities," and "scheduled tribes" are used to refer to these communities.¹⁰

One of the most cited definitions of the term indigenous was provided by José R. Martínez Cobo in his significant study titled Study on the Problem of Discrimination against Indigenous Populations. His temporary definition explains that indigenous communities, peoples, and nations have retained a historical connection to the societies that inhabited their lands before colonisation or foreign invasion. These groups see themselves as

¹⁰ Lakshay Bansal, Rights of Indigenous People under Indian and International Law, Latest Laws (16 June 2025, 08:10 A.M.) <https://latestlaws.com/articles/rights-of-indigenous-people-under-indian-and-international-law-by-lakshay-bansal>

distinct from the prevailing sectors of contemporary society within those areas. Typically constituting a non-dominant segment of the population today, they are dedicated to protecting, nurturing, and transmitting their ancestral lands and cultural identity to future generations. Their continued existence as unique peoples is grounded in their traditions, social structures, and legal practices. This concept of historical connection is evident in the ongoing presence, over time, of one or more of the following aspects:

- (a) Ongoing residence on or occupation of ancestral lands, whether entirely or partially;
- (b) Shared ancestry with the original inhabitants of those territories;
- (c) A unique culture, whether broadly defined or characterised by specific traits such as spiritual beliefs, tribal social systems, traditional clothing, livelihood practices, or communal identity;
- (d) Use of a native language—whether as the principal language, mother tongue, or customary means of communication in personal and family interactions;
- (e) Residing in certain regions of the country or specific areas of the globe;
- (f) Any other pertinent indicators of identity or heritage.¹¹

The notion of "indigenous peoples" has evolved. Most global agreements currently offer a definition that pertains to communities with historical connections to territories and traditional lifestyles. The United Nations (UN) describes indigenous peoples as those who uphold and engage in distinctive cultural, social, economic, and political customs, alongside strong ties to their communities and the natural environment. Despite their differences from mainstream societies, indigenous groups worldwide encounter comparable challenges, particularly in safeguarding their rights. Their identity is intricately linked to their heritage, encompassing language, traditions, land, and natural resources. At present, they continue to be among the most vulnerable and disadvantaged communities, often facing infringements on their fundamental rights. In reaction, international organisations have implemented specific initiatives to protect their rights and maintain their distinctive cultures. One such initiative was spearheaded by the UN Working Group on Indigenous Peoples, which crafted a Draft Declaration on the Rights of Indigenous Peoples to represent their aspirations. This

¹¹ Dr. Sachiv Kumar, Vinayak Gupta, & Prateek Jain, Protection to Indigenous Knowledge: A Study of Flawed Scenario at National and International Level, Manupatra (16 June 2025, 08:24 A.M.) <https://www.manupatra.com/roundup/363/Articles/Protection%20to%20Ind.pdf>

effort led to the 1993 Mataatua Declaration, a conference focused solely on indigenous intellectual and cultural property rights. Over 150 representatives participated, including delegates from the United States. The conference tackled significant topics such as indigenous knowledge systems, biotechnology, biodiversity, customary practices, environmental management, and cultural expressions, including language, music, and art.¹²

The Anthropological Survey of India has recognised 461 ethnic groups as Scheduled Tribes through its "People of India" initiative, acknowledging them as the country's indigenous population. In many regions of mainland India, these groups are typically referred to as Adivasis. Numerous other ethnic groups qualify for Scheduled Tribe status but remain unacknowledged. Some estimates suggest that the overall number of tribal communities may be as high as 635. India's legal and constitutional system comprises various provisions designed to safeguard the rights of indigenous populations. Among these are the Fifth Schedule, which is relevant to specific areas in mainland India, and the Sixth Schedule, which is intended explicitly for select regions in the North-East. These frameworks recognise the rights of tribes regarding land and self-governance. Nevertheless, the laws often fall short, and enforcement is frequently lacking. Indigenous groups continue to face violations of their civil and political rights, loss of land, forced relocation, and false criminal charges, particularly regarding the collection of minor forest products. As India's economy grows and the demand for resources increases, lands traditionally held and inhabited by indigenous peoples are being taken, resulting in rising discontent and escalating conflicts. In response, indigenous communities throughout India have a long history of activism aimed at asserting their rights and safeguarding their way of life.¹³

In India, most tribal groups are formally recognised as Scheduled Tribes by Article 342 of the Constitution.¹⁴ The nation boasts a richly varied tribal population, with each group exhibiting unique cultural characteristics, social frameworks, and developmental requirements, necessitating specific regional policies. For example, the lifestyles and issues encountered by tribal communities in central and western India are notably different from those in the northeastern regions or the Andaman Islands.

¹² Ronika Tater, The extent and effectiveness of indigenous peoples' intellectual rights protection in the US, iPleaders (16 June 2025, 08:54 A.M.) <https://blog.iplayers.in/extent-effectiveness-indigenous-peoples-intellectual-rights-protection-us/>

¹³ Ritu Choudhary, Social Justice and Indigenous Rights, Vol 11 Issue 4, IERJ, 138-140 (2025) <https://ierj.in/journal/index.php/ierj/article/view/4117>

¹⁴ The Constitution of India, 1949, Art. 342

Scheduled Tribes comprise a group of historically marginalised communities that have consistently experienced social and economic exclusion. Their designation is recognised in the Constitution, with specific provisions designed to address their distinctive status. Dr. B.R. Ambedkar, a pivotal figure in the creation of the Indian Constitution, recognised the entrenched inequalities these groups face. He acknowledged the long-standing neglect of Scheduled Tribes within mainstream national discourse and advocated for measures to correct this disparity. Understanding the historical oppression—like that endured by the so-called untouchables—he promoted the inclusion of special provisions, such as reservations, to support the upliftment of tribal communities and safeguard their representation and rights. India's tribal populace includes numerous notable groups such as the Gonds, Bhils, Santhals, Mundas, Khasis, Garos, Angamis, Bhutias, Chenchus, Kodavas, and the Great Andamanese. Among these, the Bhils are identified as the largest tribal group in the nation. Tribes are typically connected by shared factors such as religion, language, history, or cultural customs. Each tribe preserves its own distinct identity, with traditions that can vary considerably from those of others. Currently, there are 705 tribal communities officially recognised as Scheduled Tribes in India. In the central parts of the country, they are often referred to as Adivasis, a term meaning "original inhabitants" or indigenous people.¹⁵

The advancement of indigenous communities in India is a complex and multifaceted topic that has generated ongoing discussion at both academic and policy levels. These communities, distinguished by their unique cultural identities, traditions, and ways of life, have existed for centuries and comprise roughly 7% of the Indian population. Despite their rich cultural heritage, tribal populations in India encounter a plethora of developmental challenges, including social, economic, and political marginalisation, limited access to quality education and healthcare, and forced displacement from their ancestral lands. Although constitutional measures—such as the Fifth Schedule for central India and the Sixth Schedule for certain northeastern regions—aim to safeguard their rights, these protections are often poorly implemented and frequently ineffective in practice. India's endorsement of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was conditioned on the notion that all Indians are viewed as indigenous, thus avoiding the specific

¹⁵ Rozy Parveen, Indian Constitution and Protection of Tribal Rights, iPleaders (16 June 2025, 09:22 A.M.) <https://blog.iplayers.in/indian-constitution-and-protection-of-tribal-rights/#:~:text=Article%2046%20of%20the%20constitution,from%20social%20injustice%20and%20exploitation>

protections stated in the declaration. Land rights constitute a particularly urgent concern. While regulations aim to prevent the transfer of tribal lands to non-tribal entities and to restore illegally taken land, enforcement is often inadequate. Numerous forest-dwelling tribes live under the constant threat of eviction due to conservation initiatives. Indigenous women and girls endure particularly severe conditions, facing multiple layers of discrimination and risks. Issues such as sexual violence, human trafficking, murders, and displacement driven by militarisation and development projects are prevalent, posing significant threats to their safety and rights.¹⁶

RECONCILING UNIVERSAL HUMAN RIGHTS WITH SPECIAL TRIBAL RIGHTS: A CRITICAL ANALYSIS OF LEGAL INSTRUMENTS AND CULTURAL AUTONOMY

The worldwide importance of human rights is universally recognised, and these rights inherently apply to tribal and indigenous populations. However, when tribal rights are considered separately from human rights, it can result in viewing these communities as welfare recipients rather than as groups to whom the state has responsibilities. This raises a crucial question: Why is it necessary for tribal and indigenous communities to have additional rights beyond general human rights? The discourse on the link between tribal and human rights has been ongoing. Some academics contend that the two are at odds, arguing that many tribal legal systems are inconsistent with human rights norms and that development efforts, justified in the name of human rights, often harm indigenous groups by disrupting their livelihoods, displacing them, and harming their environment. Conversely, others posit that tribal laws can enhance and strengthen human rights by anchoring them within cultural practices and indigenous legal systems. There is a broad agreement that tribal legal frameworks can be integrated with human rights principles to support cultural identity preservation, natural resource protection, and promote religious freedom and equality.

Tribal law has developed into a unique area within the broader human rights landscape, seeking to bridge the divide between developmental objectives and social justice. While various legal frameworks protect these communities, the human rights model offers the most comprehensive and far-reaching backing. Successfully implementing these rights necessitates adjustments to meet the specific challenges faced by tribal groups, particularly in social and economic justice matters. International treaties and

¹⁶ Bornali Deori, A Critical Examination of Indigenous Peoples' Rights & Realities in India, Vol 3 Issue 1, JNRID, 224-229 (2025)
<https://tjjer.org/jnrid/viewpaperforall.php?paper=JNRID2501020>

agreements are crucial in understanding and applying tribal human rights, particularly in settings like India. Although the human rights afforded to everyone also apply to tribal communities, their histories of exclusion, marginalisation, and ongoing rights abuses necessitate a more specialised approach. Recognising their distinctive needs is vital for achieving genuine equality.

One of the key international documents relevant to this issue is the Draft Declaration on the Rights of Indigenous Peoples. Initially developed in 1985 and subsequently promoted by the Human Rights Council, this declaration includes 46 articles covering various topics such as fundamental rights, security, cultural and linguistic preservation, education, employment, land ownership, self-governance, and implementation standards. Important principles encompass the right to self-determination, autonomy, access to land and resources, and social and economic rights such as health, education, and housing. It also highlights collective rights and the right to engage in agreements with governments. Another significant legal instrument is ILO Convention No. 169, which was adopted in 1989. This treaty was the first to address the human rights of tribal and indigenous peoples specifically. It delineates state responsibilities for upholding their rights in several areas, including land, customary law, employment, education, and health. Although not all nations sign this treaty, its principles reflect widely accepted international standards and are frequently regarded as part of customary international law. In addition to global legal frameworks, regional and national legislative systems have instituted specific provisions to protect and recognise indigenous populations. Indigenous communities are also afforded access to international mechanisms through the United Nations and various other entities; however, the practical enforcement of these mechanisms is often limited.¹⁷

Numerous universal human rights instruments exert a considerable influence on the rights of indigenous peoples. Among these are the Universal Declaration of Human Rights, the Genocide Convention, the International Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights, and several treaties to combat racial discrimination and safeguard children's rights. Many of these documents explicitly address pertinent issues, including cultural identity, linguistic rights, and religious freedoms. Other agreements, such as the Rio Declaration and the Convention on Biological Diversity, underscore the critical

¹⁷ Dr. Sakshi Pathak, Implementation of Indigenous and Tribal Law in India: A Comparative Study on Legal Obligations, Vol 5 Issue 6, IJLSI, 139-159 (2023) <https://www.ijlsi.com/wp-content/uploads/Implementation-of-Indigenous-and-Tribal-Law-in-India.pdf>

importance of indigenous involvement in environmental governance and sustainable development practices. These frameworks collectively reinforce the necessity of safeguarding indigenous knowledge, promoting equitable resource sharing, and acknowledging the integral role of indigenous communities in land management and ecological preservation. Declarations such as the Vienna Declaration and the results from major international conferences further illuminate indigenous peoples' socioeconomic and cultural contributions, advocating for their active participation in developmental planning processes.

Notwithstanding specific challenges regarding enforcement and global consensus, international instruments have played a pivotal role in establishing the minimum standards for recognising indigenous rights. Instruments such as the UN Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 collectively provide a robust foundation for national and international legal frameworks. The contemporary domain of international law encompasses a vast array of indigenous rights, covering essential liberties, protections for cultural and religious practices, language rights, educational opportunities, media access, employment rights, land and resource ownership, self-determination, environmental sustainability, and the mechanisms necessary for the implementation and protection of these rights.

LAWS PROTECTING THE RIGHTS OF INDIGENOUS COMMUNITIES

International Laws

Before the 1970s, Indigenous populations residing in Western industrialized nations were largely excluded from any meaningful representation within international legal texts. They were predominantly perceived as mere legal constructs confined within the parameters of domestic legislation. In reaction to the endeavours of Indigenous communities to enhance awareness of their rights and concerns on a global platform, the 1970s heralded the inception of a worldwide revival of Indigenous cultures and movements. The seminal research conducted by Gordon Bennett in 1978 ignited an increasing intrigue among Western legal scholars regarding Indigenous rights within the purview of international jurisprudence. The academic contributions of Russell Lawrence Barsh and Douglas Sanders played an instrumental role in sustaining the fervour for Indigenous rights among legal academics in North America throughout the 1980s. Robert Williams' seminal 1990 publication, *The American Indian in Western Legal Thought*, thoroughly analyses the writings and orations of notable European thinkers and religious figures. Williams posits that these theoretical frameworks functioned as a

moral rationale for the systematic subjugation of Indigenous populations and the appropriation of their lands.¹⁸ Building upon Williams's scholarship, other scholars, such as S. James Anaya, have expanded the discourse to encompass additional topics pertinent to Indigenous issues within international law.

The current framework of International Human Rights Law lacks binding treaties under the United Nations specifically aimed at protecting the rights of indigenous groups. Nevertheless, the International Labour Organisation (ILO) has made considerable progress in creating conventions intended to support and advance the rights of these communities.¹⁹

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Although primary international human rights documents—including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR)—do not specifically address the rights of Indigenous Peoples, they do contain fundamental principles that advocate for their rights. These principles encompass the right to equality, freedom from discrimination, property rights, and political participation. Furthermore, the concept of self-determination, as referenced in both the ICCPR and ICESCR, is reflected in Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), reinforcing the autonomy of Indigenous Peoples in cultural and political affairs, including involvement in decisions that affect their communities.

ILO Convention No. 107 (1957)

In the aftermath of World War II, the ILO and other international organisations initiated discussions to formulate a convention that would delineate state responsibilities towards Indigenous populations. This dialogue ultimately resulted in the adoption of ILO Convention No. 107 in 1957. Although a limited number of countries ratified this agreement, it represented the first international effort to address the rights of Indigenous and tribal peoples specifically. Its emphasis was predominantly on

¹⁸ Sonamla Ethenpa, Legislation in India concerning the Rights of Indigenous Peoples & the Environment, Vol 9 Issue 9, IJNRD, 286-291 (2024)
<https://www.ijnrd.org/papers/IJNRD2405335.pdf>

¹⁹ Angel H Syiem, The United Nations Declaration on the Rights of Indigenous Peoples vis-à-vis the 6th Schedule of the Constitution of India: A Study on Tribal Right to Self-Governance, Vol 1 Issue 2, ILR., 1-13 (2020)
https://indraprasthalawreview.in/wp-content/uploads/2021/09/GGSIPU_USLLS_ILR_2020_V1-I2-02-Angel_H_Syiem-1.pdf

enhancing their social, economic, and cultural circumstances while recognising certain constrained political rights. It stressed the importance of collaboration with Indigenous representatives and promoted vocational training to aid community advancement.

Nonetheless, the convention has faced criticism for endorsing an assimilationist perspective. It perceived Indigenous communities as less developed and suggested that their integration into the mainstream culture was unavoidable. The interpretation of development in this treaty involved merging Indigenous identities with those of the dominant society. Despite these drawbacks, the convention did touch upon land rights, stating that Indigenous peoples should not be displaced from their ancestral lands without their consent, unless deemed advantageous by the state. These constraints prompted a revision of the convention in 1989.

ILO Convention No. 169 (1989)

ILO Convention No. 169 was enacted to amend the previous convention's assimilationist inclinations and is now referred to as the Indigenous and Tribal Peoples Convention. This treaty sets out minimum benchmarks for the rights of Indigenous communities through 44 articles categorised into ten sections. It acknowledges the right of Indigenous peoples to safeguard and govern their institutions, cultures, languages, and spiritual practices within their countries. One of the fundamental principles is that communities should have the authority to determine their development goals. It recognises the profound historical and cultural connections Indigenous Peoples have with their lands and affirms their right to remain undisturbed. Additionally, it ensures access to jobs, healthcare, and education, including the right to receive instruction in their native languages. Despite this progress, only 21 countries have ratified the convention, which limits its acceptance. A significant factor contributing to this limited ratification is its explicit acknowledgement of self-determination, which many nations are reluctant to endorse. Furthermore, enforcement tends to be weak among those that have ratified it. Still, Indigenous leaders highly value the convention for enhancing global discussions surrounding their rights and establishing a foundation for future legal safeguards.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

Although it lacks legal binding authority, UNDRIP carries substantial moral and political significance, having been issued directly by the United Nations. Adopted in 2007, this declaration outlines minimum standards to protect Indigenous communities'

dignity, survival, and well-being. After over twenty years of negotiations, it is considered a pivotal document and a framework for fostering improved relationships between states and Indigenous populations.

UNDRIP signifies a significant leap forward in acknowledging collective rights previously absent in international human rights agreements. It asserts Indigenous Peoples' rights to self-determination, cultural preservation, and control over their political, social, and economic frameworks. The declaration also safeguards their rights to life, liberty, and security while explicitly condemning acts of violence and genocide. One of the most crucial elements of UNDRIP is its focus on land rights. It recognises the rights of Indigenous communities to their traditionally occupied or used lands and urges states to recognise these territories legally. The declaration also emphasises the right to essential services such as healthcare, education, jobs, housing, and social security. Additionally, it stresses the importance of cultural preservation as a core component of Indigenous identity and rights.

Convention on the Prevention and Punishment of the Crime of Genocide, 1951

Historically, genocide has inflicted immense suffering and irreversible loss on humanity. There is a widespread agreement that addressing this serious crime requires coordinated international efforts. Genocide is defined as a range of actions taken with the intent to annihilate, in whole or in part, a national, ethnic, racial, or religious group. These actions encompass the killing of group members, inflicting grave physical or psychological damage, intentionally creating conditions designed to lead to their physical elimination, taking measures to prevent births within the group, and forcibly relocating children from one group to another.

International Covenant on Civil and Political Rights 1966

The United Nations Charter highlights that every person's inherent dignity and equal rights are essential pillars for global liberty, justice, and peace. These rights are considered to stem from the intrinsic value of human beings. This covenant asserts that the ideal of free individuals exercising civil and political rights—alongside freedom from fear and deprivation—can only be achieved if conditions are established for everyone to equally enjoy these rights, in conjunction with their economic, social, and cultural rights. In this regard, the covenant emphasises that individuals who are part of ethnic, religious, or linguistic minorities must not be denied the opportunity to practice and

celebrate their culture, religion, and language freely within their communities.

International Covenant on Economic, Social and Cultural Rights 1966

Recognising their duties under the United Nations Charter, countries must foster universal respect for human rights and fundamental freedoms. Individuals are perceived as having responsibilities towards others and their communities, and they are encouraged to contribute actively to realising and promoting the rights outlined in this covenant. Among these rights, the right to social security, including access to social insurance, is recognised as essential for every individual. Additionally, nations unable to provide free compulsory primary education when ratifying the covenant must develop and implement a comprehensive plan within two years to establish such education progressively in a reasonable time frame.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992

The United Nations has reiterated its commitment to advancing and safeguarding the rights and freedoms of all individuals, without discrimination based on race, gender, language, or religion. Inspired by previous human rights frameworks, this declaration addresses the rights of individuals from minority groups. Although it prioritises individual rights, it recognises that collective rights may also arise from these personal liberties. The declaration delineates the obligations of states toward minority groups while reinforcing the rights of individual members. It emphasises the necessity to preserve and protect the cultural, ethnic, religious, and linguistic identities of minority communities. It also affirms their right to express and develop their cultural traditions, to associate with their communities freely, and to engage in decisions that impact them. Furthermore, the declaration highlights individual and collective dimensions of exercising minority rights and stresses the importance of education about minority cultures.

Convention on Biological Diversity 1992

Considering the increasing worry about the continuous decline of global biodiversity, this convention highlights the necessity for the preservation, responsible utilisation, and equitable distribution of benefits derived from genetic resources. One of its primary mandates urges countries to acknowledge, safeguard, and sustain the traditional knowledge, innovations, and practices of indigenous and local communities whose ways of life are closely

connected to biodiversity conservation. It also stresses the importance of fostering broader use of this traditional knowledge, but only with the active involvement and consent of the knowledge holders. Furthermore, it promotes the fair and just sharing of the benefits that come from the use of such knowledge and practices.²⁰

UNDER INDIAN LAWS

Constitutional Safeguards for Tribal Rights in India

Educational and Cultural Safeguards

The Indian Constitution provides several protective measures to ensure the educational and cultural development of scheduled tribes and other marginalised communities. Article 15(4) empowers the state to make special provisions for the advancement of socially and educationally disadvantaged groups, including Scheduled Castes (SCs) and Scheduled Tribes (STs). This article forms a critical foundation for promoting equality by enabling affirmative action to address historical injustices.²¹ These disadvantaged communities have long suffered marginalisation due to caste, disability, or other social factors, resulting in limited access to education and employment opportunities.

Scheduled Tribes and Scheduled Castes are recognised as groups particularly vulnerable to discrimination and exclusion. Article 15(4) authorises the government to implement measures such as reservations in education and jobs, financial support schemes, and focused developmental programs to uplift these communities. These actions enhance social inclusion without discriminating against other groups, ensuring fairness and justice.

Further, Article 29 protects the cultural and educational rights of minorities.²² It guarantees that any group residing in India with a distinct language, script, or culture has the right to preserve it. Additionally, the Constitution ensures that no citizen is denied admission to any educational institution maintained or aided by the state based on religion, race, caste, language, or similar factors. In a notable case, *St. Stephen's College vs. University of Delhi* (1991), the Supreme Court affirmed that minority-run institutions could admit students from their community if

²⁰ Ajay Gavner Sarode, *Balancing Justice: Statutory Interpretation and Indigenous Rights*, Vol 4 Issue 3, IJLR, 475-485 (2024)

<https://ijlr.iledu.in/balancing-justice-statutory-interpretation-and-indigenous-rights/>

²¹ The Constitution of India, 1949, Art 15(4)

²² The Constitution of India, 1949, Art 29

admission processes are transparent and equitable.²³

Article 46 reinforces the state's responsibility to promote the educational and economic interests of SCs, STs, and other disadvantaged communities. It instructs the state to work actively towards the welfare of these groups.²⁴ A significant judicial intervention in this context came with the *Indira Sawhney v. Union of India* case (commonly known as the Mandal case), where the Supreme Court ruled that reservations should not exceed 50% of available seats in educational institutions and government employment, striking a balance between social justice and merit.²⁵

This cap was later altered by the 103rd Constitutional Amendment in 2019, which introduced a 10% reservation for Economically Weaker Sections (EWS) irrespective of caste, thereby increasing the total reservation quota to 60%. The amendment aimed to support low-income individuals who did not benefit from the existing reservation framework. While some view this as a move toward greater equity, others argue that it undermines merit and shifts the focus from social disadvantage to economic status. The constitutional validity of this amendment is currently under judicial review by the Supreme Court.

In addition, Article 350(A) provides information on using the mother tongue in primary education. States and local authorities are encouraged to ensure that children from linguistic minority groups receive foundational education in their native language, thereby preserving linguistic diversity and cultural heritage.²⁶

Economic Safeguards

The Constitution outlines a specific framework for the administration and governance of tribal regions to protect their economic rights. Article 244 deals with the management of Scheduled Areas and Tribal Areas.²⁷ Two key constitutional provisions support this: the Fifth and Sixth Schedules.

The Fifth Schedule applies to most states in India (excluding the North-East) and provides for creating Tribal Advisory Councils (TACs). These councils, comprising tribal representatives, legislators, and experts, advise governors on matters concerning the welfare and advancement of Scheduled Tribes. State governors are also authorised to enact regulations for managing

²³ (1992) 1 SCC 558

²⁴ The Constitution of India, 1949, Art 46

²⁵ AIR 1993 SC 477

²⁶ The Constitution of India, 1949, Art 350(A)

²⁷ The Constitution of India, 1949, Art 244

Scheduled Areas, covering land ownership, forest use, and education.

The Sixth Schedule applies specifically to the tribal areas in Assam, Meghalaya, Tripura, and Mizoram. It allows for forming Autonomous District Councils (ADCs) with significant legislative, executive, and judicial powers. These councils are tasked with governance in tribal regions and can create land management, natural resources, and local education laws. They also oversee the implementation of development schemes tailored to the needs of tribal populations.

Both the Fifth and Sixth Schedules aim to provide autonomy and preserve the rights of tribal communities by involving them directly in decision-making and governance.

Article 275 further supports economic safeguards by allowing the central government to allocate funds to states in need, especially for the welfare of Scheduled Tribes and the development of Scheduled Areas.²⁸ Parliament is authorised to determine the amount and frequency of these grants drawn from the Consolidated Fund of India. These funds are crucial in improving the living conditions and administrative efficiency in tribal regions.

Political Safeguards

The political rights of Scheduled Tribes are secured through Articles 330 and 334 of the Constitution. Article 330 mandates reserving seats in the Lok Sabha (House of the People) for SCs and STs to ensure their representation in national decision-making. This reservation is intended to promote inclusivity and integrate these communities into the broader framework of national progress.²⁹

Article 334 initially limited the duration of these political reservations to ten years from the Constitution's inception. However, recognising the persistent inequalities and lack of representation, constitutional amendments have repeatedly extended this provision. It reflects the recognition that scheduled communities continue to face social and economic hardships and thus require political safeguards for an extended period.³⁰

²⁸ The Constitution of India, 1949, Art. 275

²⁹ The Constitution of India, 1949, Art. 330

³⁰ The Constitution of India, 1949, Art. 334

LEGAL FRAMEWORK FOR TRIBAL WELFARE IN INDIA

Forest Rights Act, 2006

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, often called the Forest Rights Act, is a significant piece of legislation in India's history. This Act officially acknowledges the rights of communities living in forests over traditionally occupied and managed land and resources. These communities have historically been crucial in the sustainable use and conservation of forests, and this law aims to restore equity by formally recognising their contributions and rights. This Act grants forest dwellers various crucial rights. These rights include the authority to inhabit and farm forest land, collect forest produce, regenerate, and safeguard community forests, and actively manage forest resources. The legislation also details a structured approach for validating and formalising these rights, along with methods for settling disputes regarding forest lands. The Act is essential in addressing the historical neglect and displacement faced by tribal and forest-dependent communities. It emphasises their vital role in ecological conservation and sustainable resource management. Although there are challenges in its implementation, the Act has made significant achievements. By 2021, more than 4 million hectares had been allocated as community forest land, with over 2 million land titles distributed to individual families and communities. Furthermore, the Act has empowered forest communities by increasing their involvement in local governance and resource planning. Section 3(1)(h) of the Act is vital as it permits the conversion of forest settlements, unsurveyed or historical habitations, and other traditional village locations—regardless of official acknowledgement—into revenue villages. This clause aids in legally incorporating these areas into administrative records, ensuring rights and security for residents across all forest zones.³¹

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was enacted to offer legal protection against crimes targeting the SC and ST communities. According to Articles 342(1)³² and 366(25)³³ of the Constitution, these communities are officially recognised as historically marginalised groups that need specific legal and social protections. This law aims to prevent and penalise crimes grounded in caste-based

³¹ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, § 3(1)(h)

³² The Constitution of India, Art 342(1)

³³ The Constitution of India, Art 366(25)

discrimination and to provide justice for victims from these groups. This legislation tackles systemic injustice by establishing dedicated legal and institutional frameworks. A notable provision is the establishment of special courts and exclusive special courts to hasten the resolution of cases involving atrocities against SCs and STs. These courts are intended to guarantee timely and effective justice. Moreover, the law mandates the appointment of special public prosecutors to represent the victims, further enhancing legal recourse. In addition to judicial provisions, the Act incorporates preventive measures such as obligatory reporting of crimes, training for public officials, and creating vigilance and monitoring committees to oversee the law's implementation. The legislation also includes provisions for the financial rehabilitation of victims, covering costs associated with legal proceedings, travel, and sustenance. Designated officials are tasked with enforcing the law and assisting affected individuals and communities. The Act is essential in protecting the dignity and rights of Scheduled Castes and Scheduled Tribes. It is a crucial legal tool to challenge caste-based oppression, providing preventive and corrective actions. Furthermore, it aims to safeguard the socio-economic, political, and democratic rights of these communities, especially in situations where violence or systemic exclusion threatens their welfare. By doing so, the Act contributes to broader initiatives to ensure justice, equality, and social integration for historically marginalised groups in India.

JUDICIAL INTERPRETATIONS ON INDIGENOUS RIGHTS

The judiciary in India has consistently stressed the necessity of protecting the rights of tribal communities, advocating for active measures aimed at their upliftment and safeguarding. Courts have underscored the need for effective enforcement of laws such as the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), and the Forest Rights Act, 2006, ensuring that these statutes are not transgressed.

A landmark judgment by the Supreme Court regarding the Orissa Mining Corporation and the Ministry of Environment and Forests represented a significant milestone in protecting tribal rights. This case dealt with the refusal of forest clearance for a proposed bauxite mining venture in the Niyamagiri Hills, an area populated by the Dongria Kondh and Kutia Kondh tribes. The Orissa Mining Corporation contested this refusal, but the Supreme Court decided that no mining operations could occur without the Gram Sabha's approval (village assembly).³⁴

³⁴ Orissa Mining Corporation Vs Ministry of Environment and Forest, (2013) 6 SCC 476

The Court asserted that the forest land held profound cultural and spiritual significance for the tribal communities, and their rights under the Forest Rights Act must be respected. The verdict mandated that the Gram Sabha take a leading role in evaluating the environmental and cultural implications, effectively granting decision-making authority to the tribal communities. This ruling strengthened economic, social, and cultural rights by acknowledging the value of traditional knowledge, spiritual customs, and land ownership for Indigenous populations. In another pivotal ruling, the Supreme Court determined in *Samantha v. State of Andhra Pradesh* that land situated in Scheduled Areas—regardless of whether it is forested, government-owned, or tribally held—could not be leased to private enterprises without the consent of local tribal communities.³⁵ This decision empowered tribal communities by providing them with enhanced control over their lands and a more significant role in determining matters related to their resources. Despite these judicial safeguards, there are still shortcomings in enforcement. In various cases, the rights of Indigenous groups have been overlooked. For instance, in the Mahan coal block of Madhya Pradesh, fraudulent documents were utilised to falsely claim that the Gram Sabha had sanctioned a mining project.

Furthermore, tribal communities throughout India continue to encounter substantial challenges in essential areas such as education, healthcare, and nutrition. For example, in Kerala's Attappady region, inadequate maternal health and malnutrition have led to elevated rates of infant mortality and miscarriages. Reports from national health agencies have shown that numerous tribal infants in this area are underweight and lack sufficient healthcare services. While India has made strides in securing legal rights for Scheduled Tribes since gaining independence, there remain considerable inequalities. The complete realisation of tribal rights—particularly concerning land ownership, self-governance, and genuine participation in governance—continues to be a work in progress.³⁶

ONGOING CHALLENGES FACED BY INDIGENOUS COMMUNITIES

Indigenous communities have experienced considerable hardship throughout their history. Despite some individuals' notable progress for their communities, a significant portion of the Indigenous population still encounters various challenges. They

³⁵ 1997 (8) SCC 191

³⁶ Dharm Dhaked, *Indigenous Rights & Legal Frameworks: A Comparative Study of International and Indian Perspectives*, Vol 5 Issue 1, IJIRL, 643-654 (2025) <https://ijirl.com/wp-content/uploads/2025/02/INDIGENOUS-RIGHTS-AND-LEGAL-FRAMEWORKS-A-COMPARATIVE-STUDY-OF-INTERNATIONAL-AND-INDIAN-PERSPECTIVES.pdf>

continue to deal with poor health outcomes, limited educational opportunities, shorter life expectancy, restricted job prospects, and geographic isolation in remote areas. Furthermore, negative societal perceptions continue to be a widespread issue.³⁷

Land Ownership Issues

The issue of land rights remains critically significant for Indigenous peoples today. Ancestral lands are integral to their cultural identity and provide a basis for their economic and social value within their communities. Legal recognition of land ownership is vital to restoring cultural ties and independence. However, asserting land claims is intricate, costly, and prolonged. Claimants must provide substantial evidence demonstrating their connection to the land, showing the ongoing practice of traditions, maintaining ties over generations, and illustrating cultural importance. This is especially challenging as numerous Indigenous cultures depend on oral traditions instead of written records. Additionally, land rights legislation differs by region, complicating the process further.³⁸

Impact of Remoteness

Although most Indigenous people live in rural towns or urban settings, a segment still resides in secluded locations. This remoteness significantly restricts their access to crucial services such as healthcare and education, and it also leads to a lack of employment opportunities, resulting in elevated joblessness rates.

Health Concerns

Indigenous populations experience severe health disparities and have the highest mortality rates. Health outcomes remain unsatisfactory even with the broader population's access to healthcare services. Factors like geographic isolation, distrust of healthcare systems, and societal bias contribute to this ongoing crisis. While progress has been made through establishing Indigenous-run healthcare services tailored to their specific needs, considerable work is still required. The government must persist in addressing these issues to enhance the health and well-being of Indigenous communities.

³⁷ Dr. Sunita Acharya, Rights of the Indigenous in India: Issues and Challenges, Vol 11 Issue 8, IJCRT, 101-110 (2023)
<https://ijcrt.org/papers/IJCRT2308331.pdf>

³⁸ Shreya Lal, Concept of Property Rights in Indigenous Communities and Tribal Areas, Legal Services India (16 June 2025, 10:10 A.M.)
<https://www.legalserviceindia.com/legal/article-21610-concept-of-property-rights-in-indigenous-communities-and-tribal-areas.html>

Education and Employment Challenges

Indigenous students consistently demonstrate the lowest school attendance, retention, and progression rates. Significant issues include regular absenteeism and a lack of engagement with formal education. Although initiatives providing financial support have been introduced, more efforts are necessary to highlight the importance of education within Indigenous communities. Distrust in the existing education system has also led to high unemployment rates. While numerous Indigenous individuals have moved to urban settings in search of job opportunities, those in remote areas continue to face limited employment options. There are government-funded employment programs available, but additional actions are needed. These include offering skill development, altering public perceptions, and encouraging community engagement to deter the normalisation of generational unemployment.

Social Perceptions

A significant obstacle still facing Indigenous communities is the persistence of negative societal attitudes. While there have been considerable efforts to educate the public about the historical and ongoing challenges faced by Indigenous peoples, discrimination and prejudice have not been completely eradicated. Reconciliation initiatives have been pivotal in fostering understanding, respecting Indigenous culture, and strengthening community relationships, but ongoing effort is crucial for enduring change.

CONCLUSION

At both the international and national strata, many legal instruments and frameworks have been instituted to safeguard indigenous communities' rights. These encompass constitutional provisions, legislative enactments, and an array of international conventions and declarations designed to ensure indigenous populations are afforded protection, empowerment, and equitable opportunities for flourishing. Notwithstanding this ostensible commitment articulated in legal texts, a substantial disparity persists between these legal guarantees and the realities encountered. This disjunction is manifest across numerous global regions, where indigenous groups continue to suffer from systemic neglect and widespread transgressions of their fundamental rights. In the Indian context, an exhaustive investigation conducted by the Asian Indigenous and Tribal Peoples Network elucidates the grave and multifaceted nature of these rights violations. Indigenous individuals and collectives in India are subjected to a spectrum of human rights infringements. These encompass, yet are not limited to, extrajudicial killings,

unlawful detentions, custodial torture, and imprisonments executed without adherence to proper legal protocols. Furthermore, they have been victimised by violence instigated by extremist factions such as Maoists, in addition to state security apparatuses.

Additionally, traditional power hierarchies such as caste panchayats or village councils have frequently played a role in perpetuating discriminatory practices, coercion, and violence against tribal populations. One of the most critical and recurrent challenges confronting indigenous communities is the systemic infringement of their rights concerning land and natural resources. Tribal territories are often appropriated under the pretext of national development, industrial growth, or infrastructure initiatives, typically without sufficient consultation or consent. This has resulted in the coerced displacement of innumerable families from their ancestral domains—spaces that are not merely physical but are intricately linked to their cultural identity, spiritual convictions, and means of subsistence. Displacement ruptures their connections to their natural environment, degrading their traditional lifestyles and undermining their capacity for self-sustainability. Moreover, the frameworks for the rehabilitation and resettlement of displaced indigenous populations are egregiously insufficient in India.

The inability to deliver timely and equitable rehabilitation has rendered many displaced individuals devoid of access to vital resources, adequate housing, or employment opportunities. This, consequently, constitutes a violation of their fundamental human rights, including the right to life, dignity, and means of livelihood. The apathy or, in certain instances, the direct complicity of state authorities further exacerbates the situation. Instead of fulfilling their responsibilities as guardians of citizens' rights within a democratic and welfare-oriented framework, governmental agencies have frequently actively participated in rights violations or remained inactive in the face of prevailing injustices. This paradox—wherein a government, constitutionally mandated to protect the interests of its most vulnerable citizens, becomes complicit in their oppression—highlights the urgent necessity for enhanced accountable governance, more robust implementation of protective laws, and a sincere commitment to justice for indigenous peoples.³⁹

³⁹ Dr. Aneesh V Pillai, Protection on Rights of Indigenous People: International and National Legal Perspective, ResearchGate (16 June 2025, 11:18 A.M.) https://www.researchgate.net/publication/340738667_PROTECTION_OF_RIGHTS_OF_INDIGENOUS_PEOPLE_INTERNATIONAL_AND_NATIONAL_LEGAL_PERSPECTIVE

The Indian Constitution and its laws recognise the distinct status of tribal communities. While sociologists and anthropologists continue to discuss the precise definition of a tribe, the Constitution emphasises the importance of providing special protections for these communities. The government must ensure that these protections are effectively implemented. A systematic approach is frequently utilised to evaluate the inclusion of tribal regions and populations in development planning. To comprehend the development of the concept of "tribe," one must examine its historical origins and how it has been influenced by various historical and political factors, especially during the colonial period in the Indian subcontinent. In ancient Rome, "tribe" refers to either an uncivilised society or a group engaged in reciprocal tribute and trade with the empire.

A similar notion was present during the Mughal period in India, where tribes maintained a unique yet dependent relationship with the ruling authority. Another early definition of the term pertained to communities connected by a common ancestry. Indigenous populations are the original stewards of the land, and their extensive environmental knowledge should be treasured and preserved rather than detached from their ancestral lands. To facilitate their full integration into a fast-modernising country, supporting their cultural identity and enhancing their sense of belonging is vital. Nevertheless, numerous obstacles impede self-governing bodies' effective and fair functioning in areas governed by the Sixth Schedule. Moreover, it is crucial for any initiatives taken by the governor for the benefit of tribal communities to be recorded in the governor's annual report to the president. The Sixth Schedule provides extensive provisions for autonomy and self-governance. Yet, many tribal groups that remain officially unrecognised are advocating for acknowledgement and the elimination of social prejudice and discrimination. Additionally, the rising engagement of tribal individuals with the criminal justice system in recent years has become a noteworthy concern.⁴⁰

The connection between development and human rights is profound, and both cannot operate efficiently if considered separately. Advancements in development facilitate the realisation of human rights, while safeguarding these rights creates opportunities for both individual and collective progress. Genuine development encompasses economic growth and the progressive

⁴⁰ Dr. Vinod Kumar Bogaria, The rights of indigenous peoples: constitutional and legal provisions for their protection and development, Vol 9 Issue 3, IJL, 46-51 (2023)
<https://www.lawjournals.org/assets/archives/2023/vol9issue3/9084-1686301807939.pdf>

attainment of all human rights. To empower indigenous communities, it is crucial to implement a people-centred and integrated strategy. These communities must have the necessary tools and opportunities to pursue their developmental objectives. This approach addresses entrenched issues such as inequality, exclusion, and disproportionate power dynamics that impede advancement. Additionally, it fosters greater transparency and accountability within governance. India must rethink and expand its development concept to ensure it is inclusive, sustainable, and comprehensive. Temporary or reactionary solutions are insufficient; meaningful structural change necessitates ongoing and well-thought-out reforms that focus on the challenges faced by tribal populations.

A significant hurdle has been the lack of institutional frameworks and a coherent implementation strategy. Since gaining independence, the Indian state has frequently struggled to establish a dependable and trustworthy relationship with its indigenous populations. To progress effectively, the nation must emphasise transformative policies that ensure equal access to healthcare, education, financial services, and digital technologies. Securing these rights for all individuals will promote true inclusion. Foundational principles such as unity, interdependence, and collective strength should steer this process. The government must continually strive to build trust with its citizens, particularly those from marginalised backgrounds. These guiding values can shield communities from adversity and enhance the design of more effective policies. As Verrier Elwin advocated, tribal communities should be free to develop and advance in ways that reflect their distinct identities while ensuring their rights are upheld.⁴¹ Future research should explore the lasting impacts of constitutional acknowledgement on Indigenous populations' welfare, cultural preservation, and political empowerment. It is crucial to carry out comparative studies that emphasise Indigenous women's distinct experiences and hurdles. Additionally, it is necessary to examine innovative approaches to implement and enforce Indigenous rights effectively. These approaches may involve community-driven monitoring systems and restorative justice practices that resonate with Indigenous values and governance.⁴²

⁴¹ Apoorva A, Indigenous Communities: Human Rights and Right to Development Exploring the Indian Context, Vol 3 Issue 2, EJSSS, 289-313 (2023) https://ejsss.net.in/uploads/172/14311_pdf.pdf

⁴² B James Jaya Raj, Indigenous Rights & Constitutional Recognition: A Comparative Analysis, Vol 8 Issue 2, IJLMH, 822-834 (2025) <https://ijlmh.com/wp-content/uploads/Indigenous-Rights-and-Constitutional-Recognition.pdf>

SUGGESTIONS

Several essential measures are proposed to advance the process of significant and impactful constitutional recognition. Governments and policymakers should engage in genuine and ongoing dialogue with Indigenous communities throughout the reform process. This means hearing Indigenous perspectives and ensuring that these viewpoints directly shape the ultimate constitutional results. Furthermore, resources should be allocated to institutions and frameworks that support the realisation and enforcement of Indigenous rights.

Indigenous communities are urged to continue asserting their rights and striving for self-determination. This can be accomplished through ongoing political activism, strategic legal actions, and reinforcing cultural identity and practices. Establishing alliances with broader social movements and civil society groups can also help elevate Indigenous voices and increase collective power.

For all stakeholders, including citizens, institutions, and leaders, creating an atmosphere of mutual respect, understanding, and reconciliation is vital. The journey toward constitutional recognition should be viewed not as a competition of conflicting interests but as a joint effort to foster a fairer and more inclusive society for all.