



Tribals' Rights as Human Rights: Challenges and Legal Perspectives – National and International Context

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ARTICLE DETAILS	ABSTRACT
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Keywords :	
Tribal Rights, International Law, Human Rights, Indian Constitution, Legal Framework, Judiciary,	<i>Tribal communities in India represent a significant portion of the nation's cultural and social diversity. Recognizing tribal rights as human rights is essential to ensuring their dignity, equality, and development. Despite constitutional provisions and protective laws, these communities continue to face systemic marginalization, displacement, socio-economic exclusion, and inadequate access to justice. This paper explores the legal framework safeguarding tribal rights in India, including Constitutional mandates under Schedules V and VI, and relevant domestic legislation. It also analyzes the judiciary's role in interpreting and enforcing these rights. However, challenges such as ineffective implementation, lack of awareness, and conflicting development policies persist. By examining national and international human rights standards, this study highlights the urgent need for stronger legal mechanisms, participatory governance, and inclusive</i>



development models that align with human rights principles. The paper calls for a rights-based approach to tribal welfare that not only protects but empowers these communities within India's democratic and legal framework.

Introduction

In recent times, the rights of tribal people recognized as an integral part of the broader framework of human rights have gained increasing attention. Like all human beings, those residing in tribal areas are entitled to the same fundamental rights and freedoms. As citizens of the country, they are also granted specific legal protections and privileges. However, throughout history, tribal communities have consistently experienced violations of their basic rights. In today's society, the State has made some efforts to address and mitigate these injustices.

Growing awareness of human rights supported by international organizations such as the United Nations, global media, and non-governmental organizations (NGOs) has contributed significantly to raising concerns about the plight of tribal populations. Human rights refer to those essential conditions and freedoms that are inherent to every individual by virtue of being human. These rights enable individuals to fully develop their personality, utilize their intelligence and talents, and meet their spiritual, social, and physical needs. They are founded upon the universal demand for a life that respects and protects the dignity and worth of every human being.

Objects

1. To study the constitutional rights and other relevant provisions related to Scheduled Tribes.
2. To study the human rights of Scheduled Tribes at the International level.
3. Judicial response to word rights of ST's at National and International level.

Histological Backgrounds of Tribals

The history of the tribal population in India has undergone many changes over time. In 1951, the tribal population was approximately 5.3%, which was about 19 million people. Since then, along with natural growth and the inclusion of many new communities in the Constitutional schedule, this number has continued to increase. By 2001, the population had reached about 8.2%, or nearly 84 million, and

according to the 2011 Census, it further rose to 8.6%, approximately 104 million¹. Tribal communities are spread across various parts of India, but their density is higher in certain specific regions. In northeastern States such as Mizoram (approximately 94%), Meghalaya (86%), Nagaland (86%), and Arunachal Pradesh (68%), the tribal population is very high, while in Tripura it is 31.6%, in Manipur about 35.8%, and in Sikkim around 33.7%. In contrast, Assam has a tribal population of about 12.4%. Central Indian states like Chhattisgarh (30.6%), Jharkhand (26.2%), Odisha (22.8%), and Madhya Pradesh (21.1%) have large tribal groups. Maharashtra has about 9.4%, while West Bengal has 5.8%. In southern India, Karnataka has about 7% tribal population, Andhra Pradesh 6.6%, Kerala 1.4%, and Tamil Nadu about 1.1%. Additionally, tribal communities are present in Rajasthan (13.5%), Gujarat (14.8%), and Jammu & Kashmir (11.9%). Over time, fluctuations in the tribal population have been observed due to various reasons; for example, in Tripura, the tribal population was about 90% in the 19th century, which later declined to around 31.6%². Tribal communities in India are called 'Adivasis,' meaning 'original inhabitants.' These communities have long remained isolated from mainstream socio-religious structures and mostly reside in hilly or forested areas. Thus, the history of the tribal population in India is closely linked to their cultural diversity and regional characteristics and forms an important part of the Country's social fabric.

Concept of Tribe

The term Schedule Tribes came to be used to denote tribes that were scheduled as such under the Constitution of India, distinguished from other communities by relative isolation, cultural distinctiveness and low level of production and subsistence, not necessarily implying original inhabitants. In India words like 'Adivasi' (first settlers), 'Vanvasi' (inhabitants of forests), 'Vanyajati' (forest communities), 'Pahari' (hill-dwellers), 'Adimjati' (original communities/primitive people), 'Janjati' (folk people), 'Anusuchit Janjati (ST) are used interchangeably. While, at the international level the phrase used is 'indigenous people'. The term 'tribe' has been used by the colonial government in India to categorise a large number of groups who did not fit the categories of 'Caste' or 'Hindu'. The term subsumed communities which were very different from one another in terms of demographic size, linguistic and cultural traits, ecological conditions, material conditions of living, and more distinctly were essentially 'primitive', 'backward' and 'uncivilized' in character. Ever since the Government of India Act, 1935, where the term Schedule Tribes

¹ Demographic Spread and Regional Variability of Tribal Communities in India, available at: <https://csr.education/community-organisation-management>.

² Tribal Research and training institute Government of Maharashtra, available at: <https://trti.maharashtra.gov.in>

first came to be used to denote tribes which were listed in the schedule, the phrase remains relevant, albeit as those tribes listed in the Schedule of the Constitution of India, after independence. The term 'tribe' has not been defined anywhere in the Indian Constitution. However, Article 366(25) of the Constitution defines ST as "such tribes or tribal communities or part of or group within such tribes or tribal communities as are deemed under Article 342 to be ST for the purposes of this constitution"³. "According to L.P. Vidyarthi, "a tribe is a social group with the definite territory, common name, common district, common culture, and the behaviour of an endogamous group, common taboos, and existence of the distinctive social and political system, full faith in leaders and self-sufficiency in their distinct economy"⁴. "

P.G. Krishnan defines tribe as "a social group of simple and kind, the members of which speak a common dialect, have a single government act together for common purposes and have a common name, a contiguous territory, a relatively uniform culture or way of life and traditions of common descent"⁵. A.B. Bardhan defines the tribe as "course of a social-cultural entity at a definite historical stage of development. It is a single, endogamous community with cultural and psychological makeup"⁶. According to D.N. Majumdar "a collection of families or common group bearing a common name, the members of which occupy the same territory, speak the same language and observe certain taboos, regarding marriage, professions and have developed a well-assured system of reciprocity and mutuality of obligation.

Definition of Tribe's and Scheduled Tribe's (ST's)

The term *tribe* originates from the Roman word "*tribus*", referring to a political and territorial unit. While Indian tribals are commonly referred to as *Adivasis*, meaning "original inhabitants" (*Adi* = original, *Vasi* = dweller), this term has no official definition in Indian law. In fact, neither *tribe* nor *Adivasi* is defined in the Indian Constitution. However, the term *Scheduled Tribes (STs)* is constitutionally recognized and refers to "tribes or tribal communities or parts or groups within such communities" listed under the Constitution. Tribes are generally seen as among the oldest ethnological sections of humanity. The International Labour Organization (ILO) classifies them as indigenous peoples—socially or economically disadvantaged groups with distinct traditions, customs, and customary laws. Historically, Adivasis have lived in the Indian subcontinent since ancient times and were likely pushed into forests by more dominant settlers, such as the Aryans. In response to external pressures and to preserve their identity, tribes maintained distinct cultural features through endogamy, unique agricultural practices, hunting, and food

³ Art. 366(25), the Constitution of India.

⁴ L.P. Vidyarthi, *Tribal Development and its Administration*, 12-14 (ed., 1981).

⁵ P.G. Krishnan, *Constitutional and Tribal Welfare*, ix(1) *Cochin University Law Review*, p. 45-46 (1986).

⁶ A.B. Bardhan, *The Tribal Problem in India*, 16-17 (ed., 1973).

gathering. Their close, interdependent relationship with nature created a symbiotic way of life, rooted deeply in their environment.

Constitutional Provisions for Protection of Tribal Rights

The preamble to the Constitution of India declares India to be a “Democratic Republic.” In a democratic set up, people have the right to participate in governments decision. As a purported follow-up of the foregoing over-arching objectives the Constitution provides for protection and promotion of the interests of the Schedule Tribes (ST’s). These include affirmative action for promotion of social and economic interests of the communities notified as ST’s under the Constitution; reservation in legislatures, enabling clause for reservation in educational institutions and services, protection and promotion of languages and culture and so on⁷. Moreover, people have the right to access and obtain information about government policies, which is essential for the establishment of liberty, equality, and social justice. Constitutional Articles 14, 15(4), 16(4), 17, 46, 244, 275(1), 330, 332, 338A, along with Schedules V and VI, as well as several other constitutional provisions, play a significant role in the protection of tribal rights.

Article 23 and Article 24 – Protection from Exploitation

Article 23 prohibits **human trafficking and forced labor (begar)**, which were common exploitative practices faced by tribals in colonial and feudal systems. Many tribal communities, due to economic vulnerability, have historically been victims of bonded labor or forced servitude. Article 23 provides Constitutional protection against such exploitation.

Article 24 prohibits the **employment of children below the age of 14** in factories, mines, or any other hazardous occupations. This is especially significant for tribal children who are at higher risk of being pushed into child labor due to poverty and lack of access to education.

Article 164(1) – Minister in Charge of Tribal Welfare

This article States that in the States of **Chhattisgarh, Jharkhand, Madhya Pradesh, and Odisha**, there shall be a **Minister in charge of Tribal welfare**, who may also be in charge of the welfare of Scheduled Castes and backward classes. This ensures that there is **direct representation at the executive level** to handle and prioritize issues related to tribal communities.

⁷ B.K. Roy Burman, Indigenous and Tribal Peoples in World System Perspective available at: [http://www.krepublishers.com/\(Visited on February 16,2016\)](http://www.krepublishers.com/(Visited%20on%20February%2016,2016))

**Article 243D and 243T – Reservation in Panchayats and Municipalities**

Article 243D provides for reservation of seats for Scheduled Tribes in every Panchayat (village-level local self-government), and Article 243T extends similar reservation in Municipalities. These provisions ensure grassroots political empowerment of tribal communities and allow them to participate in local governance, planning, and decision-making.

Moreover, the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) was enacted to extend Part IX of the Constitution (related to Panchayats) to Scheduled Areas with modifications. Under PESA, Gram Sabhas (village assemblies) in tribal areas are given powers over natural resource management, social justice, and cultural preservation — making it a vital tool for tribal self-governance.

Article 243G – Powers of Panchayats

This article empowers Panchayats to function as institutions of self-government and authorizes them to prepare plans for economic development and social justice. In tribal areas, this helps in developing & implementing schemes according to local needs, especially under the PESA Act 1996.

Article 371A to 371G – Special Provisions for Certain States

These articles provide for special Status to certain tribal-dominated States or regions, allowing them to preserve their customs, practices, and laws.

- Article 371A (Nagaland) and Article 371G (Mizoram) protect tribal religious practices, customary law, and land ownership.
- Article 371B to 371F provide for the formation of autonomous councils in tribal-dominated regions of Assam, Meghalaya, Tripura, and Sikkim.

These articles recognize the ethnic, cultural, and legal uniqueness of these regions and grant them autonomy in internal matters.

Article 338 – National Commission for Scheduled Castes (also covers STs prior to 338A)

Before the establishment of the National Commission for Scheduled Tribes (NCST) under Article 338A, the rights of STs were also covered by the National Commission for Scheduled Castes and Scheduled Tribes under Article 338. After the 89th Amendment Act (2003), a separate NCST was created under Article 338A to give focused attention to the specific needs of tribal communities.

Article 371 (Various Clauses) – Autonomy in Administration and Development

These articles, especially from 371A to 371J, provide region-specific safeguards in northeastern and other tribal-dominated areas by recognizing their unique culture, language, and administrative needs. These articles prevent the application of central laws unless approved by the respective state legislatures, thus preserving customary tribal law and institutions.

- Social protection (protection from exploitation under Articles 23 and 24),
- Political protection (reservation of seats in legislatures, Panchayats, and Municipalities under Articles 330, 330A, 332, 332A, 334, 334A, 243D, and 243T),
- Educational and economic protection (special provisions under Article 15(4), Article 46, and grants under Article 275(1)),
- Administrative protection (Fifth and Sixth Schedules, Article 244),
- Cultural autonomy (special provisions for certain states under Articles 371A to 371G),
- Executive accountability (Article 164 for tribal welfare ministers),
- Institutional oversight (Article 338A for NCST).

Human Rights:

Human Rights are defined under Section 2(d) of the Protection of Human Rights Act, 1993. Human Rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. International Human rights law lays down the obligations on Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedom of individuals or groups.

National law and policy related to tribal's

Indian Forest Act of 1927

The Indian Forest Act of 1927 was enacted to consolidate and regulate forest laws: It classified forests into four types—reserved, village, protected, and private giving the government strong control over forest land and resources. Forest officers were empowered to arrest without a warrant and penalize offences, while local rights were often restricted or denied. The Act enabled the government to declare vast areas as forest land, often displacing tribal communities without recognizing their traditional rights. Though it

aimed to improve forest management, the Act largely served colonial commercial interests and led to the marginalization of forest dwellers.

Tribal Land Rights Acts, 1976:

- Land rights are integral part of land laws. Land laws address the legal mandates in regards to land ownership. Land rights refer to the social acceptance of land ownership.
- According to Section 4(3) of the land rights Act, a date has been affixed for determining whether the rights to land which has not been cultivated before and after 31st December 2005.
- Under section 3(1)(a) read with Section 4(6), as long as the land that is being cultivated by themselves for their livelihood but whose documents are not available at the claimant's disposal, a minimum of 4 hectares of land can be claimed.
- As per section 3(1)(f) and 3(1)(g), if the land of the claimant has been illegally occupied by the Forest Department or is subject to a Forest-Revenue Department's dispute, he/she can still claim those land rights on presentation of a patta or a government lease.
- Section 4(4) of the Act provides for the protection of the land in a way that permits the selling or transfer to anyone except through inheritance.

Tribal Forest Rights Act, 2006:

- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of forest rights) Act, 2006 was enacted to protect the marginalized socio-economic class of citizens and balance the right to environment with their right to life and livelihood.
- Sanctioning a legal recognition of the rights of the traditional communities living in forested areas since time immemorial who have been kept deprived of their basic fundamental legal rights due to the draconian provisions of the colonial forest Acts.
- The Act also aims to shift away from the excess state control of the forests which were kept away from the purview of public discourse and discussion. This democratizes and gives a respectful recognition to the tribal identity.
- This Act provides for guidelines for undertaking developmental facilities of the villages in and around forested areas.

Forest Dwellers Act, 2006:

- Section 2(o) of the Forest Dwellers Act stipulates that the person should be bonafide dependent on forest, its land and resources for their livelihood.
- Section 2(c) of the Act provides that the person is a member of the Scheduled Tribe.
- Section 4(1) of the Act provides that the person is a resident of an area where they are scheduled.

Protection and Conservation of Forest Rights Act:

- Forest Rights Act, rights are provided to the community for protecting and managing the forest.
- Section 3(1)(i) of the Act provisions for right and power of the conservation and protection of the community forest.
- Section 5 of the Act vests rights to different forest-dwelling communities for safeguarding their habitat, wildlife etc.

Tribal Water Resources Rights:

- Tribal water rights are based on federal law; state law is a factor in water rights adjudications due to allocation of water to tribes.
- Section 12-Claims to right of way, right to water resource or to use of water etc.
- Water symbolized many things including life and death, strength, change, healing, dreaming and unconditional love.
- Water is the single most important tool for performing agriculture of tribal people.
- From birth to death water remains an essential ingredient in performing all rituals in Hindu society.

The scheduled castes and the scheduled tribes (prevention of atrocities) act, 1989

The *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*, along with its amendments, represents a crucial legal and moral commitment by the Indian state to protect its most marginalized communities, including tribal groups. By recognizing the unique forms of violence and discrimination faced by Scheduled Tribes, the Act seeks not only to punish offenders but also to ensure dignity, justice, and equal rights for victims. Though challenges in enforcement remain, the Act is a significant step toward correcting historical injustices and promoting a more inclusive and equitable society.

Panchayats Extension to Schedule Areas Act, 1996

The 1990s marked a turning point in tribal rights advocacy, challenging State control over natural resources and pushing for Constitutional recognition of tribal autonomy. The enactment of the *Panchayats (Extension to Scheduled Areas) Act, 1996* (PESA) was a landmark achievement, empowering tribal gram sabhas with decision-making authority over land, water, and forests. By decentralizing governance and recognizing traditional rights, PESA laid the foundation for participatory resource management in tribal areas. While implementation has varied across States, many tribal villages have successfully asserted their rights, making Gandhi's vision of *Gram Swaraj* a partial reality and signaling a shift toward more inclusive and democratic governance in India's tribal heartlands.

International Law Protecting Tribal's Rights

Although there are strong legal frameworks at both the international and national levels—such as ILO Conventions 107 and 169, the Universal Declaration of Human Rights, and various provisions of the Indian Constitution—these guarantees often fail to translate into actual protection for tribal communities on the ground. Constitutional provisions under the Preamble, Part III (Fundamental Rights), Part IV (Directive Principles), Part IX (Panchayati Raj), Part X (Scheduled and Tribal Areas), and Part XVI (Special Provisions) were designed to safeguard the rights of Scheduled Tribes. However, in several regions, particularly in the four talukas mentioned, these rights have been consistently violated by non-tribal actors, authorities, and State institutions. As a result, tribal populations have been denied access to government services and basic protections. This disconnect between legal promise and lived reality must be addressed through stronger implementation, accountability, and community empowerment, both within the national framework and in alignment with global human rights standards. Only then can the true spirit of justice, equality, and dignity be realized for India's tribal communities.

Universal Declaration of Human Rights⁸

The provisions of particular relevance for the Scheduled Castes and Scheduled Tribes, Article 1 provide all human beings are born free and have equal dignity and rights. No distinction to be made based on race, colour, sex, language, religion etc. provision under Article 2, Article 3 provide Right to life, liberty and security. Article 4 included No one shall be held in slavery and servitude.

⁸ United Nations Universal Declaration of Human Rights 1948, available at: <http://watchlist.org/wordpress/wp-content/uploads/Universal-declaration-of-human-rights.pdf> (Visited on March 14, 2025)

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 15(1): Everyone has the right to a nationality.

Article 17(1): Everyone has the right to own property alone as well as in association with others.

Article 17(2): No one shall be arbitrarily deprived of his property.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality⁹.

Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment, and, everyone, without any discrimination, has the right to equal pay for equal work¹⁰. And right to standards of living adequate for the health and well-being of himself and of his family¹¹.

Everyone is entitled to a social and international order in which the Declaration of 1948 branched off in 1966 into two instruments, namely International Covenant on Civil and Political Rights and International Covenant in Economic, Social and Cultural Rights¹².

As mentioned by Justice Bhagawati in the World Congress on Human Rights held at Delhi in 1990, while in the West approach to Human Rights focuses primarily on implementation and enforcement of the civil and political rights which are individualistic rights, the emphasis of the developing countries has been on social and economic rights which are meta-individual collective rights. But both sets of rights are vital to the existence of democratic structure.

Most of the Articles in the Universal Declaration of Human Rights have been formally incorporated in the Constitution of India, in one form or the other. But Articles 17(i) and 17(ii) deserve special mention. In India, there is either denial or ambiguity about communal rights of peoples over resources¹³. This is the

⁹ Article 22 of Universal Declaration of Human Rights, 1948

¹⁰ Article 23, *ibid*

¹¹ Article 25, *ibid*

¹² Article 28, *ibid*

¹³ B.K. Roy Burman "Tribal development in world system perspective" tribal in India ed Amar Kumar Singh & M.K. Jabbi (, New Delhi har anand publication pvt ltd 2004) p.42

major source of the land rights of the tribals and of a section of the dalits (socially suppressed and oppressed peoples). On this matter a report prepared by a committee set up by the Planning Commission shows that in some parts of the country hardly 1 to 5 per cent of the land under occupation of the tribals for generation was recorded in their favour during the land survey and settlement operations. The report was placed in the Lok Sabha by Planning Minister vide USO No. 675 dt. 15.4.1987 but it has not evoked any reaction even from the Scheduled Tribe or dalit Parliamentarians or from any party forum. Only some social activist organizations have taken notice of the same. From a US document it is found that social formations analogous to the tribals are facing similar problems in some other countries as well.

International Convention on the Elimination of All Forms of Racial Discrimination 1969

This Convention, grounded in the principles of the United Nations Charter, reaffirms the inherent dignity and equality of all human beings and calls for global cooperation to eliminate racial discrimination in all its forms. By defining racial discrimination as any act that impairs equal enjoyment of rights based on race, descent, or ethnicity, the Convention establishes a clear legal and moral standard. Its preamble strongly rejects any ideology of racial superiority as scientifically baseless, morally unacceptable, and socially dangerous. This Convention remains a critical milestone in the international community's commitment to promoting human rights, equality, and justice for all, regardless of racial or ethnic background.

International Convention on Economic, Social and Cultural Rights

Convention in 1966 Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, recognizing that these rights derive from the inherent dignity of the human person. In accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights, Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms.

Human Rights and Indigenous People

Historically, international law focused on State relations and ignored how States treated their own people, including indigenous populations. Since World War II, human rights—like non-discrimination and freedom of expression—became an international concern. However, indigenous peoples still lack specific

group rights under international law, and applying self-determination to them remains debated. The International Labour Organization (ILO) was the first to address indigenous rights with Convention No. 107 in 1957, criticized for promoting assimilation. It was later replaced by Convention No. 169 in 1989, which emphasized self-determination, cultural respect, and land rights. Though not perfect, it marked progress in recognizing indigenous rights globally.

UN's Involvement with the Rights of Indigenous People

The UN began seriously addressing indigenous issues after World War II, gaining momentum in the 1970s. A major breakthrough came with José Martínez Cobo's 1981–1984 report, which showed general human rights were insufficient for protecting indigenous peoples' specific needs, especially around land, culture, and self-determination. This led to the formation of the UN Working Group on Indigenous Populations and greater indigenous participation in global forums. Key conferences in the late 20th century helped establish indigenous rights in international law and paved the way for future declarations.

ILO and Rights of Indigenous Peoples

The ILO has been key in protecting indigenous rights since its founding in 1919. It created Convention No. 107 in 1957, the first treaty on indigenous and tribal rights, but it was criticized for promoting assimilation. In response, the ILO adopted Convention No. 169 in 1989, which emphasized consultation, self-determination, and respect for indigenous cultures, including land rights and participation. Though some indigenous groups remain critical, Convention No. 169 is viewed as progress in setting international standards for indigenous protections.

Role of Judiciary

The role of the judiciary in protecting the rights of tribal people and addressing related issues can be understood through the following observations made by the Supreme Court in India & some other cases at international level.

Samatha vs State of Andhra Pradesh¹⁴

Agriculture is the only source of livelihood for Scheduled Tribes, a part from collection and sale of minor forest produce to valuable asset and impenshable endowment from which the tribals derive their substance social status, economic and social equality and permanent place of abode and work and living. It is a security and source of economic empowerment of their lands. The land, on which they live and assure

¹⁴ AIR 1997 SUPREME COURT 3297

them equality of status and dignity of person and means to economic and social justice and it, is a potent weapon of economic empowerment in a social democracy”.

Chameli Singh vs State of Uttar Pradesh ¹⁵

The Apex Court referring to Article 11 of the International Covenant on Economic, Social and Cultural Rights, 1966 held that the State parties recognize “the right to everyone to an adequate standard of living for himself and for the family including food, clothing, housing and to the continuous improvement of living conditions”. The state parties were to take appropriate steps to ensure realization of the thought.

The Supreme Court has enlarged the meaning of life under Article 21 of the Constitution to include within its ambit, the right to shelter. In case below given the Supreme court upholding the right to shelter, differentiating between a mere animal-like existence and a decent human existence, thereby bringing out the need for a respectable life in **Shantistar Builders vs Narayan Khimalal Totame**. ¹⁶The right to life would take within its sweep the right to food, the right to clothing, the right to wholesome environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body, for a human being it grows in every aspect-physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child. That would be possible only if the child is in proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or mud mud-built fireproof accommodation”.

Murlidhar Dayandeo Kesekar vs Vishwanath Pandu Barde ¹⁷

The Preamble, the Directive Principles of State policy and the Fundamental Rights including the right to life, the apex court held that economic empowerment and social justice are Fundamental Rights to the tribes. The basic aim to the welfare State is the attainment of substantial degree of social, economic and political equalities and to achieve self-expression in his work as a citizen, leisure and social justice. The distinguishing characteristic of the welfare State is the assumption by community acting through the State and as its responsibilities to provide the means, whereby all its members can reach minimum standard of economic security, civilized living, capacity to secure social status and culture to keep good health. The

¹⁵ 1995 Supp (6) SCR 827

¹⁶ AIR 1990,SC 630

¹⁷ 1995 SCC SUPL



welfare State, therefore, should take positive measure to assist the community at large to act in collective responsibility towards its member and should take positive measure to assist them to achieve the above”.

Mayagna (Sumo) Awas Tingni Community v. Nicaragua¹⁸

This case is a significant decision by the Inter-American Court of Human Rights concerning indigenous land rights. It was brought by an indigenous community in Nicaragua, the Mayagna Awas Tingni. The community accused the government of granting logging contracts on their traditionally used lands without their permission or consultation.

The community claimed that such actions violated their collective land rights, which are protected under the American Convention on Human Rights. At that time, the Nicaraguan government did not legally recognize the collective land ownership of indigenous peoples, leaving their lands vulnerable to external exploitation.

The Inter-American Court ruled in favor of the community. This judgment marked the first time international human rights law recognized indigenous peoples' collective land rights. The Court clarified that the state has a positive obligation to recognize and protect indigenous lands, even if those lands have not yet been formally recognized under national law. The state must ensure the demarcation and titling of indigenous lands to prevent any violations.

This decision was important because it acknowledged that land is not merely property but an essential part of the indigenous peoples' cultural and economic identity. Furthermore, it directed states to consult indigenous communities before making any decisions affecting their lands.

Overall, the Awas Tingni ruling was a major milestone in indigenous rights. It granted indigenous communities the right to their traditional lands and compelled states to take positive steps to protect those rights. This judgment has served as a guiding precedent for the recognition and protection of indigenous land rights in other countries as well.

Tagaeri and Taromenane Indigenous Peoples v. Ecuador¹⁹

This case is related to two indigenous groups in Ecuador, the Tagaeri and Taromenane, who live voluntarily in isolation in the Amazon jungle. Their land was protected under the name “Zona Intangible Tagaeri Taromenane” (ZITT). However, the Ecuadorian government allowed oil and mining companies to operate in these areas, which posed a serious threat to their land, life, health, and culture.

¹⁸ Series C. No. 79 August 31, 2001

¹⁹ Judgment of 4 September 2024



The Inter-American Court of Human Rights found that Ecuador had violated the collective rights of these indigenous peoples. The government failed to protect their rights adequately, such as the insufficient boundaries of ZITT, failure to investigate incidents of violence, and inability to prevent forced contact. The Court considered the “no-contact” principle important, meaning these indigenous peoples should be ensured to live in their own way without external interference.

The court ordered Ecuador to expand ZITT, investigate incidents of violence, rehabilitate forcibly separated girls, train officials, and create an independent monitoring commission to implement reforms. This case has set a historic precedent for protecting the rights of indigenous peoples who live voluntarily in isolation.

Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) & Others v. Government of Nepal²⁰

public interest litigation filed in the Supreme Court of Nepal by LAHURNIP (Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples) and other organizations. The main argument of the petitioners was that although the Government of Nepal had adopted international treaties such as ILO Convention No. 169 (ratified in 2007) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (endorsed in 2007), these treaties had not been effectively implemented in practice or in domestic law. As a result, Nepal’s Indigenous communities continue to remain marginalized socially, economically, and politically.

The petition alleged that the government had been undertaking development projects, mining, and other resource-based activities in Indigenous territories without obtaining their Free, Prior, and Informed Consent (FPIC). This was said to be in violation of international law, as well as the Constitution of Nepal (2015), which guarantees Indigenous identity, cultural protection, and equal opportunities.

The Supreme Court ruled in favor of the petitioners. The Court clarified that international treaties ratified by Nepal especially ILO 169 are legally valid and binding, and must be implemented at all levels of government (federal, provincial, and local). The Court directed the government to ensure the enforcement of FPIC, to protect the lands and resources of Indigenous communities, and to recognize their cultural autonomy. Additionally, the Court stated that Indigenous participation must be mandatory in government policies and projects, and that any law or plan that violates their rights must be amended.

²⁰ Judgment of 6 June 2025

Conclusion

The rights of tribals are not merely welfare entitlements but fundamental human rights rooted in dignity, equality, and justice. Despite constitutional safeguards in India and strong recognition under international frameworks like the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169, tribal communities continue to face challenges of displacement, exploitation, poverty, and cultural erosion. The legal perspective highlights that while progressive legislations such as the Forest Rights Act, 2006, and PESA Act, 1996 have created frameworks of empowerment, their poor implementation, coupled with developmental pressures, has weakened their impact.

At the international level, the emphasis is on participatory development, protection of identity, and the principle of free, prior, and informed consent. Nationally, the Indian Constitution through provisions like Articles 46, 244, 275, and the Fifth and Sixth Schedules, reinforces social justice and protective discrimination in favour of tribals. Yet, the gap between legal recognition and ground realities persists.

Therefore, the way forward requires a human-rights-based approach to tribal development, ensuring that policies are not merely protective but also empowering. Strengthening community institutions, safeguarding land and cultural rights, and harmonising development with environmental and social justice are essential. In essence, protecting tribal rights is not only a constitutional and international legal obligation but also a moral imperative towards building an inclusive, just, and humane society.

Suggestions

- Commissions established for tribal communities should be implemented effectively.
- The government needs to increase awareness about the rights and issues of tribal people.
- The implementation and impact of special programs run for tribal communities should be regularly evaluated.
- The government should continuously monitor the outcomes of these programs.
- Necessary improvements and more effective actions should be taken as required.

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