

## BALANCING JUSTICE: STATUTORY INTERPRETATION AND INDIGENOUS RIGHTS

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### Abstract

*Balancing Justice: Statutory Interpretation and Indigenous Rights. Indigenous rights have a long and complex history. From the colonial era to modern times, indigenous communities worldwide have faced dispossession, discrimination, and marginalization. The struggle for recognition and justice has been ongoing, with significant milestones such as the United Nations Declaration on the Rights of Indigenous Peoples. Currently, indigenous rights are recognized at both national and international levels. Many countries have constitutional provisions, legislation, and court decisions that protect indigenous rights. However, challenges persist, including land disputes, cultural preservation, and economic empowerment. Statutory interpretation plays a crucial role in shaping the legal landscape for indigenous communities. It involves analysing laws and regulations to understand their intent and impact. In the context of indigenous rights, statutory interpretation can determine the scope of land rights, cultural protections, and access to resources. Despite legal advancements, grey areas remain. Questions arise about the adequacy of existing legal frameworks. Addressing conflicting statutes and cultural nuances. These gaps necessitate focused research to bridge the divide between legal theory and indigenous realities. Our hypothesis is that while current legal infrastructure provides a foundation, it falls short in addressing the unique challenges faced by indigenous communities. We believe that a deeper understanding of statutory interpretation can lead to more effective legal solutions. To enhance indigenous rights, we propose several reforms: Customary Law Integration to Recognize and incorporate indigenous customary laws alongside statutory provisions. Land Title Clarity to Clarify land title procedures to prevent disputes and ensure secure land tenure. Cultural Heritage Protection to strengthen legal protections for indigenous languages, traditions, and sacred sites. Our aim is to contribute to the ongoing discourse on indigenous rights. By researching statutory interpretation, we seek to raise Awareness and Highlight the importance of legal clarity for indigenous communities. Empower Advocacy and Equip policymakers, lawyers, and activists with insights to champion indigenous rights.*

**Keywords:** Advancements, Customary Law, Culture, Indigenous Rights, Statutory Interpretation.

### A. Introduction

In India, the term 'indigenous people' typically refers to the 'Scheduled Tribes,' comprising nearly eight percent of the nation's population. While they benefit from constitutional protections in political representation, they have not fully received the advantages of national development initiatives. India hosts the world's largest concentration of tribal communities, excluding Africa, with these communities occupying approximately 15

percent of the total land area. Despite prevailing as a generic term in India for many years, other countries may prefer alternative descriptors such as tribes, first peoples/nations, aboriginals, ethnic groups, adivasi, and janajati. Additionally, occupational and geographical terms like hunter-gatherers, nomads, peasants, and hill people are sometimes used interchangeably with 'indigenous people.'

India boasts the largest tribal population globally, primarily concentrated in

central regions, although they constitute only around 10% of the local population. Major tribal populations reside in Maharashtra, Orissa, and West Bengal. In southern states, Kerala and Tamil Nadu, tribal members account for approximately 1% of the population, while Andhra Pradesh and Karnataka have about 6% tribal inhabitants.<sup>823</sup>

North-eastern states like Arunachal Pradesh, Meghalaya, Mizoram, and Nagaland have tribal populations comprising up to 90%, mainly residing in rural areas. In contrast, Assam, Manipur, Sikkim, and Tripura have tribal populations ranging from 20% to 30%.<sup>824</sup> Despite this, many ethnic groups meeting the criteria for Scheduled Tribe status remain unrecognized officially. The central tribal belt spanning from Rajasthan to West Bengal and the seven north-eastern states are the primary regions where tribal communities are concentrated. However, tribal presence extends across all states and union territories, referred to as Adivasis, meaning indigenous peoples.

## B. Origin: Indigenous People and Tribe

The term 'tribe' originated around the time of the Greek city-states and the early formation of the Roman Empire. The Latin term 'tribus' has since been transformed to mean, 'a group of persons forming a community and claiming descent from a common ancestor'. Today, the range of groups referred to as 'tribal' is truly enormous. Not everyone, however, can be deemed to be a member of a 'tribe'.<sup>825</sup> More recent is, those peoples who resisted joining in larger nation-state entities were also labelled by the nation-states themselves to be 'tribes.' It is with the people described as 'tribes' that the term 'indigenous people' has generally come to be associated in India. It is assumed that they have been the original settlers of what geographically constitutes India today or at least people who inhabited the region before

the coming of the more dominant sections of the Indian society. So that the communities of people of today, whom the anthropologists call tribals, happen to be the indigenous, autochthonous (adivasis) people of the land, in the sense that they had long been settled in different parts of the country.<sup>826</sup>

## C. Characteristics Of Indigenous Peoples

Let's look at the various characteristics of indigenous people defined by the various organizations and schoolers;

### a. World Bank

The World Bank suggested identifying indigenous peoples on the basis of the following characteristics. But it may not be possible for any community to meet all these attributes or requirements.

1. Close attachment to ancestral territories and the natural resources in those areas;
2. Self-identification and identification by others as members of a distinct cultural group;
3. An indigenous language, often different from the national language;
4. The presence of customary social and political institutions; and
5. Primarily subsistence-oriented production;<sup>827</sup>

### b. According to T. B. Naik

T. B. Naik has given the following features of tribes in Indian context in his book.

1. A tribe should have least functional interdependence within the community.<sup>828</sup>
2. It should be economically backward (i.e. primitive means of exploiting natural resources, tribal economy should be at an underdeveloped stage and it should have multifarious economic pursuits).

<sup>823</sup> Ashok Brahma, *Safeguarding the Rights of Indigenous Peoples in India*, 24 IOSR Journal of Humanities and Social Science 01, 03 (2019).

<sup>824</sup> Ibid

<sup>825</sup> *Tribe*, Online Etymology Dictionary, available at <https://www.etymonline.com/word/tribe>, last seen on 17/10/2024.

<sup>826</sup> Ashok Brahma, *Safeguarding the Rights of Indigenous Peoples in India*, 24 IOSR Journal of Humanities and Social Science 01, 03 (2019).

<sup>827</sup> *Indigenous People*, The World Bank, available at <https://www.worldbank.org/en/topic/indigenouseoples>, last seen on 17/10/2024.

<sup>828</sup> T. B. Naik, *The Bhils: A Study* (1st ed., 1956).

3. There should be a comparative geographical isolation of its people.
4. They should have a common dialect.
5. Tribes should be politically organized and community Panchayat should be influential.
6. A tribe should have customary laws.

Naik argues that for a community to be a tribe it should possess all the above-mentioned characteristics and a very high level of acculturation with outside society debars it from being a tribe. Thus, term usually denotes a social group bound together by kin and duty and associated with a particular territory.<sup>829</sup>

#### D. United Nations on the Rights of Indigenous Peoples

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and International Human Rights Law. The Declaration goes on to guarantee the rights of Indigenous peoples to enjoy and practice their cultures and customs, their religions, and their languages, and to develop and strengthen their economies and their social and political institutions. Indigenous peoples have the right to be free from discrimination, and the right to a nationality.

##### 1. World Conference

The General Assembly, in its resolution 65/198 of 21 December 2010, decided to organize a high-level plenary meeting of the General Assembly, to be known as the World Conference on Indigenous Peoples, in order to share perspectives and best practices on the realization of the rights of indigenous peoples, including pursuing the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.<sup>830</sup>

<sup>829</sup> T. B. Naik, *The Bhils: A Study* (1st ed., 1956).

<sup>830</sup> *World Conference on Indigenous Peoples*, United Nations Department of Economic and Social Affairs, available at

##### 2. System-Wide Action Plan

At the 2014 World Conference on Indigenous Peoples, the General Assembly requested the development of a system-wide action plan for a coherent approach to achieving the ends of the UNDRIP. The system-wide action plan covers six elements: Raise awareness of the UN Declaration on the Rights of Indigenous Peoples; Support the implementation of the UN Declaration on the Rights of Indigenous Peoples, particularly at the country level; Support the realization of indigenous peoples' rights in the implementation and review of the 2030 Agenda for Sustainable Development; Map existing standards and guidelines, capacities, training materials and resources within the United Nations system, international financial institutions and the members of the Inter-Agency Support Group on Indigenous Peoples' Issues for the effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples; Develop the capacities of States, indigenous peoples, civil society and United Nations personnel; and Advance the participation of indigenous peoples in United Nations processes.<sup>831</sup>

##### 3. Participation at the UN/UNGA

Process On 8 September 2017 the General Assembly adopted resolution A/RES/71/321 entitled Enhancing the Participation of Indigenous Peoples' Representatives and Institutions in Meetings of Relevant United Nations Bodies on Issues Affecting them.<sup>832</sup>

##### 4. UN Country Teams

The basis for UN Country Teams supports to Member States on indigenous issues is the United Nations Declaration on the

<https://social.desa.un.org/issues/indigenous-peoples/world-conference-on-indigenous-peoples>, last seen on 17/10/2024.

<sup>831</sup> *System-Wide Action Plan (SWAP)*, United Nations Department of Economic and Social Affairs, available at <https://social.desa.un.org/issues/indigenous-peoples/system-wide-action-plan-swap>, last seen on 17/10/2024.

<sup>832</sup> *Participation Of Indigenous Peoples At The UN*, United Nations Department of Economic and Social Affairs, available at <https://social.desa.un.org/issues/indigenous-peoples/participation-of-indigenous-peoples-at-the-un>, last seen on 17/10/2024.

Rights of Indigenous Peoples (2007), which establishes a universal framework of minimum standards for the survival, dignity, well-being and rights of the world’s indigenous peoples. All over the world, indigenous peoples face exclusion, discrimination and multiple challenges in terms of threats to their cultures, languages and identity. Indigenous peoples should therefore be part of the United Nations core work. Recognition of indigenous peoples: The recognition of indigenous peoples varies from country to country, and region to region.<sup>833</sup>

### E. International Statutes for the Protection of Indigenous Peoples’ Human Rights

Indigenous Peoples’ rights overlap with many other human rights. Many important Indigenous Peoples’ rights are not framed in specific Indigenous Peoples’ rights treaties, but are part of more general treaties, like the Universal Declaration of Human Rights or the Convention on the Prevention and Punishment of the Crime of Genocide.

#### 1. Declaration on the Rights of Indigenous Peoples

This is the most comprehensive statement of the rights of Indigenous Peoples to date, establishing collective rights to a greater extent than any other document in international human rights law. It establishes the rights of Indigenous Peoples to the protection of their cultural property and identity as well as the rights to education, employment, health, religion, language and more. It also protects the right of Indigenous Peoples to own land collectively. The draft Declaration is divided into nine parts:<sup>834</sup>

- Part I. Fundamental Rights;
- Part II. Life and Security;

- Part III. Culture, Religion, and Language Laws;
- Part IV. Education, Media, and Employment;
- Part V. Participation and Development;
- Part VI. Land and Resources;
- Part VII. Self-Government and Indigenous;
- Part VIII. Implementation; and
- Part IX. Minimum Standards.

#### 2. Universal Declaration of Human Rights 1948

The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. The Universal Declaration of Human Rights is the first international document that states that all human beings are;

- Article 1: Equal in dignity and rights
- Article 2: Everybody is entitled to the rights in the Declaration, —without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status
- Article 3: Everyone has the right to life, liberty and security of person.<sup>835</sup>

#### 3. Convention on the Prevention and Punishment of the Crime of Genocide 1951

Recognizing that at all periods of history genocide has inflicted great losses on

<sup>833</sup> UN Country Teams, United Nations Department of Economic and Social Affairs, available at <https://www.un.org/development/desa/indigenouspeoples/un-country-teams.html>, last seen on 17/10/2024.

<sup>834</sup>United Nations General Assembly, *Declaration on the Rights of Indigenous Peoples*, Resolution 61/295, available at [https://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf), last seen on 17/10/2024.

<sup>835</sup> United Nations General Assembly, *Universal Declaration of Human Rights*, Resolution A/RES/3/217A, available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, last seen on 17/10/2024.

humanity, and being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required. Genocide means any of the following acts which have the intention of destroying, in whole or in part, a national, ethnical, racial or religious group:

- Article 2: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent birth within the group; forcibly transferring children of the group to another group.<sup>836</sup>

#### 4. International Covenant on Civil and Political Rights, 1966

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. It is recognizing that these rights derive from the inherent dignity of the human persons. Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

- Article 27: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.<sup>837</sup>

<sup>836</sup> United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, Resolution 260 A (III), available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-prevention-and-punishment-crime-genocide>, last seen of 17/10/2024.

<sup>837</sup> United Nations General Assembly, *International Covenant on Civil and Political Rights*, Resolution 2200A (XXI), available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>, last seen of 17/10/2024.

#### 5. International Covenant on Economic, Social and Cultural Rights, 1966

It is considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms. Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.

- Article 9: The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.
- Article 14: Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.<sup>838</sup>

#### 6. Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, 1992

The General Assembly, reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion, inspired by the provisions of Article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic

[mechanisms/instruments/international-covenant-civil-and-political-rights](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights), last seen of 17/10/2024.

<sup>838</sup> United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, Resolution 2200A (XXI), available at <https://www.ohchr.org/sites/default/files/cescr.pdf>, last seen of 17/10/2024.

minorities.<sup>839</sup> This Declaration deals with all minorities, which includes many of the world's Indigenous Peoples. It only concerns individual rights, although collective rights might be derived from those individual rights. The Declaration deals both with states obligations towards minorities as well as the rights of minority people

- Article 1: Topics that are dealt with include the national or ethnic, cultural, religious or linguistic identity of minorities;
- Article 2: The free expression and development of culture; association of minorities amongst themselves; participation in decisions regarding the minority;
- Article 3: The exercise of minority rights, both individual and in groups;
- Article 4: Education of about minorities.<sup>840</sup>

## 7. Convention on Biological Diversity, 1992

The General Assembly concerned by the continuing loss of the world's biological diversity, and, on the basis of the provisions of the Convention, reiterating the commitment to the conservation of biological diversity and the sustainable use of its components, as well as the fair and equitable sharing of benefits arising from the use of genetic resources.

- Article 8(j): The Convention calls upon its signatories to: respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and

<sup>839</sup> United Nations General Assembly, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, Resolution 47/135, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-persons-belonging-national-or-ethnic>, last seen of 17/10/2024.

<sup>840</sup> United Nations General Assembly, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, Resolution 47/135, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-persons-belonging-national-or-ethnic>, last seen of 17/10/2024.

involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;<sup>841</sup>

## F. India And Safeguarding the Rights of Indigenous Peoples

Though the 'Scheduled Tribes' is an administrative term used for the purpose of administering certain specific constitutional privileges, protection and benefits for specific section of people, historically it was considered as the disadvantaged and the backward. Article 366(25) of the Constitution of India defines scheduled tribes as such tribes or tribal communities or part of it, or group within such tribes, or tribal communities as are deemed under Article 342 to be scheduled tribes for the purpose of this constitution. The scheduled tribe status confers on the tribe, or a part of it, a constitutional status invoking the safeguards provided for in the constitution in their respective States/UTs. The scheduled tribe status is conferred on the basis of birth of a person into a scheduled tribe.

### a. Constitutional Provisions relating to Scheduled and Tribal Areas in India

#### i. *Social Importance*

- **Article 14:** Equality before Law
- **Article 15:** Prohibits discrimination on grounds of religion, race, caste, sex or place of birth
- **Article 15 (4):** The State is to make special provisions for the advancement of any socially and educationally backward classes of citizens or for (the Scheduled Castes) and the STs
- **Article 16:** Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the government.

<sup>841</sup> United Nations Governing Council, *Convention on Biological Diversity*, Resolution 14/26, available at <https://legal.un.org/avl/ha/cpbcbd/cpbcbd.html>, last seen of 17/10/2024.

- **Article 16 (4):** The State to make provisions for reservation in appointment, posts in favour of any backward class citizens, which in the opinion of the State is not adequately represented in the services under the State
- **Article 16 (4A):** The State to make provisions in matters of promotion to any class or classes of posts in the services in favour of (the Scheduled Castes and) the STs
- **Articles 25–28:** Freedom of religion
- **Articles 29–30:** Freedom to culture and education
- **Article 338 A:** A National Commission for Scheduled Tribes to investigate, monitor and evaluate all matters relating to the Constitutional safeguards provided for the STs
- **Article 339 (1):** Appointment of a Commission to report on the administration of the Scheduled Areas and the welfare of the STs in the states
- **Article 340:** Appointment of a Commission to investigate the conditions of socially and educationally backward classes and the difficulties under which they labour and to make recommendations to remove such difficulties and to improve their conditions
- **Article 342:** To specify the tribes or tribal communities to be Scheduled Tribes<sup>842</sup>

**ii. Economic importance:**

- **Article 46:** The State, to 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 STs, and protect them from social injustice and all forms of exploitation
- **Article 275(1):** Grants-in-Aid to be made available from the Consolidated Fund of India each year for promoting the

welfare of the STs and administration of Scheduled Areas

- **Article 335:** The claims of the members of (the Scheduled Castes and) the STs in the appointments to services and posts in connection with the affairs of the Union or of a State to be taken into consideration consistent with the maintenance of efficiency of administration<sup>843</sup>

**iii. Political importance:**

- **Article 330:** Reservation of seats for (the Scheduled Castes and) the STs in the House of the People
- **Article 332:** Reservation of seats for (the Scheduled Castes and) the STs in the Legislative Assemblies of the States
- **Article 243D:** Reservation of seats for (the Scheduled Castes and) the STs in every Panchayat
- **Article 243T:** Reservation of seats for (the Scheduled Castes and) the STs in every Municipality
- **Article 243M (4) (b):** Extension of the Part IX- the Panchayats- to the Scheduled Areas through a law enacted by Parliament. This has been done by the Panchayats (Extension to the Scheduled Areas) Act, 1996.
- **Article 243ZC (3):** Extension of the Part IX-A- the Municipalities- to the Scheduled Areas through a law enacted by Parliament. No such law has been enacted to date.
- **Article 244:** The administration of Scheduled Areas and STs to be governed by the Fifth Schedule, and that of tribal areas in Assam, Meghalaya, Tripura and Mizoram to be governed by the Sixth Schedule (for further detail see section on Self-Management in Part II)
- **Article 339:** Control of the Union over the administration of scheduled areas and the welfare of scheduled tribes

<sup>842</sup> the Constitution of India

<sup>843</sup> the Constitution of India

- **Article 371 A:** Special status to the State of Nagaland
- **Article 371 B:** Special provisions for the State of Assam
- **Article 371 C:** Special provisions for the State of Manipur
- **Article 371 F:** Special provisions for the State of Sikkim<sup>844</sup>
- **Article 371 G:** Special provisions for the State of Mizoram
- **Article 371 H:** Special provisions for the State of Arunachal Pradesh
- **Fifth Schedule:** Provisions as to the Administration and Control of Scheduled Areas and STs
- **Sixth Schedule:** Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram<sup>845</sup>

## G. Legislative Safeguards of Indigenous People in India

It is very clear to say that from the Constitutional mandate, there are a number of legislative safeguards in the form of special laws, rules and notifications, both at the central and at the state levels.

### 1. Protection of Civil Rights Act, 1976

This central statute prohibits the practice of untouchability and cites instances of such practice liable for prosecution as criminal offences.

### 2. The Scheduled Castes and the STs (Prevention of Atrocities) Act, 1989

This Central statute is aimed at checking and deterring atrocities against STs (and Scheduled Castes)

### 3. The STs and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006

This is a recently enacted Central law concerning the rights of STs and other forest dwellers over forests and forest resources.

### 4. Odisha Scheduled Areas Transfer of Immovable Property (by STs) Regulation, 1956

Enacted by the Odisha State legislature, this Regulation prohibits the transfer of immovable property from tribals to non-tribals in the State of Odisha, and provides mechanisms for restoration of land so alienated. Similar legislations are in place in other states as well.

### 5. Odisha Land Reforms Act, 1960

This state level statute applies to land rights across Odisha's entire population; it is important because it also contains provisions regulating the transfer of land from tribals to non-tribals in non-Scheduled Areas. Most states have similar provisions in their revenue laws.

### 6. Odisha (Scheduled Areas) Debt Relief Regulation, 1967

Enacted by the Odisha State legislature, these regulations provide relief to STs from indebtedness, the control of money lending, and for the setting up of Debt Relief Courts.

### 7. Odisha Government Land Settlement Act, 1962:

Although this state level statute contains a specific provision which overrides custom, practice or usage is having the force of law it has been an important tool for regularisation and settlement of lands among tribals in Odisha.

### 8. Odisha Gram Panchayats (Minor Forest Produce Administration) Rules, 2002

These Rules give primacy to the Gram Panchayat in the procurement and trading of 67 items of minor forest produce, whether produced in government lands and forest areas within the limits of the village or collected from the reserved forests and brought into the village.

<sup>844</sup> Ibid

<sup>845</sup> the Constitution of India



### 9. Odisha Protection of Scheduled Castes and Scheduled Tribes (Interest in Trees) Act, 1981

This State level legislation forbids any person from entering into contracts with persons who are SC/STs for the sale of timber of specified trees unless previous written permission of the Range Officer has been obtained.

### 10. Odisha Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948

This rather outdated and little used state legislation claims to prevent the alienation of communal lands and private lands over which village communities have usufructuary rights. Its significance lies in the fact that it covers not only land which is actually owned by communities, but also land which may be privately owned but over which communities have rights of user. Government forest land, however, is not covered.

### 11. Nagaland Village and Area Council Act, 1978

This is a state level legislation which gives statutory recognition to traditional Village Councils in the governance system.

### 12. Nagaland Commoditisation of Public Institutions and Services Act, 2002

This is a State level legislation which enables the community to participate in the management and development of public institutions as their own. Rules have been framed under this law for bringing under its purview elementary education, grassroots health services and electricity management.

### 13. Nagaland Jhum land Act, 1970

A state level legislation enacted to safeguard and regulate the rights to jhum land, or lands on which shifting cultivation is traditionally practiced.

### 14. Chotanagpur Tenancy Act, 1908

This legislation was enacted subsequent to the tribal rebellion led by Birsa

Munda in the Chotta Nagpur area, in order to prevent transfer of Adivasi land to the non-Adivasis. It is currently applicable in the state of Jharkhand.

### 15. Santhal Parganas Tenancy Act, 1949

A powerful legislation giving legal recognition and supremacy to the customary laws of the Adivasis in the Santhal Parganas region of Jharkhand, the applicability of this law has been considerably weakened by recent adverse judgments of the Jharkhand High Court.

### Conclusion

The term 'indigenous peoples' in India encompasses diverse ethnic groups, each with unique cultural identities and socio-economic characteristics. However, recognition and classification vary across states and regions, leading to disparities in access to resources and opportunities.

The situation of indigenous peoples, particularly the Scheduled Tribes in India, presents a complex landscape of identity, rights, and development. Despite constitutional protections and recognition, there remains a significant gap between policy intentions and practical outcomes.

International frameworks, such as the United Nations Declaration on the Rights of Indigenous Peoples, emphasize the rights of indigenous communities to self-determination, cultural preservation, and socio-economic development. India's commitment to these principles is reflected in constitutional provisions and legislative safeguards aimed at promoting the welfare of Scheduled Tribes. Efforts to safeguard the rights of indigenous peoples in India are multifaceted, encompassing legal protections, institutional mechanisms, and development initiatives. However, addressing the underlying challenges requires a comprehensive approach that addresses socio-economic disparities, empowers local communities, and promotes inclusive development.

In conclusion, while progress has been made in recognizing and protecting the rights of indigenous peoples in India, significant challenges remain. Sustained efforts are needed to bridge the gap between policy and practice, ensuring that indigenous communities can fully participate in and benefit from India's development journey.

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