

# Tribal Protection Laws: A Comparative Analysis of National and International Perspectives

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## ABSTRACT

This paper examines the plight of tribal communities, who possess unique customs, cultures, and lifestyles distinct from non-tribal populations. Despite numerous laws and constitutional provisions intended to uplift these communities, they continue to suffer from marginalization, deprivation, and oppression. The relentless pursuit of progress, modernization, globalization, and industrialization often disregards the profound impact on the lives of these marginalized individuals who are the original inhabitants of their countries. Although there exist a plethora of constitutional provisions and laws aimed at safeguarding the welfare, interests, and rights of tribal communities, they largely remain confined to paper and are limited to competitive examination answers. In practice, the majority of tribals are unaware of their rights, some even oblivious to the existence of laws specifically designed for their protection. This research paper explores both international and national measures implemented to protect tribal rights. Its primary objective is to assess the effectiveness of these laws in securing the rights of tribal communities and, if ineffective, to identify the underlying reasons and causes. Furthermore, the paper presents findings, suggestions, and recommendations to facilitate the proper implementation of these laws, ensuring the protection of tribal rights and the preservation of their unique cultures and traditions in their authentic form.

## Introduction

Despite the existence of numerous laws aimed at fostering their development, tribals continue to be marginalized, deprived, and oppressed. The relentless drive for progress, modernization, globalization, and industrialization often fails to consider the adverse impact on the most marginalized segment of society—the tribal population, who are

the original settlers and inhabitants of their countries. Although a substantial number of constitutional provisions and laws exist to safeguard the welfare, interests, and rights of tribals, their practical implementation remains limited, primarily confined to the context of competitive examinations. In reality, most tribals are unaware of their rights, with some lacking knowledge of the laws designed specifically for their protection. This paper explores inter-

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national and national measures established to safeguard tribal rights, with a primary focus on assessing their effectiveness. It also investigates the reasons behind the shortcomings of these laws and offers suggestions and recommendations to enhance their implementation, thereby ensuring the preservation of tribal rights, cultures, and traditions in their truest form.

As per the jurisprudential point of view, rights and duties of every individual in a State can only be protected and enforced by law, which in short is termed as the "administration of justice", i.e., enforcement of rights as per law.

According to Austin<sup>1</sup>, "Law is the command of the Sovereign"; more broadly "Law is the aggregate of the rule set by men as politically superior, or sovereign, to men as politically subject". So, laws are that weapon in the hands of the State, which are being made just for peaceful administration over the country. In a country like India, the expansion of self-governance, the growth of the gaming industry, and the increasing interdependence of Indian and non-Indian Communities have intensified concern about the possible abuse of power by the tribal governments.<sup>2</sup>As tribes gain greater political and economic clout on the world stage, expectations have risen regarding the need for greater Government accountability in Indian Country.<sup>3</sup>

## International Measures

### (I) The most important international laws that secure the tribal people's rights are the

ILO Conventions. There are two Conventions adopted by the ILO for the indigenous and tribals viz:

#### *Convention 107 of 1957*

This Convention has been ratified by twenty seven countries till now including India, Pakistan and Bangladesh, and it applies to the members of tribals, semi-tribals and indigenous peoples. It is basically individual oriented but collective orientation is also found as a secondary by product. It mainly speaks of and works to improve the living and working conditions of "these populations" by simultaneous action in respect of all factors which have

<sup>1</sup>John Austin (1790-1859), the founder of the Analytical School of Jurisprudence and considered as the "Father of English jurisprudence".

<sup>2</sup>Single, T. Wenona., "Indian tribes and Human Rights Accountability", p-3. Retrieved from <http://digitalcommons.law.msu.edu/facpubs> on August 5, 2013

<sup>4</sup>Katherine J. Florey, "Indian Country's Borders: Territoriality, Immunity, and the construction of Tribal sovereignty", 51 B.C.I. REV. 595, 598, 621 (2010). P-3. Retrieved from <http://digitalcommons.law.msu.edu/facpubs> on August 5, 2013

hitherto prevented them from sharing fully in the progress of national community of which they form part.<sup>4</sup>

#### *(b) Convention 169 of 1989*

Till date, this Convention has been ratified by twenty two countries, which does not include India. Presently, all over the world, the lands of the tribal people's are stolen and the only international law that can secure their land rights is this Convention. It recognises and protects tribal people's land ownership rights and sets a series of minimum UN standards regarding consultation and consent.<sup>5</sup> It protects their rights to-

- i. Own the land they live on and use,
- ii. Make decisions about projects that affect them and
- iii. Equality and freedom. Part II of the Convention deals with the provisions of land rights, among which Articles 14, 15, 16, 17, and 20 are very much significant.

### (II) UNWGIP Draft Declaration of Indigenous Peoples

The United Nations Working Group on Indigenous Populations, a subsidiary body of UN, was established in the year 1982. The important mandates of this wing are to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of Indigenous Peoples, to give attention to the evolution of international standards concerning individual rights, to draft a Universal Declaration on Indigenous rights.<sup>6</sup>

Articles 4, 19 & 20 of this Declaration states that Indigenous Peoples have the rights to participate fully in the political, economic, social and cultural life of the State in the decision-making process of the State and in devising legislative or administrative measures of the State if they so choose. This was the principal UN group, concerned with the Indigenous Peoples rights until the Permanent forum on Indigenous issues was established in 2000 and started working in May, 2002.

<sup>4</sup>Convention C107 - Indigenous and Tribal Populations Convention, 1957 (No. 107), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100\\_ILO\\_CODE:C107](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C107) (last visited May 15, 2023).

<sup>5</sup>Andrea Porciello, *Robert Alexy's Ideal Dimension of Law: Descriptive Theory of the Constitutional Legal system or Normative Theory of the Concept of Law?*, 103 ARCH. FÜR RECHTS- SOZIALPHILOSOPHIE 483 (2017).

<sup>6</sup>United Nations Declaration on the Rights of Indigenous Peoples | Division for Inclusive Social Development (DISD), <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples> (last visited May 15, 2023).

### ***(III) Some Federal Tribal Consultation Statutes, Orders, Regulations,***

Rules, Policies, Manuals etc. prepared by White House – Indian Affairs

Executive Working Group (WH – IAEWG), Consultation and Coordination Advisory Group (CACAG): It contains those federal Tribal consultation statutes, orders, regulations, policies, manuals, and protocols that specify procedures as to how Departments, agencies and bureaus are to carry out consultation. It also includes many of the laws, orders, and regulations and policies requiring that government to government relationships with tribes be carried out. However, it does not purport to be comprehensive or all encompassing. Some of them are: American Indian Religious Freedom Act (AIRFA), Archeological Resource Protection Act, 1979 (ARPA), National Historic Preservation Act (NHPA), Native American Graves Protection and Repatriation Act (NAGPRA) etc.

### ***(IV) Task force on Indigenous Women:***

This was established by the Inter Agency Network on Women and Equality<sup>7</sup> and the Permanent Forum on Indigenous Affairs on 11th June 2004.<sup>8</sup>

### ***(V) World Intellectual Property Organisation (WIPO):***

WIPO recently concluded a Round table on Intellectual Property and Indigenous peoples, which represents a change from its earlier rejection of any claims to legitimacy from Indigenous peoples against the Intellectual Property rights regime.<sup>9</sup>

### ***(VI) The World Bank:***

This Bank has issued a revision of its Indigenous people's policy OD 4.20,<sup>10</sup> the revised

Draft Operational Policy on Indigenous peoples.<sup>11</sup>

<sup>7</sup>Task Force on Indigenous Women, <https://www.un.org/womenwatch/ianwge/taskforces/tfIndigenousWomen2005.htm> (last visited May 15, 2023).

<sup>8</sup>ibid.

<sup>9</sup>Roy Burman.B.K(2003); "Indigenous and Tribal peoples in world system perspective"; Retrieved from [www.krepublishers.com](http://www.krepublishers.com) on May 8, 2013.

<sup>10</sup>World Bank Group - International Development, Poverty, & Sustainability, WORLD BANK, <https://www.worldbank.org/en/home> (last visited May 15, 2023).

<sup>11</sup>Roy Burman.B.K(2003); "Indigenous and Tribal peoples in world system perspective"; p-16. Retrieved from [www.krepublishers.com](http://www.krepublishers.com) on August 5,2013

### ***(VII) The Economic and Social Council (ECOSOC):***

Several organs of the United Nations which are concerned with human rights are under the control of the ECOSOC. The Commission on Human Rights of the ECOSOC was an important organ in the UN Human Rights system. This Commission had supervision of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which has several ad-hoc Working Groups like the Working Group of Experts on South Africa, the Working Group of Experts to investigate Israeli practices affecting human rights of the population of the occupied territories and the Working Group of Experts on Chile.

### ***(VIII) The Human Rights Council:***

The UN Human Rights Council which was previously known by Commission on Human Rights on 3rd April, 2006, and at its first session in June 2006, it adopted the Draft Declaration on the Human Rights of Indigenous peoples and recommended it to the General Assembly for adoption.<sup>12</sup>

### ***(IX) Permanent Forum on Indigenous Issues:***

This was established by ECOSOC on 28th July, 2000 and its first session was held from 13th to 24th May, 2002. Its functions cover economic and social development, culture, the environment, education, health and human rights as they apply to Indigenous peoples.<sup>13,14</sup>

### ***(X) The Working Group established in accordance with Commission on***

#### **HR resolution 1995/32 of 3rd March 1995:**

The Commission on Human Rights established the the Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3rd March 1995, which is also known as the Working Group of the Commission on the Draft Declaration.

<sup>12</sup>Welcome to the Human Rights Council, OHCHR, <https://www.ohchr.org/en/hr-bodies/hrc/about-council> (last visited May 15, 2023).

<sup>13</sup>Economic and Social Council | United Nations, <https://www.un.org/en/model-united-nations/economic-and-social-council> (last visited May 15, 2023).

<sup>14</sup>Permanent Forum on Indigenous Issues | United Nations For Indigenous Peoples, <https://www.un.org/development/desa/indigenouspeoples/about-us/permanent-forum-on-indigenous-issues.html> (last visited May 15, 2023).

## National Measures

Let's now throw some light on the national provisions, laws, measures that have been taken for the tribals of India.

### (I) *The Constitution of India:*

The Preamble of the Indian Constitution itself reflects the concerns of the Constituent members of the Constitution for protecting and promoting the interests of the deprived classes, which speaks to constitute India into a Sovereign, Socialist, Secular, Democratic and Republic and to secure to all its citizens Justice, Liberty, equality and fraternity. The provisions of the Constitution of India, laid emphasis on two aspects viz: protective and development. It also permits to change the legislations, as situations of the respective tribes, in a particular area demands.<sup>15</sup>

Relevant provisions are as follows:

#### (A) Fundamental Rights:

##### (a) Right to equality

##### (1) ARTICLE 14: right to equality

(2) **ARTICLE 15:** Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

##### (4) **ARTICLE 17:** Abolition of Untouchability

17. "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

(1) **ARTICLE 19:** Protection of certain rights regarding Freedom of Speech, etc.

##### **ARTICLE 21A:** Right to education

21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

This provision was inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, s. 2(w.e.f. 1-4-2010) in the Constitution of India.

**ARTICLE 23:** Prohibition of traffic in human beings and forced labour

(1) **ARTICLE 25:** Freedom of Conscience and Profession, practice and propagation of religion.

<sup>15</sup>Constitution of India | Legislative Department | India, <https://legislative.gov.in/constitution-of-india/> (last visited May 15, 2023).

(2) **ARTICLE 26:** Freedom to manage religious affairs  
26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—The tribals are enjoying this right without any fear as well as managing their religious affairs as per their will.

**ARTICLE 29:** Protection of Interests of minorities.<sup>13</sup>

**Article 31**, which was repealed by the Constitution (Fourth Amendment) Act, 1978, Articles 31A and 31B.

### (B) **Directive Principles of the State Policies:**

The Policies starting from articles 36 to 51 provides provisions for safeguarding the interests of the tribals among which article 46 is of special importance, which speaks for the promotion of educational and economic interests of Scheduled Castes and scheduled tribes and other weaker sections. It states that "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation".

### (C) **Other Provisions:**

Articles 164 (Other Provisions as to Ministers), 330 (Reservation of seats for SCs and STs in the House of the People), 332 (Reservation of seats for SCs and STs in the Legislative Assemblies of the States), 334 (Reservation of seats and special representation to cease after Sixty years), 335 (claims of SCs and STs to services and posts), 338A (National Commission for SCs and STs), 339 (control of the union over the administration of Scheduled areas and the welfare of the STs), 342 (which is a specific provision for Scheduled Tribes), 366(25) (definition of Scheduled Tribes), are some of the provisions which deal with the rights of the Scheduled Tribes. Articles 371A, 371B and 371C provide some special provisions for the tribal areas and hill areas of Nagaland, Assam and Manipur respectively. With all this Articles 32 and 226 of the Indian Constitution which speaks for the Constitutional remedies are also applicable for the tribals if any of their Fundamental rights are infringed. (D) Fifth and the Sixth Schedule: In the Constitution of India, some special provisions for tribals have been made, keeping in mind about their administration which is incorporated in the Fifth and Sixth Schedule.

Articles 244 and 244A of Part X of the Constitution of India speak for the administration of Scheduled areas and tribal areas. Fifth Schedule deals with "Scheduled Areas" and Sixth Schedule deals with "Tribal Areas".

## **(II) Others Legislations, rules, orders.**

Apart from the constitution of India, there are some other legislations which deals with the protection of the tribal rights that are mentioned as follows:

### **(a) Forests Laws**

The first Act for the regulation of forest was passed in 1865.<sup>16</sup> It empowered the government to declare any land covered with trees or brushwood as government forest and to make rules to manage them. The Act was applicable only to the forests in Control of the government and did not cover Private Forest. According to the Indian Forest Act, 1927, the Government can constitute any forest land or waste land which is the property of Government or over which the Government has proprietary rights, a reserved Forest, by issuing a notification to this effect. After the enforcement of the Indian Forest Act in 1927, the government declared all lands not claimed by Private individuals and agencies as forest lands and classified them into Reserve, Protected and village Forest. The first legislation asserting the state monopoly right over forests came in the year 1865 followed by 1878 Act and subsequently culminated with the Act of 1927. The Forest (Conservation) Act, 1980, is another legislation which was considered as a remarkable milestone for conservation of forests and their rights. During this period also the first ever statement on forest policy was issued in the year 1894 further consolidating their position over forests. Different Forest policies in the year 1894, 1952, and 1988 came with many provisions for the tribals.

Huge conflicts are there regarding the Forests laws and the laws which protect the rights of the Tribals. They can be discussed under two heads: -<sup>19</sup>

1. Constitutional Rights of the tribals versus wildlife and forest laws.
2. Tribal laws versus wildlife and forest laws.

Let us consider them one by one: -

#### **(1) Constitutional Rights of the tribals versus wildlife and forest laws: (A) Rights of the tribal people versus Right to Equality:**

Section 65 of the Wildlife (Protection), 1972 Act states that rights of Scheduled Tribes have to be protected and nothing in this Act shall affect the hunting rights conferred on the Scheduled Tribes of the Andaman and Nicobar Islands in the Union Territory of Andaman and Nicobar Islands.

But these rights are not conferred on the tribes other than that of the Andaman and Nicobar Islands. Article 14 of the Indian Constitution confers right to equality and equal protection of law to all persons.

Section 65 of the Wildlife (Protection) Act, contradicts Article 14 of the Indian Constitution because it discriminates between the tribal of Andaman and Nicobar Islands and the tribes living in other parts of India.

#### **(B) Right to livelihood versus Prohibition on Livestock Collection**

In the case of Board of Trustee of the Port of Bombay v/s Dilip Kumar R. Nandkarni, Hon'ble Supreme Court held that Right to livelihood is included in the Right to life because no person can live without the means of living, i.e., the means of livelihood as is held in Olga Tellis v/s Bombay Municipal Corporation<sup>21</sup>. In the case of Ramsharan Autyanuprasi v/s U.O.I 22, the Supreme Court observed that life includes all that give meaning to a man's life including his traditions, culture, heritage and protection of that heritage in its full measure. The above provisions of the said Act express absolute prohibition and restriction on rights of the Scheduled Tribes. After declaration of certain area as Protected area, the inhabitants of that area, who are mostly people belonging to Scheduled Tribes are displaced from their native places. They have to go undergo numberless problems with respect to their habitation and living. They are actually deprived of their property rights. The question of the deprivation of their property rights leading to deprivation of life or liberty or livelihood falls within the reach of Article 21. But the bare reality is that no employment has been given to any family member of the displaced tribes men. Hence one can construe that the enforcement of Wildlife (Protection) Act, in as much as it relates to the acquisition of displaced persons, is violative of Article 21 of the Constitution. Thus section 35 infringes the right to livelihood of the tribes which is their fundamental right. (C) Free movement versus restriction on entry in the protected areas.

Article 19 (1) (d) of the Constitution states that all citizens shall have the right to move freely throughout the territory of India; and more over Article 19 (5) states that nothing in sub – clause (d) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing reasonable restrictions on the exercise of any of the rights conferred by the said clause either in the interests of the general public or for the protection of the interests of any Scheduled tribes. Sections 27 & 35 of the Wildlife (protection) Act has put restriction on entry in Sanctuary and National parks with a few exceptions.

<sup>16</sup>Indian Forest Act, 1927, <https://www.drishtiias.com/to-the-points/Paper2/indian-forest-act-1927> (last visited May 15, 2023).

This includes restrictions of the Scheduled tribes also to enter into such areas. (D) Freedom to reside and settle versus restriction on entry in sanctuaries and National Parks: The restriction on entry in sanctuaries and National parks, according to section 27 & 35 of the Wildlife (Protection) Act, is violative of the provisions of Article 19(e) of the Indian Constitution which states that all citizens shall have the right to reside and settle in any part of the territory of India. Because here again the restrictive clause i.e. 19 (5) talks of such restriction to be imposed for the protection of the interests of any Scheduled tribe, but contrary to this section 27 & 31 of the Wildlife (Protection) Act violates the interests of the Scheduled tribe.

**(E) Cultural rights versus relocation:**

The term “any section” in Article 29 rightly includes Scheduled tribe and that they too have the right to conserve their language, script and culture. Now, under the Wildlife (Protection) Act, the land is acquired according to the provision of Land Acquisition 1894. The inhabitants affected by the land acquisition include the Scheduled tribe, which are in majority. They are relocated to some place other than the protected areas, many a times the environment of the areas where they are relocated is different from their native place. For which, it becomes difficult for the tribesmen to maintain their cultural activities. No help is provided by the Government to them so as to make them able to preserve and maintain their culture. In simple words, it can be said that the Wildlife (Protection) Act, here violates the cultural rights of Scheduled tribes as provided in Article 29 (1) of the Constitution.

**(F) Promotion of Economic and Educational Interest versus Restriction on Development:**

Article 46 of the Constitution provides for the promotion of the educational and economic interests of the weaker section of the people specially the Scheduled casts and Scheduled tribes.<sup>17</sup> Tribal economy depends primarily on agricultural produce and livestock collection from the forest. When certain areas are declared as protected areas under sections 18, 35, 36 A and 36 C of the Wildlife (Protection) Act, the people most of whom are the Scheduled tribes, are relocated. This relocation is generally accomplished in areas which are adjacent to the protected areas. Here against the developmental activities are subject to certain prohibitive conditions. The poor tribesman, with no other option accept relocation in these areas, therefore, once again, due to want of development, the educational and economic interest of the Scheduled tribes gets hampered.

<sup>17</sup>Constitutional Provision | Government of India, Ministry of Education, [https://www.education.gov.in/directive\\_principles\\_of\\_state\\_policy\\_article-46](https://www.education.gov.in/directive_principles_of_state_policy_article-46) (last visited May 15, 2023).

**(G) Wildlife (Protection) Act Versus National Commission For Scheduled Tribes And Scheduled Castes:**

Article 338 of the Constitution of India has declared a National Commission to investigate and monitor all matters relating to the safeguard provided for the Scheduled tribes. An examination of the living conditions of the Scheduled tribes and the impact of the enforcement of various laws pertaining to forest areas on them provides evidence to statement that despite 56 years of freedom of India, Article 338 of the Constitution could not produce the desired result. Various laws were enacted by the Union and different state Governments of the country, which did hamper the welfare prospects of the Scheduled tribes as envisaged by Article 338 of the Constitution. Little action has been taken by the National Commission or report submitted, with respect to the problems faced by the Scheduled tribes when the tribesman is dislocated due to the declaration of certain forest areas as protected areas, may be under the Wildlife (Protection) Act or The Indian Forest Act.<sup>18</sup>

**(2) Tribal laws versus wildlife and forest Laws:**

Now let us discover the conflict between the laws which protect the rights of the tribes and the wild life Laws.

**(A) Intellectual property Rights of the Tribes versus Protected Areas:**

In India, aboriginal people have numerous concepts in their minds, which can be protected as their intellectual Property. One of the most appreciable rights of the tribesman is Naturopathy (Ayurved). It can only be protected when the tribes men free access to forests ill continue. Now, with the declaration of National parks and Sanctuaries most of the Forest areas has been covered under them and restrictions have been imposed on people including the tribesmen to enter into these areas. Thus by the declaration of protected areas the Government encroaches upon the intellectual property rights of the tribes.

**(B) Customary Easements versus Land Acquisition:**

As we know that the tribesman used to reside in the protected area before the declaration of those areas as protected area. They are entitled for customary easements by virtue of being the residents of those areas. The Land, now declared as Protected area is government land. It has been used as the dominant heritage by the tribes men from times immemorial. These easements were in the form of grazing their cattles, collection of livestock etc. But after the declaration of these areas as National Park and Sanctuaries under the Wild Life (Protection) Act, these activities have

<sup>18</sup>National Commission for Scheduled Tribes on the Forest Conservation Rules of 2022, <https://www.sanskritias.com/current-affairs/nation-al-commission-for-scheduled-tribes-on-the-forest-conservation-rules-of-2022> (last visited May 15, 2023).

been restricted and prohibited. Thus section 35 of wild life (protection) Act and the Indian Easements Act lay stress on two different things at the same time resulting into conflicting provisions.

**(C) The Panchayats (Extension to Scheduled Areas) Act, 1996 versus Wildlife (Protection) Act:**

The Panchayat Act, 1996 empowers the Gram Sabha and Panchayat to prevent alienation of land in the Scheduled areas and to take appropriate action to restore any unlawful alienated land of Scheduled Tribes. It also provides that the Gram Sabha or Panchayat Shall be consulted before acquiring land in the Scheduled areas for various public purpose.<sup>19</sup>

The Wild Life (Protection) Act has mentioned that land can be acquired for protected areas as per the Land Acquisition Act but the incorporation of Powers of Gram Sabha and Panchayat has not been mentioned there. Recently the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was passed by the Parliament, which is a very intellectual and positive output of the government. The assent of the President has been received on 29.12.2006. The Ministry of Law & Justice (Legislative Department) has published the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 in the Gazette of India, Extraordinary, Part-II. Section-I on 2.1.2007 [No. 2 of 1007] which aims to compensate the “historical injustice” done to forest dwelling tribes that were denied their traditional rights to forest lands and resources in the last couple of hundred years. In this period, the lands they had been dwelling on were declared “Forest land” or “Protected areas” for wildlife. The traditional conservation, ethos and dependence of tribal societies on forest land were overlooked. The Act aims to reverse the alienation of tribes from their own habitat caused by past policies and laws

**(b) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act No. 33 of 1989)**

This Act was enacted to Prevent the Commission of offences of atrocities against the members of the SCs and the STs, Provide for special courts for the trial of such offences and for the relief and rehabilitation of the

victims of such offences and for other matters connected with.<sup>20</sup>

**(c) The Panchayats (Extension to Scheduled Areas) Act, 1996 (Commonly known as PESA)**

1. It has extended the provisions of Part IX of the Indian Constitution relating to Panchayati Raj to Scheduled Areas of the country with necessary exceptions and modifications.
2. One of the demarcating features of PESA is its suggestion that, “every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution”. It empowers the Gram Sabha’s at the hamlet (or groups of hamlet) level as opposed to at the level of the unwieldy Gram Panchayat.

**(d) The Protection of Civil Rights Act, 1955 (Act No. 22 of 1955)**

This Act was formerly known as Untouchability (Offences) Act. This was enacted to prescribe punishment for the preaching and practice of „untouchability“ for the enforcement of any disability arising there from and for any other connected matters.

**(e) The Constitution (Scheduled Tribes) Order, 1950**

Part XVI of the Schedule to this Order, enlists 40 tribes of India as STs of West Bengal. This order provides a detailed list of tribals all over the States of India as Scheduled Tribes. Order 2 of this provides that “the tribes of tribal communities, or parts of, or groups within, tribes or tribal communities, specified in [parts I to XXII] of the Schedule to this Order shall, in relation to the States to which those parts respectively relate, be deemed to be STs so far as regards members thereof residents in the localities specified in relation to them respectively in those parts of that Schedule.”

**(f) The Scheduled Castes and the Scheduled Tribes (POA) Rules, 1995 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forests Rights) Rules, 2008.**

<sup>19</sup>3) The Forest Rights Act (2006) and the Panchayats (Extension to Scheduled Areas) Act (1996) have established a framework for local self-governance in demarcated (or “scheduled”) areas, yet their full implementation is fraught with many challenges. Critically analyse these challenges and suggest ways to overcome them. - INSIGHTSIAS, <https://www.insightsonindia.com/2016/02/04/3-forest-rights-act-2006-panchayats-extension-scheduled-areas-act-1996-established-framework-local-self-governance-demarcated-scheduled-areas/> (last visited May 15, 2023).

<sup>20</sup>Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, AN ACT TO PREVENT THE COMMISSION OF OFFENCES OF ATROCITIES AGAINST THE MEMBERS OF THE SCHEDULED CASTES AND THE SCHEDULED TRIBES, TO PROVIDE FOR SPECIAL COURTS AND THE EXCLUSIVE SPECIAL COURTS FOR THE TRIAL OF SUCH OFFENCES AND FOR THE RELIEF AND REHABILITATION OF THE VICTIMS OF SUCH OFFENCES AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO. (1989), <http://indiacode.nic.in/handle/123456789/1920> (last visited May 15, 2023).

## (IV) Role of National Commission for Scheduled Tribes (NCST)

The National Commission for Scheduled Tribes (NCST), a statutory body was established by amending Article 338 and inserting a new Article 338A in the Constitution of India through the Constitution (89th Amendment) Act, 2003.<sup>21</sup> By this amendment, the erstwhile National Commission for Scheduled Castes and Scheduled Tribes was replaced by two separate Commissions namely - (i) the National Commission for Scheduled Castes (NCSC), and (ii) the National Commission for Scheduled Tribes (NCST) with effect from 19th February, 2004. The Commission would also discharge the following other functions in relation to the protection, welfare and development & advancement of the Scheduled Tribes, namely: -

- i. Measures that need to be taken over conferring ownership rights in respect of minor forest produce to the Scheduled Tribes living in forest areas.
- ii. Measures to be taken to safeguard rights to the Tribal Communities over mineral resources, water resources etc. as per law.
- iii. Measures to be taken for the development of tribals and to work for move viable livelihood strategies.
- iv. Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects.
- v. Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place.
- vi. Measures to be taken to elicit maximum cooperation and involvement of Tribal Communities for protecting forests and undertaking social afforestation.
- vii. Measures to be taken to ensure full implementation of the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996.
- viii. Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by Tribals that lead to their continuous disempowerment and degradation of land and the environment, and etc.

Recently the explanatory Memorandum on the Special Report of the National Commission for the STs, 2012, by the Ministry of Tribal Affairs, Government of India, laid in the Table of the Rajya Sabha on 12th of December, 2013 and on Lok Sabha on 13th December, 2013, make some recommendations to the Government for considering the need for amendments of Schedule V and VI to provide a comprehensive Charter for tribal communities incorporating the best practices enumerated in the ILO Convention (s).

<sup>21</sup>Functions of the Commission | National Commission for Scheduled Tribes, <https://ncst.nic.in/content/functions-commission> (last visited May 15, 2023).

## Conclusion

The process of modernization is gradually encroaching upon the lives of tribal communities, and this transformation can potentially pose risks to their culture and traditions. It is crucial to acknowledge that any forceful attempts to assimilate tribes into mainstream society may undermine their longstanding traditions, which define their identity. While development is an inherent aspect of human progress, it should not come at the expense of jeopardizing the cultural heritage of tribal communities. Preserving their culture becomes imperative because, at their core, tribals are the "adivasis," the original inhabitants.

## Findings

1. Ignorance of their rights.
2. Silent administration.
3. Unhygienic living conditions.
4. Poor environmental sanitation and insanitary habits.
5. Lack of education.
6. Poor development

## Recommendations

1. Mass awareness programmes should be conducted by the Governments, NGOs sponsored by Government, local authorities regarding tribal rights.
2. Education, sanitation, health and giving work to live a dignified life should be given priority in real sense.

After going through the implementation scenario of the laws, schemes, notifications, etc., for the tribals, in the state, it may be said that now a day's Government is trying to look into the problems of the tribals, especially in the Maoists affected regions so that the tribal peoples may get the basic needs for leading their life in a good way. There is slow pace of implementation of the legislations but still a process has begun to pave way of light in the dark life of the so called adivasis of our own state

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- 3) The Forest Rights Act (2006) and the Panchayats (Extension to Scheduled Areas) Act (1996) have established a framework for local self-governance in demarcated (or "scheduled") areas,



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