

## RIGHTS OF INDIGENOUS PEOPLE

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### ABSTRACT

This article focuses on the rights of indigenous people and on resources in India, which is a main theme which require to be understood. As a branch of anthropology, It focuses on the country's Indigenous peoples over 70 tribes that are often referred to as Adivasis. arguably the greatest freedom enshrined in the Indian Constitution is that of Aboriginal education to uphold their rights.

However, it is very essential to emphasize that the article recognize the fact of discrimination of these communities and rather frequent violating of their rights. This research reveals a misconception whereby, industrial and development related projects which can be favorable as a mean to the growth of an economy comes at the same time with the factor which is the expulping of the indigenous people from their original homes. It concerns itself with aspects of compensation, compensation for which is often inadequate, and lives which require reconstruction due to projects sited in those areas. There is, however, a more positive side to the article sampled, which sheds light on how the Indian constitution provides for proper resource management structures that supposedly accords with the knowledge and rights of indigenous folks. Therefore, by combining both viewpoints, a more holistic and effective approach towards the utilization of resources can be developed.

**KEYWORDS:** Sons, daughters, tribes, indigenous, legal representation, common properties.

### INTRODUCTION

There is no policy name in India for any specific group of people any specific group of people rights of indigenous people considered as indigenous in the same sense as the United Nations. In contrast, the government of Mexico places all its citizens as indigenous people. Nevertheless, in many practical activities or discussions, there are certain groups of people categorized as the 'Scheduled Tribes' (STs) who can be referred to as indigenous peoples. While 'tribal' and 'Adivasi' which means original dweller is not synonymous with ST but it is generally understood that most of the ST in India can be categorized as 'indigenous peoples. Indian constitution and laws elaborately and distinctly provide a meaning to this 'indigeneity' which is distinct from 'Regionalism'. Though this research will be using 'ST' in which while not all indigenous peoples

belong to the ST category. The Adivasi group has been settled in India for a long time so their history is rooted in traditions and customs. Secondly, there are references to past sins not solely of the Gallois couple but also colonial officers and other individuals. One still finds prey of these wrongs to this very day.

Having touched the American soil with t insatiable desire for material possession they came not only equipped with greed but with something far more dangerous, arrogance which manifested in Cultural Imperialism. Like Malthus, First Nations regions were vulnerable to plunder because of their richness in resources such as timber and farmable land. There were clear cases of violations of agreement meant for protection rights in various settings. Landscapes were cleared for wood, ecosystems disturbed and holy land scarpd for minerals. Therefore, the Adivasis' primary means of

employment to sustain their livelihood and their sacred association with the earth were eliminated.

There was also a planned subversion of Adivasi practices in the reading as erasure of whole identity was integral to the process of annexation. Indigenes were spoken to in their indigenous languages and the native languages forbidden because of the term native sounded "savage", while the colonizers' language was encouraged to be learned. Boards of schools are recognized as instruments of Was encouraged to be learned schools are recognized as instruments c cultural assimilation, and as such, they came into fame. Apart from their rights physical integrity, cultural identity, parental care and freedom of association and assembly, children were physically and psychologically tortured, separated from their home towns and villages. The identification and practical application of Adivasi tribes was destabilized during this due to the disruption of intergenerational transition between culture networks.

#### INDIGENIOUS PEOPLE AND SC TRIBE IN INDIA

The terms 'Scheduled Tribe' relates to an official categorization that is intended to offer identified constitutional safeguards, advantages, and prerogatives to the disadvantaged indigenous groups. As per Article 366 (25) of the Indian Constitution, the Indian SCRC defines the ST as such tribes or tribal communities or parts of, or groups within such tribes or tribal communities as are deemed under Article 342 of this Constitution to be Scheduled Tribes for the purposes of this Constitution. It gives constitutional recognition, and the protection under the state or Union Territory constitution, to such Schedule Tribe. Scheduling of tribes depends solely on belonging to the tribe that has been recognized and the identification of a Scheduled Tribe typically involves several criteria: The identification of a Scheduled Tribe typically involves several criteria:

- Primitive traits

- Distinctive culture
- Geographical isolation
- Forking Spreading Awareness Program to other areas or counties
- Socio Economic backwardness

#### LEGAL AND POLICY FRAMEWORKS

- The Indian Constitution:

With 395 articles and 12 schedules, this legal instrument lays the doctrinal foundations for both politics and law in India. Constitutional changes can be affected by Parliament and in the last 65 years over 940 changes have been made through a set procedure.

This constitutional provision was first affirmed by the Supreme Court in the Kesavananda Bharati Sarswati case been made through a set procedure.

This constitutional provision was first affirmed by the Supreme Court in the Kesavananda Bharati Sarswati case in 1973 when the court termed the Preamble as a part of the basic structure of the Constitution and hence beyond amendment"

- Rules, Government Notifications, and Legislation from State Legislatures and Parliament: Rules, Government Notifications, and Legislation from State Legislatures and Parliament:

The Constitution does record procedures for enacting laws and clearly outlines the roles of the Central and State Legislatures. It states that all legal provisions must be compatible with the fundamental rights, and any legal provision that infringes any of the said rights will be considered and held as unlawful and Judicial Precedent:

The Constitution provides for consideration of judicial decisions, and indicates that they are part of the legal system. This means that pronouncements made by the Supreme Court are authoritative to all the high courts, and other inferior courts. High Court decisions are largely regional and mostly binding to the

region while subordinate court decisions usually don't set legal precedent.

- Customary Law:

The article 13 in the Constitution defines the law as stating, including custom or usage having in the territory of India the force of law.

Customary law must be not only reasonable, but also to have been practiced from time immemorial, in operation from the date of the coming into force of statutory law, to have been accepted and applied of their own free choice by those who are bound thereby, to be popular or notorious, and to be in conformity with public policy and with morality.

In personal law the matters of marriage, divorce and succession, religious canons are also taken into account in addition to the religious texts.

### Legal Assistance for Indigenous People

In the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), all the rights spoken of are bestowed on 'indigenous peoples, as it is named by; however, the word has not been defined in clear terms. The preamble of the Declaration highlights traits commonly associated with indigenous peoples: they view themselves as being unique, form political, economic, social, and cultural associations and work towards the attainment of equal rights for all human beings regardless of color, gender, religion, or political affiliation. Again, colonization and dispossession of Indigenous peoples' land, territories and resources are some of the historical wrong done to them. These inherent rights are recognized in treaties, agreements, and other constructive engagements with estate based on the political economic /trade and social systems and related cultures, religious beliefs, histories, and philosophies, especially in relation to their rights to lands, territories and resources. They actively pursue the dismantling of their territories of military forces for the purpose of attaining the long-awaited peace and in order to enhance the economic and social development of their nations with the preservation and consolidation

of their institutions, culture, and local traditions. They bring their knowledge and cultures as well as traditional control methods for managing the environment and natural resources for sustainable utilization. Apart from these rights, they have other rights entitled to them as a group to their sustainable existence, prosperity, a development as human beings. A focusing event is the Preamble of the Indian Constitution where it asserts 'equality of status and opportunity is one of the core principles that would be upheld in the country. She said, right to equality is one of the protections of the basic structure of the constitution and therefore, it cannot be abridged. Therefore, while upholding the principle of equality, constitutional provision article 15 forbade discriminations on the ground of race, religion, caste, sex, place of birth or both. Consequently, it also enshrines policies such as affirmative action like reservation which aims to provide certain percentage of 'socially and educationally backward classes of citizens' or 'Scheduled Tribes' with certain privileges. Article 16 of the Constitution forbids Discrimination on grounds of race, caste, sex, and origin or a combination of these in public employment though it permits quota for STs and 'backward class of citizens' in initial employment as the article asserts that untouchability is prohibited and that it is a criminal act in India.

### I. CONSTITUTIONAL PROTECTIONS:

#### CURRENT TRENDS A TWO EDGED

The constitution of India allows for Adivasi people (indigenous people of India) through provisions within the constitution. Such protections which are implemented to respond to past injustices would enable the welfare of the Scheduled Tribes (STs).

Nevertheless, the protections that either exist or have been called for may have two sides, be to the benefit and a source of difficulty for these communities.

- Article 15(4): The provision within this clause creates scope for the state to



formulate specific developmental policies for the benefit of the 'Scheduled Tribes, to implement beneficial action with a view to remove the disparities concerning educational, employment and social upliftment, etc.

- Article 16(4): One of the rights given to Scheduled Tribes is the ability to schedule consultations and postings. This accepted quota mechanism is designed to encourage the appointment of those groups into leadership positions so that they can be empowered against previous vices.
- Article 19(5): For protection of rights of the older frame Scheduled Tribes, right to mobility and to reside anywhere is subject to certain restrictions. This gives the government authority to restrict outsiders – especially non-Indians on living or investing within tribal jurisdictions, thus protecting tribal assets and territories.
- Articles 29 & 30: Often these articles retain the cultural as well as education rights of minorities such as the Adivasis. They preserve the ability to retention native language, literature, and civilization.
- Article 46: This article will go a long way in boosting economic and cultural pillar of the Scheduled tribes. It calls upon the state to protect, develop, and finance certain sociocultural and educational rights of these peoples.
- Article 244: This article describes the nature of the administration of the Tribal Areas and the Scheduled Areas that offer extra Tribal Health Manpower Act
- Article 244A: Deals with the creation of autonomous district councils for tribal people in Assam so that the first-grade functions of the district can be performed by the council of ministers for the development, administration, and organization of district council

areas in respect of infrastructure, health, education, etc.

- Article 275(1): Gives out financial assistance to states to fund and promote the wellbeing of those belonging to the Scheduled Tribes.

Some of these funds are funding that assist in provision of shelter, health care, education and income generating activities for the tribes.

- Article 330: Explains how the legislative assembly for a state is shared between the Scheduled Tribes.
- Article 332: Prescribes the number of seats to be reserved in state legislatures for members belonging to the Scheduled Tribe category with a view decision influencer or their representation in the legislative representation in the legislative process.
- Article 335: Guarantees reservation of the claims of the Scheduled Tribes while appointing persons to any tum, post, office, employment or service under the State and also furnishes equal opportunities in the State employment.
- Article 339: The extension of certain areas under the direct control of Union government and financial matters relating to the Scheduled Tribes. These can include the formation of triumphant corporations, offering of funds and development of certain projects.
- Article 342: Enables the President to specify which tribes or tribal groups are to be classified as Scheduled Tribes and therefore guarantee that those in dire need to utilize reserved laws can do so.
- Article 350: Ensures the Adivasis' right to maintain their different languages, traditions, and codes, thus preserving their cultural differentials as no domains of the Adivasi societies should be forced to merge with other leading societies.

- Fifth and Sixth Schedules: These schedules have outlined the provisions of the administration of tribal areas and protect the entire Native governance, the Customary Native Land Tenure System, and the indigenous laws of the tribes.

These constitutional safeguards have been envisaged to make the society emancipated to a considerable extent for the Scheduled Tribes and ensure their welfare dispensation beseeching to historical injustices. However, the role of such provisions is measured and contingent on the realization of these provisions and the goal between native individuals' rights and Native Land Tenure System, and the indigenous laws of the tribes.

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### **SOCIO-ECONOMIC RIGHTS Constitutional Provisions:**

The Indian Constitution provides several provisions to safeguard socio-economic rights, particularly for Scheduled Tribes (STs): The Indian Constitution provides several provisions to safeguard socioeconomic rights, particularly for Scheduled Tribes (STs):

Article 23: Forbids persons purchase, sale, transportation, placing or delivery of one person to another for prostitution, forced labor, and beggar. Article 38: Activist for a favorable society through the delivery of equitable social products.

Article 39: It is significant in that it guarantees that justice will be done in the distribution of goods and services.

Article 41: Ensures full employment.

Article 43: This ensures that workers are paid a decent wage, which is essential in the provision of their basic needs.

Article 46: Supports the policies that will be in the overall best of the economic benefits of the SCs and STs.

However, with or without these constitutional protective measures in place, exploitation especially in various other forms continue to rear its ugly head especially for STs. In this regard, loss of other forms continues to rear its ugly head especially for STs. In this regard, loss of land and common property resources has caused a severe loss of livelihood of the Adivasi and other tribal people who could earlier access forest products like wild fruits, vegetables, and valuable species of medicine. As a result of this, many Adivasis have been left with no option but to seek employment or buy these goods at exorbitant prices in the market. For instance, a cross-sectional analysis of the primordial Gujarati Bhil Adivasi population revealed that only 12% are capable of living off their agricultural land exclusively.

### **II. CONSTITUTIONAL AMENDMENT**

In order to ensure proper protection and defense of the indigenous people known as Scheduled Tribes (STs), the Indian administration has put into consideration some of the following amendments. These amendments seek to assure its sovereignty, propriety, and stake in the assets besides factoring in the enciphered concerns of the welfare of these minorities. Some of the important alterations consist of the Constitution (Scheduled Tribes) Orders, which defines the list of the STs along with legal privileges over numerous states and union territories.

- The Constitutional (Scheduled Tribes)

Order, 1950:

- The Constitutional (Andaman and Nicobar Islands) Order, 1959: The Constitutional (Andaman and Nicobar Islands) Order, 1959:

- The Constitutional (Union Territories) Order, 1963: The Constitutional (Union Territories)

Order, 1963:

This was the first decision made under Article 342 of the Indian Constitution that essentially enumerates Scheduled Tribes in India.

This order made the tribes of the Andaman and Nicobar Islands, as Scheduled Tribes.

This act used to alter the list of the Scheduled Tribes in the Union

Territories of Dahra and Nagar Haveli, Goa, Daman and Diu and Pondicherry (now Puducherry).

- The Constitutional (Uttar Pradesh)

Order, 1967: The Constitutional (Uttar Pradesh) Order, 1967:

- The Constitutional (Scheduled Tribes) (Uttar Pradesh) Order, 1976:0

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- The Constitutional (Scheduled Tribes) Order (Amendment Act),

1991: The Constitutional (Scheduled Tribes) Order (Amendment Act),

- The Constitutional (Scheduled Tribes) Order (Second Amendment

Act), 2012: The Constitutional (Scheduled Tribes) Order (Second Amendment Act), 2012:

- The Constitutional (Scheduled Tribes) Order (Amendment Act),

2003: The Constitutional (Scheduled Tribes) Order (Amendment Act),

These are Armaments arising out from continuous impulse in the process of addressing concerns of the Scheduled Tribes within and for India, to preserve, protect, and promote their privileges and rights so as to fit Scheduled Tribes within and for India, to preserve, protect, and promote their privileges and rights so as to fit the existing and emerging environments.

**POST THE CONSTITUTION:** Despite this persistence, the campaign itself - the war against opium - has remained a constant.

However, campaign for Adivasi rights does not solely rely on legalism, and related demands are largely facilitated by some indigenous organizations in the execution of gap or exclusion. Here's a closer look at significant movements and legal cases related to changes in land rights: Here's a closer look at significant movements and legal cases related to changes in land rights:

- Demographic Trends
- Niyamgiri Struggle:

The indigenous tribe of Dongria Kondhs who are extremely sensitive to nature were able to upset the plans of Vedanta

Resources to mine aluminum in the hills of Niyamgiri in Odisha. In this fight led by a tribe member, Lodu Sikaka, overstated problems of informed consent as well as the right to manage and defend sacred sites were brought into focus. To illustrate the above principles, let start with the historic and most debated case of Samatha v. Union of India (2017) which concerned the Indian Supreme Court.

This order superseded the previous order to change the list of the states Scheduled Tribe status of the Uttar Pradesh.

This act also made changes regarding the list of the reserved tribe in the territory of Uttar Pradesh. This act replaced the older Scheduled Tribes list with newer ones in some of the states/Union Territories of India. The chief modifications incorporated by this act added or deletion of more Scheduled Tribes across different state.

The act in particular dealt with and provision changes on the Scheduled Tribes list concerning the state of Jharkhand.

The Forest Rights Act and also recognized the Dongria Kondh tribe right to their identified traditional territories.



Jai adivasi diwas movement. Specifically, this style is adopted by the Narmada BachaoAndolan led by Medha Patkar against the construction of the Sardar Sarovar dam. In the process of the project implementation, a large number of Adivasi people have been evicted, which makes it important to address the issues of equitable distribution of payments for the losses incurred as well as integrating effective rehabilitation policies. NBA maintained that the dam was impeding the flow of rivers and threatening the lives of those living in the valleys and the adverse effect on wildlife. The Supreme Court allowed the construction of the dam but noted the sad plight of the tribal people displaced from their habitat and the need for meaningful rehabilitation and compensation.

- Samata v. State of Andhra Pradesh (2022)

The Supreme Court held that the state cannot seize tribal land for trading or business-related rolls without consulting members of the affected tribes till an appropriate consultation process is achieved. This decision further continued. The supreme court held that the state business-related rolls without consulting members of the affected tribes till an appropriate consultation process is achieved. This decision further continued the authority of the Scheduled Tribes more than its land and resources.

- Marri Chandra v. Seth G.S. Medical

College (1990): Marri Chandra v. Seth

G.S. Medical College (1990) :

According to the Supreme Court the local authority cannot exclude any piece of territory for the purposes of the Fifth Schedule to the Constitution of India, which regulates the Scheduled Areas without seeking the consent of the concerned tribal people. This ruling gave the rights of tribal people a quota in territorial legal proceedings. (2022): Wildlife Trust of India v. Union of India (2022):

In its new ruling, the Supreme Court directed that indigenous peoples' rights have to be

protected and promoted in conservation of natural resources inside protected areas. This ruling further held that without the consent of the customary environments of tribal, their conditions should not be altered, thus making a narrow clearance of preserving the environment without erasing indigenous rights.

These movements and legal cases show that Adivasis' rights in India continue to spark legal claims of justice for the indigenous people. Despite the constitutional provisions, only energetic communal involvement and juridical activism help solve specific problems related to these indigenous inhabitants.

- Cultural Renewal Efforts

With regards to social aspects and culture it is very important that attempts should be carried out to sustain and revitalize Adivasi cultural values to uphold the indigenous populations of India. Several organizations and initiatives have been pivotal in these andavare Coveral armanizatinne and (2022): Wildlife Trust of India v. Union of India (2022):

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- Adivasi Academy:

The Adivasi Academy was initially founded by activist Dr. Martin Macwan with the purpose of documenting and sharing the folklore, local languages, and further artistic development of Adivasi culture in Gujarat. The academy's work contributes tremendously in documenting and preserving such a colorful and vibrant though unnoticed part of African traditions for coming generations.

- Sahitya Akademi Awards:

The Sahitya Akademi, the literary organization of India, is noted for honoring many Adivasi writers and poets who have been contributing to Indian literature. These awards celebrate the literary works of Adivasi writers, and help put into focus

the distinct literary endowment of Adivasi that diversifies the Indian progressive literary scene.

It gives more importance to cultivate and pass on the indigenous culture of Adivasis, not only for their identity but also for the future generation to act as a reminder of the indigenous people of India, them

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### Labor Laws and Regulations:

Recognizing the marginalized status of the working class, including STs, the Indian government has enacted several labor laws to protect their rights. Recognizing the marginalized status of the working class, including STs, the Indian government has enacted several labor laws to protect their rights:

- Minimum Wages Act, 1948: Some of the benefits include the following; it maintains the standards of minimum wage rates.

- Contract Labor (Prohibition and Regulation) Act, 1970: Responsible for the modulation and regulation of the food intake of the organism. employment of contract labor.

- Bonded Labor System (Abolition) Act,



1976: Eliminates bonded labor or labor which is done under conditions of bonded labor.

- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service)

Act, 1979: Believed to protect migrant workers.

- Building and Other Construction Workers (Regulation of Employment and Condition' of Service) Act, 1996: Sector skill councils, of Service) Act, 1996: Sector skill councils; organizes and regulates employment within construction industry.

- Building and Other Construction Workers Welfare Cess Act, 1996: Ensures welfare initiatives such as minimum wage rates for construction employees.

Judicial Precedents: In the later chapters, the Supreme Court of India has had an important role to support these legal shields. Key decisions have affirmed that key decisions have affirmed that:

- Forced labor is prohibited under Article

23 Forced labors as defined in Article 23 indicates that no person shall be allowed to engage in forced labor.

- The event of present having the authority to pay less than the minimum wages is unlawful under the Bonded Labor System.

(Abolition) Act.

Cumulatively, these laws and judgements have an overall objective of safeguarding the socio-economic rights of the STs and their right to fair treatment in the labor market. However, the disparities that remain when implementing provisions suggest that ongoing efforts are required (Abolition) Act.

Cumulatively, these laws and judgements have an overall objective of safeguarding the socio-economic rights of the STs and their right to fair treatment in the labor market. However, the disparities that remain when implementing provisions suggest that ongoing efforts are required to uphold and promote these constitutional guarantees.

## CONCLUSION

Never taking into consideration, India today is home to approximately 80 million Adivasis, making it the country in the world with maximum indigenous population accounting for nearly 25% of the global Adivasi population. This diverse category includes ethnic, cultural, and economic populations that vary from the indigenous tribes in central India, such as Gonds and Santhals, to the isolated Sentinelese Tribe, Andaman Islands. From this point onwards, they all have a humbling common factor that belongs to the category of 'marginalized' in social, political and economic planes in the Indian context.

For the past one and half centuries, there have been strides to cover these issues with the present-day aboriginal people having a myriad of laws, policies and constitutional provisions to protect their rights. Yet, the Indian government's surprisingly strong reluctance or refusal to recognize or integrate this international rights. Yet, the Indian government's surprisingly strong reluctance or refusal to recognize or integrate this international system/framework for indigenous people rights is a major issue.

India's indigenous peoples cannot claim status or protection under framework as UNDRIP, to which India voted positively in 2007 for, as well as under the ILO Convention No 169 that India is a signatory to in its previous version. Thus, the government negates the particular status and the rights of 'indigenous peoples, holding all Indian individuals as indigenous to the region.

This resistance is specifically concerning the rights of being independent, governing themselves, and deciding on matters that affect them; although the Indian law acknowledges these rights but in a variable measure depending on the community in question. Thus, the issue at the center of this contradiction points to an important future domain for advocacy and change.

In conclusion, legal developments for indigenous peoples in India have come a long

way from their earlier state with heightened legal protections for the indigenous populations required now to focus on the strict implementation of the provisions made and further opening up affect them; although the Indian law acknowledges these rights but, in varia, measure depending on the community i question. Thus, the issue at the center o this contradiction points to an important future domain for advocacy and change. It is only through such measures that the rights and the welfare of pre-tribal peoples of India can be effectively protected and enhanced.

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