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Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 – info@iledu.in / Chairman@iledu.in



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STOLEN LANDS SILENCED VOICES: THE LEGAL EROSION OF TRIBAL AUTONOMY

AUTHOR – N NAGA SUGANESWAR, SCHOOL OF LAW, CHRIST (DEEMED TO BE UNIVERSITY), LAVASA CAMPUS, PUNE 412112, MAHARASHTRA, INDIA

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ABSTRACT

The Tribal Community is the only ancient ethnicity that has survived to present day, but not necessarily so in the true sense. This research critically reviews the changing situation of tribal autonomy in India from the 19th century to the present day in their collective development with aging concerns, which quite directly questions the state of poverty and marginalization that has been associated with the country's economic and infrastructural development. Focusing on tribal rights since independence, this research is dealt with the concerning the impact of major laws such as the Land Acquisition Act of 1894, Indian Forest Act of 1927, and the Forest Conservation Act of 1980 with their respective amendment in last century, It also looks very thoroughly into the inadequacy of compensation mechanisms and challenges whether monetary compensation can ever really replace the sacred, cultural, and economic value tribes attach to land and forests? By referring to the Fifth and Sixth Schedules of the Indian Constitution, this brings to light the persistent unawareness and shortcomings in turning autonomy into rights that can be exercised. India is in the midst of a global context and outlook on various fronts, drawing parallels from Bolivia's and Australia's Tribal re-ignition model. This comparative lens highlights the necessity of rights-based development that is respectful of Free, Prior, and Informed Consent (FPIC), and also calls for restorative justice mechanisms that would be able to heal the deep cultural and economic gaps. In addition, this study maintains that truly, development can only be achieved when the tribal voices are put at the centre of the process and not silenced and their connection with the land made as a core aspect of the constitutional rights of equity, dignity, and self-determination.

Keywords: Tribal Affairs, Constitution, Displacement, Tribal Rights, Framework, Land Alienation

1. Introduction

The tribal or Adivasi groups in India are recognized as one of the most primitive indigenous populations in the world. Their number was more than 104 million according to the 2011 Census, which represented approximately 8.6% of India's total population²⁵⁸⁰, and the archaeological findings confirmed their existence since the Stone Age, therefore, they have been regarded as the world's first inhabitants. These tribes inhabit biodiversity hotspots like the Central Indian

highlands, Eastern Ghats, and Northeast hills and have always been sharing the richest plantation and wildlife of the nature with a very optimistic philosophy by regarding the forests and lands not as commodities but as their cultural, spiritual, and economic life parts.

2. Research Objectives

1. To map the patterns of the India to clearly identify the major factors responsible for the land alienation of tribals from the period of 1947 till date, with the state-wise displacements reports

²⁵⁸⁰ Census of India 2011, Primary Census: Scheduled Tribes Population, ST-01 tbl. (Reg'r Gen. & Census Comm'r, India, Ministry of Home Affairs)

2. To critically examine the legal and administrative frailties of the Fifth and Sixth Schedules, Tribes Advisory Councils and the executive powers.

3. To evaluate the inability of monetary compensation for the alienated lands for the tribals which breaches the principles of natural justice with regards to inseparable tribal connection with land and forests.

3. Research Question

How did post-independence policy frameworks of India led to the process of the land alienation of tribals and loss of tribal autonomy with regard to the Fifth and Sixth Schedules and what impact did the poor compensation systems, which were a breach of the principles of natural justice by considering land and forests as just the economic, spiritual and cultural base of tribal life, contribute to the process?

4. Research Methodology

This research aligns with doctrinal legal research methodology with the incorporation of socio-legal and comparative approaches, especially on constitutional and policy matters related to tribal rights, land alienation under Indian Constitution. This is a Normative, Rational, and analytical based research with Historical and socio-economic contexts are referred to focuses on the examination of statutes and their application specially related to displacement, Monetary-based Compensation and Resettlement.

5. Post-Colonial period of Infrastructural Development

After the 1947, Indian leaders including Prime Minister Jawaharlal Nehru came up with an ambitious plan for the country that would take a long time to build but would bring about rapid modernization and self-sufficiency. *The Five-Year Plans*,²⁵⁸¹ which were the backbone of the project and started in 1951, intended to run

heavy industries, create large irrigation systems, and concentrate on resource extraction. Nehru called these activities the "*temples of modern India*"²⁵⁸² where among many others the colossal Bhakra Nangal dam, Bhilai and Rourkela steel plants, and massive mining operations in the mineral-rich tribal areas were the main elements as well. These investments in modern infrastructure were to turn an industrial power out of the resources that had been used up by colonialism with the promise of economic prosperity for the whole country. But the Adivasi, India's original tribes, for whom nature is a mother and a partner, were more than once overlooked by this vision that considered their complex and sustainable living styles as obstacles. Moreover, the government inherited colonial laws enacted a long time ago, which included the infamous *Land Acquisition Act (LAA) of 1894*,²⁵⁸³ which gave the state the power to take over privatized or community lands for purposes that were not clearly defined as "public."

*The tribal population's impact on the year 1990 was really dramatic in the negative sense. As per the existing rough calculations, about 8.54 million or 85.39 lakh tribal people were forced to evacuate their lands and settlements which accounted for 40% of the displacements in total caused by development. The irony is that the Scheduled Tribes who were less than 9% of the population were the ones hit the hardest. In a similar way, the area of coal mining in Odisha that had been the site of community rituals for centuries was converted into a deserted place as people were scattered. The rehabilitation process was mere technicalities; even the partial resettlement was given to less than 25% of the people which left many urban migrants or landless labourers who were already in the profession with nothing.*²⁵⁸⁴

²⁵⁸¹ High Level Comm. on Socio-Econ., Health & Educ. Status of Tribal Cmty. of India, Ministry of Tribal Affs., Gov't of India. (Discussing Nehru's modernization and integration at pp. 37-38; Five-Year Plans and displacement at p. 39; dams like Bhakra Nangal, Polavaram, Hirakud, Sardar Sarovar at pp. 31-32

²⁵⁸² Jawaharlal Nehru, Address at the Inauguration of Bhakra Nangal Dam (Oct. 22, 1963), reprinted in Jawaharlal Nehru's Speeches, Vol. 5 (Gov't of India 1967).

²⁵⁸³ The Land Acquisition Act, 1894, No. 1, Acts of Parliament, 1894

²⁵⁸⁴ United Nations Dev. Programme, Land and Governance under the Fifth Schedule (2013) (discussing inherited colonial laws including Land Acquisition Act 1894 and eminent domain at pp. 27-30; displacement due to mining, dams, and national parks at pp. 08-09, 29-31, 36-37, 67-69, 74;

6. Laws used an Instrument of Extraction

The *Indian Forest Act of 1927*, a law pushed through by the British rule, openly designated over 40% of India's territory as "reserved forests",²⁵⁸⁵ thus prohibiting the very life of the tribal community that includes collection, grazing, and non-timber resources like medicinal herbs and bamboo for rituals, which could result in fines or imprisonment. This oppression of rural life was granting forest officials unlimited power, and the exploitation of timber was going to be the cause of the conflict that would turn sacred groves into state monopolies, displacing Adivasis from their lands and slowly annihilating their role as biodiversity maintainers. However, it intensified the practice of bureaucratic centralization, permitting industrial invasions to disguise under the term "development" and thus hastening the process.²⁵⁸⁶

*The combined impact of these laws had resulted in the official or unlawful takeover of more than 300,000 hectares,*²⁵⁸⁷ mostly for mining, trucking, and power production, and the communities that developed their beliefs in association with these ecosystems were uprooted.

7. Standards of Safeguards by Constitution under Fifth & Sixth Schedules

The Indian Constitution, through the Fifth and Sixth Schedules, provided for self-governance of indigenous tribes and, in turn, protected the native tribes from the excesses of development that was uncontrolled. The Fifth Schedule, which came into force in 1950, includes the Scheduled Areas of the peninsula consisting of Jharkhand, Odisha, Himachal Pradesh and so on and specifies the governor's supervision measures like preventing the land transfer to non-tribals, regulating mining activity, and establishing

Tribes Advisory Councils (TACs) as the consultation bodies for the tribal welfare policy. *The "discretion" granted to governors in Para 5 of the Fifth Schedule amounts to a power for the top management to declare that some projects will be unaffected by the bans on land transfer, at times even without prior consultation with the TAC, thus prioritizing the national needs over local agreement.*²⁵⁸⁸

Emergency provisions along with the Land Acquisition Act enable quick rerouting of the development process; The pledges of providing people with equivalent land and compensation vanished into thin air; in fact, the outsees had not even gotten the titles till 2012, which only fuelled their resentment. In the Northeast, ADCs suffer from a shortage of money and too much control by centre.

8. Theoretical Framework

8.1 UNDRIP and ILO 169

This research is founded on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was approved by the *UN General Assembly in 2007*.²⁵⁸⁹ This paper is regarded as a significant point in the history of recognizing the rights and autonomy of indigenous peoples. The right to self-determination is guaranteed in the *3rd article* of the declaration,²⁵⁹⁰ thus indigenous peoples can determine their political, economic, social, and cultural development freely, while the *32nd Article provides for Free, Prior, and Informed Consent for all kinds of activities affecting their lands and territories,*²⁵⁹¹ thereby ensuring that neither the state nor the corporation can impose anything upon them. India, which supported the resolution at the time of its adoption, expressed its support for UNDRIP by making a reservation that in the absence of any "indigenous" status for post-colonial citizens.

impacts on tribal populations at pp. 02, 04-07, 25-26, 74; rehabilitation issues at pp. 09, 29-31, 41-47.

²⁵⁸⁵ Indian Forest Act, No. 16 of 1927.

²⁵⁸⁶ Madhav Gadgil & Ramachandra Guha, *This Fissured Land: An Ecological History of India* (1992)

²⁵⁸⁷ Siegfried Wiessner, *Rights and Status of Indigenous Peoples: A Global Comparative and Critical Assessment* (1999).

²⁵⁸⁸ India Const. sched. V, ¶ 5.

²⁵⁸⁹ Indigenous and Tribal Populations Convention, June 26, 1957, 328 U.N.T.S. 247 (No. 107).

²⁵⁹⁰ United Nations Declaration on the Rights of Indigenous Peoples art. 3, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007)

²⁵⁹¹ United Nations Declaration on the Rights of Indigenous Peoples art. 32, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007)

The International Labour Organization's (ILO) Convention 169 (1989) is one of the earliest references to this viewpoint, as it renders mere consultation into a full-fledged participatory process where states are obliged to do so with the Indigenous people in a fair and respectful manner to their very existence.²⁵⁹² This instance is indicative of a more widespread aversion: Despite the Forest Rights Act (2006)²⁵⁹³ and the Panchayats (Extension to Scheduled Areas) Act (1996)²⁵⁹⁴ being the domestic reflections, the enforcement is still at a very low level. The approval of the Gram Sabhas is very often disregarded, as was the case in the Vedanta-Niyamgiri mining issue where the Supreme Court chose the route of extraction through FPIC instead of the local people's consent.²⁵⁹⁵

8.2 The Principles of Natural Justice

The Principles of Natural Justice, *Audi Alteram Partem* (the right to be heard) and *Nemo Judex in Causa Sua* (the judge's impartiality), are not only minimum procedural requirements but also the very foundation of the expansive Article 21 of the Indian Constitution,²⁵⁹⁶ which according to the Supreme Court's interpretation, takes the right to life and personal liberty through the channel of substantive due process which is also established in *Maneka Gandhi V Union of India*. In case the Adivasi populations of India, who are completely dependent on the land for their survival and maintenance, are deprived of their land without an extensive redress including consultation, compensation, and cultural rehabilitation, then this is a great injustice not only taking away their property but also their existence. The *Narmada Bachao Andolan v. Union of India (2000)*²⁵⁹⁷ case opened the gates for similar lawsuits, as the Hon'ble Supreme Court predicted the disaster of displacements that the Sardar Sarovar Dam would cause.

²⁵⁹² Indigenous and Tribal Peoples Convention, June 27, 1989, 1650 U.N.T.S. 383 (No. 169).

²⁵⁹³ Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, No. 2 of 2007

²⁵⁹⁴ Panchayats (Extension to Scheduled Areas) Act, No. 40 of 1996

²⁵⁹⁵ Orissa Mining Corp. v. Ministry of Env't & Forest, (2013) 6 SCC 476

²⁵⁹⁶ *Maneka Gandhi v. Union of India* (expansive interpretation of Article 21, introducing substantive due process and principles of natural justice)

²⁵⁹⁷ *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664

Medha Patkar and the plaintiffs relied on Article 21 and argued that it was a great injustice for 40,000 tribal people to be uprooted from 245 villages to be submerged without their Free Prior Informed Consent (FPIC).

*The Court, in a very close 2:1 division between Justices Kirpal and Anand (the dissenting opinion was authored by Justice Bharucha), ruled that the atrocities included: the tribal displacements done by force and linked with Article 21, ILO Convention 107, as separating communities from their forests and rivers, and eventually leading to the impoverishment of the poor and the loss of identity.²⁵⁹⁸ However, the Court did not change the dam height to 90 meters, which would put the displaced under the line of "larger public interest" and still require rehabilitation measures that are not just cash payouts but also land-for-land, community reconstruction, and Narmada Control Authority monitoring, for various categories. This duality exists as a warning contradiction: the court, on one side, acknowledged the cultural loss to be a matter under Article 21, but on the other side, it entrusted the whole issue to the executive power which at times through *ex parte* acquisitions, completely sidestepped the rule of hearing.*

9.1 Extractive Developmentalism

In book *Encountering Development* (1995), the track of the world's societies and their ways of life is described by the authoritative critique of *Arturo Escobar*,²⁵⁹⁹ whose work is now referred to as the "development era" owing to its duration and scope, as a colonial situation. Furthermore, he claims that the developments of the so-called *Western civilization democracy* prior to the capitalist countries, along with their reliance on science and unlimited growth, were the main factors that led to the 'civilizations encounter' with non-modern, place-based worldviews which in turn were subjected to colonialism and exploitation only under the justification of

²⁵⁹⁸ Bench: B.N. Kirpal, J. (for himself and Dr. A.S. Anand, C.J.) (majority); S.P. Bharucha, J..

²⁵⁹⁹ Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (1995) Pg 1-64

development. The Five-Year Plans (1951 onwards) turned the lands of the tribal people who had lived there for centuries and were part of the rich bio-cultural diversity, into mere resource bases, thus replicating the looting of the East India Company but this time under the guise of "nation-building."

The ontological violence discussed above became very apparent in the reserved forests' spread, which increased under the Indian Forest Act (1927) and the Forest Conservation Act (1980) to cover about 23% of India's land area by 1980, thus making illegal Adivasi access to non-timber resources such as medicinal plants and grazing.²⁶⁰⁰ The "reserved" areas that were declared state property, turned the sacred groves into timber banks and more than 1.5 million forest-dwellers were displaced between 1980 and 2005, with tribals being 8% of the population and thus bearing 40–50% of the hardship.

8.3 Escobar Perspective not merely aberrations but systemic²⁶⁰¹

The Adivasi ontologies' "pluriverse" sees the land as kin and not the monocultural capital source, hence they are in conflict and create resistance cycles like the Narmada Bachao Andolan's Satyagrahas, and Naxalite insurgencies in the mineral-rich red corridors, among other things. To find a way out of this situation, decolonial strategies are imperative that entail FPIC-embedded policies, pluriversality planning and especially recognizing tribal stewardship, else the "temples of modernity" in India would bury its civilizational diversity.

9 Tribal Land Alienation

9.1 Early Displacements Period (1947 – 1960s)

Jawaharlal Nehru's great vision regarding dams as "the temples of modern India" and the assurance of the country's progress through self-reliance came to expression in the unrivalled hydraulic mania that followed the

year 1947.²⁶⁰² However, at the same time, the large infrastructure projects had a very disturbing human toll. By 1990, India had constructed just over 3,200 big dams, which placed it at third position worldwide in the total number of large dams. The Five-Year Plans instituted the severe control of the rivers for irrigation, power generation, and flood management. *The huge toll of this infrastructure was the displacement of over 21.3 million people throughout the years 1951 to 1990, of which the majority were the victims of the dams that alone resulted in the displacement of 16.4 million people.* The planned rehabilitation of the displaced people turned out to be a mirage, as only 24.8% of the people were partially resettled, while most of them ended up living in either the fringes of towns or barren lands where they had to switch from foraging to taking up low-paid jobs in despair.

The *Bhakra Nangal Dam complex (1948–1963)*,²⁶⁰³ which was Nehru's major project on the Sutlej River that separated Punjab and Himachal Pradesh, was a classic case of this scenario. The dam, which was opened in 1954 and was termed a sacred site akin to a secular one *producing 1,204 MW, inundated 90,000 acres of land, uprooted 36,000 individuals* and did it all without any real consultation,²⁶⁰⁴ as the mandatory Tribes Advisory Council (TAC) was merely a formality to the extent that it acted as a holder of papers. The government's promise of providing equivalent land in Haryana and Punjab was not kept. *By 2013, there were still 3,600 families left which did not have land,*²⁶⁰⁵ with a large number of them living in forests without any titles on their name even after alienation; thus, they were in danger of being

²⁶⁰⁰ Forest (Conservation) Act, No. 69 of 1980

²⁶⁰¹ Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (1995) Pg 85-101

²⁶⁰² Jawaharlal Nehru, Address at the Dedication of the Bhakra-Nangal Project to the Nation (Oct. 22, 1963), reprinted in *Jawaharlal Nehru's Speeches, March 1963–May 1964*, vol. 5 (Publications Division, Ministry of Information and Broadcasting, Gov't of India 1968).

²⁶⁰³ World Commission on Dams, *Dams and Development: A New Framework for Decision-Making* (2000)

²⁶⁰⁴ Shripad Dharmadhikary, *Unravelling Bhakra: Assessing the Temple of Resurgent India* (Manthan Adhyayan Kendra 2005)

²⁶⁰⁵ Manthan Adhyayan Kendra, *The First Development-Caused Displacements in India: The Forgotten People of Bhakra Nangal*, in *Beyond Relocation: The Imperative of Sustainable Resettlement* (Renu Modi ed., 2009).

evicted as per the certain provisions of the Forest Rights Act.

9.2 Major Revolutions Period (1970s–1990s)

The Indian Forest Act 1927, a law of colonial origin, sanctioned the ongoing and indeed the promotion of the designation of areas as "reserved forests", where the government taking of land and the upholding of traditional rights are in direct conflict with the banning of the very practices like grazing and collecting of minor forest produce that the indigenous people still practice and are thus considered criminals. As per certain data from *India State of Forest Report (ISFR) 2023*, the total area of these reservations was approximately 442,276 square kilometres in 2022, which was also an all-time high with this regard and it also stats that these reservations encompassing more than 57% of the total recorded forest area (RFA) of India,²⁶⁰⁶ which is around 775,377 square kilometres.

The forest land area that was subject to the IFA 1927 and recognized by Section 20 of the IFA²⁶⁰⁷ overlapped with the traditional territories that included some of the richest areas in terms of biodiversity, such as the Western Ghats and the Eastern Himalayas, and in many cases, it was done without the existing claims being settled and the exclusion being in place for the already claimed areas that were primarily designated for timber production dictated by the British.

The calculation done by humans comes up with a big number: the reserves have a great influence on about 150 million tribal and forest-dwelling people, more than 40% of them belonging to the Scheduled Tribes and living in or around 170,000 villages with forests for food, medicine, and cultural continuity. Besides the IFA's hold, the *Forest Conservation Act (FCA) of 1980*²⁶⁰⁸ put all power in one hand by allowing only central government restrictions on access to forest land for "non-forest" uses while forbidding community access. Although the law allowed the granting of the "unforested" land

through the manoeuvre of conservation, it imposed the very conditions under which people were evicted.

9.3 Intensified Period (LPG) (1990s–2000s)

India's economic reforms in 1991 which led to the removal of restrictions on the country's economy and the inflow of foreign investment have been in the mining boom with the destruction of the tribal heartlands and transforming the mineral-rich areas into extraction frontiers as the biggest impact of such reforms. The mining sector was strictly controlled by a licensing raj before the reforms, while after the liberalization wave of approvals flooded the mining sector.²⁶⁰⁹

*Between 1992 and 2000 alone, 67 projects with a total foreign equity of Rs. 37 billion got green signal, and the number of active mining leases jumped to over 3,000 by the end of 2010 with most located in the Scheduled Areas of Odisha, Jharkhand, and Chhattisgarh.*²⁶¹⁰ The tribal population of 2–3 million was displaced due to this confiscation which often took place without the consent of the Gram Sabha according to the revised *Mines and Minerals Act (2021)*, which also led to the weakening of the communal land tenure system and consequently the impoverishment of the people through small royalties.

9.4 Current Period (2000s – Present)

The enactment of the Forest Rights Act (FRA) in 2006 was viewed as a measure for correction, which gave individuals and communities the right to ownership as a way of redressing the wrongs committed during the colonial period through dispossession. *However, the Ministry of Tribal Affairs reports that by May 2025, only 2.511 million (49%) out of 5.123 million claims made mainly by tribal people have been approved while 1.862 million (36%) were rejected and 0.75 million claims are still awaiting decision.*²⁶¹¹ The

²⁶⁰⁶ Forest Survey of India, Ministry of Env't, Forest & Climate Change, Gov't of India, *India State of Forest Report 2023 (2023)*

²⁶⁰⁷ Indian Forest Act, No. 16 of 1927, § 2

²⁶⁰⁸ Forest (Conservation) Act, No. 69 of 1980.

²⁶⁰⁹ Mines and Minerals (Development and Regulation) Act, No. 67 of 1957

²⁶¹⁰ National Mineral Policy 1993, Report of NMP 2000

²⁶¹¹ Ministry of Tribal Affairs, Gov't of India, Status Report on Implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Monthly Progress Report).

areas of rejection, where the refusal rates reached up to 40–70% on average; Madhya Pradesh (53%) and J&K (85%) had the highest rates, were linked to the problems regarding documentation, resistance from the forest department, and issues with the computerization of records. This has resulted in 1.7 million families being vulnerable to eviction while the case is being reviewed by the Supreme Court.

According to the latest data for October 2025, the number of districts affected by Left-Wing Extremism (LWE) has been reduced to 11 and these districts are located in the areas where 80–85% of the Fifth Schedule regions are found, which are the regions that are inhabited by 90% of India's 104 million tribal people and are under the threat of violence as in Chhattisgarh's Bastar and Jharkhand's West Singhbhum.^{2612'}

10 Major Tribals States with their Displacement Report

10.1 Central: Madhya Pradesh, Chhattisgarh, Uttar Pradesh & Etc

The Narmada Valley Development Project (NVDP) which consisted of gigantic dams like Sardar Sarovar (SSP) and Narmada Sagar (NSP), was the indication of India's advanced hydraulic engineering after its independence.

It irrigated 18 million hectares of land, produced 3,450 MW of electricity, and supplied drinking water to 20 million residents of Gujarat, Madhya Pradesh, and Maharashtra as its main impact. The project, however, during planning from the 1950s till the eventual construction boom in the 1980s, caused more than 200,000 displacements. *The displaced population consisted mostly of Adivasi tribes like Bhil, Tadvi, and Sahariya, and the Narmada river valley had 245 drowned villages and 37,000 hectares of land and forests which were already recognized as ecologically significant.*²⁶¹³

Consequently, the corporate invasion was blamed on the denial of FPIC. The displaced

populations turned into "development refugees," and women and children were by far the most affected in terms of losing their assets and even more so owing to gender-based violence in the transit camps. The rehabilitation process, as it was specified in the 1979 *Narmada Water Disputes Tribunal Award*,²⁶¹⁴ consisting of land-for-land with basic amenities, is now nothing but a joke. Based on the audits of Narmada Bachao Andolan and the petitions submitted to the Supreme Court, it is estimated that in the year 2025, approximately 60% of the displaced population, more than 120,000 people, will still be waiting for adequate rehabilitation.²⁶¹⁵

10.2 Eastern Ghats: Odisha, Jharkhand, Andhra Pradesh, Telangana & Etc

The Polavaram multipurpose hydropower-cum-irrigation dam on the Godavari River, which has become the centre of India's most controversial projects, and the Mandira dam of the Rourkela Steel Plant in Odisha are two impoundments that have been responsible for land alienation due to development such as over 150,000 hectares of the most fertile tribal land lost since the 1950s. *By the year 2025, close to 200,000 people, more than 55% of whom are Adivasis of Konda Reddi and Koya tribes from 293 villages, will have been displaced.*²⁶¹⁶ The total alienation of land of more than 150,000 hectares, including areas taken for canals and expansions, has rendered the people poor for generations and in 2025, *52% of the displaced households will still be multidimensionally deprived.*²⁶¹⁷

10.3 Northeast: Seven Sisters

The Sixth Schedule enclaves of Northeast India, which consisted of the states of Assam, Meghalaya, Tripura and Mizoram, witnessed the post-independence developmental juggernaut primarily aimed at hydroelectric mega projects

²⁶¹² Ministry of Home Affairs, Gov't of India, Parliamentary Statement on Left Wing Extremism

²⁶¹³ Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664

²⁶¹⁴ Narmada Water Disputes Tribunal Award, 1979 (NWD T Award; governs water allocation, dam heights, and rehabilitation/resettlement provisions, including land-for-land policy for project-affected families)

²⁶¹⁵ Ministry of Tribal Affairs, Gov't of India,

²⁶¹⁶ Ministry of Jal Shakti, Dep't of Water Res., Gov't of India, Polavaram Irrigation Project Status Reports

²⁶¹⁷ Prafulla Das, Development, Displacement and Resistance: The Case of Rourkela Steel Plant Report 2025

and modern tea estates ruthlessly occupying nearly 30% of the tribal community lands from 1950 to 1990. The Sixth Schedule as per articles 244(2) and 275(1) empowered the Autonomous District Councils (ADCs) to make laws pertaining to land allotment, forest management, and inheritance. Gradually, they were able to afford the jhum cycles and clan-based tenures protection from external threats. The damage that hydropower caused to the environment was very clear, for instance. By 1990, over 168 hydropower projects, most of them being upstream in Arunachal, had taken away 1 million acres of the whole region, with the losses estimated as high as 20–40% of the tribal lands of Tripura due to the reservoirs and transmission corridors during the 1960s alone.²⁶¹⁸

It was the legacy of the colonial-era tea estates and their increasing significance after 1947 that mainly contributed to the entire plundering process. The Brahmaputra Valley in Assam, which had previously been home to the Kachari and Bodo tribes, lost to monoculture a whopping 14.1 lakh acres during the years 1947–2000 and, in the same time frame, around 25% of the community forests in *Karbi Anglong and Dima Hasao* were made 'waste lands' under the very poor supervision of the Sixth Schedule thus losing their forests from 1950 to 1990.²⁶¹⁹ The non-tribal planters with their unending leases not only displaced the tenant farmers but also turned the areas rich in biodiversity into export monopolies which by 1990 were generating Rs 2,500 crore a year.²⁶²⁰ The ADCs, which received less than 5% of the royalties, became the facilitators of patronage. The loss estimated at about 30% from the combined consumption of hydropower and tea that covered an area of 2.1 lakh acres in Tripura and Meghalaya went on to be the main reason for the start of ethnic insurgencies like the *Tripura National Volunteers*

(1978),²⁶²¹ and ULFA agrarian revolts as landlessness rose up to 30% among the affected clans in some cases.

11 Legal Erosion under Fifth and Sixth Schedules

11.1 Doctrinal Analysis of Fifth Schedule

According to the *Indian Constitution, Article 244(1), the tribal inhabitants of Scheduled Areas which are explicitly mentioned are the legitimate basis for the Sixth Schedule to recognize them as a whole and enforcing legal rights and benefits.*²⁶²² In the first place, it is stated that any alterations regarding land rights or their transfer should not only be in line with local customs but also have the prior consent of the governor. One of the major prohibitions operating within this context and supported by the state laws such as Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and various Panchayats (Extension to Scheduled Areas) Acts, is the restriction on the transfer of tribal land to non-tribals. This has the form of a direct policy aimed at safeguarding the tribal people and preventing their displacement through expropriation and other means, learning about encroachment as a cause which is associated with the non-tribal people's historically economic pressure and thus, loss of land to outsiders and their encroachments.²⁶²³

Article 244(1) gives power to the Tribes Advisory Councils (TACs) which are made up of tribal members to provide counsel on matters pertaining to the welfare, land management, and the tribes' development. TACs are important to the degree that they make it possible to govern the period's policy in ways that respect the tribal people's autonomy, religion, and resource rights thus facilitating participatory governance in the Scheduled Areas of the states of Jharkhand, Odisha, and Chhattisgarh among others, etc. However, "public purpose" loopholes are the main reason

²⁶¹⁸ Tribals Affairs Committee, Govt of Tripura – Annual Tribals Report of 1970

²⁶¹⁹ Sanjay Barbor, *Tea Tribes of Assam: Colonial Exploitation and Assertion of Adivasi Rights*

²⁶²⁰ Neeraj Vagholikar et al., *Damming Northeast India* (Kalpavriksh, Aaranyak & ActionAid India 2010).

²⁶²¹ Subir Bhaumik, *Insurgency in Tripura*

²⁶²² India Const. art. 244, cl. 1.

²⁶²³ Khan Rifat Mumtaz & Mollick Farhad, *Tribal Rights on Land: Policy, Practices and Perspective*, (2015).

erasing all the good intentions.²⁶²⁴ Governments often use this term with a vague meaning when they want to acquire land under different Acts such as the Land Acquisition Act, 1894 (pre-2013) or even the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013*, and they do so to escape limitations.²⁶²⁵ The projects described as "for public interest" such as infrastructure, mining, or industrial corridors get exemptions through notifications or ordinances issued by the governor.

11.2 Dams and Mines

The construction of the dam that went through the Scheduled Areas of Punjab and Himachal Pradesh made the entire tribal population relocate and the Tribes Advisory Councils (TACs) were hardly consulted at all. The government authorities gave national development irrigation and power generation the top priority over indigenous land rights,²⁶²⁶ went ahead without even thinking about the approval from the governor and local practices. Mining activities carried out in Andhra Pradesh before the enactment of Samatha law very simply ignored the stipulation of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, which clearly forbade the transfer of scheduled lands to non-tribals. The cases illustrate how the "public purpose" claims managed to sidestep not only the TAC supervision but also the land laws, thus diminishing tribal power until the courts stepped in. They ask for the implementation of reforms that would return land.

11.3 Tribes Advisory Councils: Structure and Shortcomings

The role for Tree Authority Committees, or TACs as they are popularly known, is basically that of an adviser, which means their impact on guarding the environment is minimal since they

hold their meetings so infrequently.²⁶²⁷ The committees operating this way are subject to very little funding and have no authority, meaning they cannot impose any kind of punishment or legislation and they are often left with mere recommendatory functions without any power to back them up. The 2020 Talabira deforestation case in Odisha is one of the incidents that best illustrates this lack of fortification when involving TACs. The case was surrounding the Mahanadi Coalfields Limited company which being granted huge forest clearances for mining despite the existence of ecological concerns. *The Supreme Court later pointed out that this was due to the TACs' powerlessness that illegal tree felling was going on which was violating the Forest (Conservation) Act, 1980.*²⁶²⁸ Thus, more than one thousand trees fell victim to this situation which demonstrates how infrequency of meetings coupled with a shortage of staff creates a situation where developers can get past the so-called "safeguards." It is very crucial that the TACs are given the power to impose deadlines, sufficient funding, and punitive authority in order to achieve real conservation.²⁶²⁹

11.4 Sixth Schedule: Northeast

The Sixth Schedule, Article 244(2) of the Indian Constitution, was established to create the autonomous district councils which are intended for governing the tribal areas of Assam, Meghalaya, Tripura and Mizoram. The councils put the power of legislation, administration and even judicial measures over land, forests and local customs, to the tribal peoples, with the objective of preserving the rights of the tribes during the process of integration into the society. *There were no actions among the post-1950 amendments, such as the Seventh Amendment of 1956, which altered the states and the schedules, and the*

²⁶²⁴ Ananya Sharma & Jayanti Jaya, Efficacy of Tribal Governance: A Critical Analysis of the Working of the Governing Bodies Under the Fifth and Sixth Schedule of the Indian Constitution, (2021).

²⁶²⁵ G. Srihari, Land Acquisition and Tribal Displacement in India, (2022)

²⁶²⁶ Douglas E. Sanders, Tribal Self-Government in India, (1993)

²⁶²⁷ Bodhi S. R. & Bipin Jojo eds., The Problematics of Tribal Integration: Voices from India's Alternative Centers (Sage Publ'ns India 2019)

²⁶²⁸ Apoorv Kurup, Tribal Law in India: How Decentralized Administration Is Extinguishing Tribal Rights and Why Autonomous Tribal Governments Are Better, (2008)

²⁶²⁹ B. R. Prasad Reddy, Tribal Land Alienation in India, (2022)

Twenty-second Amendment that provided for Article 244A in 1969 for the future creation of autonomous states in Assam. The playing of emergency provisions, particularly during the National Emergency of 1975-1977 under Article 352,²⁶³⁰ which the central government allowed to rule the states and thus weakened the councils' powers by the Governor's discretionary and ordinance powers. This in turn caused land grabbing in Assam where, for instance, oil drilling and the construction of infrastructures were carried out by displacing the tribals without the councils' permissions

11.5 Both Executive and Judicial Overreach

The discretionary powers of the governors bestowed by the Fifth and Sixth Schedules very often restrict the rights of the tribals to such an extent that the state governments are practically left with no other option but to take the route of the autonomous councils for land and forest transactions. This issue is a case in point that is beautifully illustrated by the *T.N. Godavarman Thirumulpad vs. Union of India (1997)*.²⁶³¹ The Supreme Court's drastic measure in imposing the country-wide restoration of all the forests along with the eviction of all "encroachers" who happen to be historically-rooted tribal people designated under this term was a direct result of illegal logging in Tamil Nadu. The court's decision to overstep, which was supported by the reports of the governors and the emergency provisions, drove thousands from the scheduled areas of Assam and other places, giving nature protection a higher priority than human rights of the indigenous people, and this without any rehabilitation.

11.6 Monetary Based Compensation Failures: Bargi and Narmada

The construction of the Bargi Dam in 1990 on the river led to the displacement of 5475 families in 162 villages. It also inundated an area of more than 27,000 hectares that was intended for

irrigation and electricity production. The official papers promised compensation in the form of land-for-land according to the then-existing rehabilitation policy, but 90% of the people were not given any good alternatives; many got dry plots without water or means of living. Cash payouts, which had already been brought down by the hyperinflation of the 1990s,²⁶³² were too little; the so-called model villages became deserted, and deaths from starvation and migration were reported by the Planning Commission. The outsees of Narmada, including those of Bargi, were driven to suicide by poverty and also experienced a great cultural emptiness; the extinction of the ancestral riverside rituals deepened the trauma and spurred the NBA protests against development-induced alienation.²⁶³³

12 Comparing Global Perspectives

12.1 Free, Prior, and Informed Consent Model Based on Bolivia

According to Bolivia's 2009 Constitution, Free, Prior, and Informed Consent (FPIC) is a prerequisite for the indigenous peoples' territories, which is the point of Law 071 of 2005 that set consultation criteria based on ILO Convention 169 for the deceased land protections from extractive industry invasions. This law was a major asset for the communities who could stop all development that they thought would threaten their cultural existence.²⁶³⁴ A 40% drop in socio-environmental conflicts from 2009 to 2020 resulting from territorial consultations that blocked unilateral mining and hydrocarbon explorations in the Amazon lowlands was the final outcome. Nevertheless, *the enforcement of such laws faces a lot of hurdles: government agencies conduct superficial "dialogues" that take away the communities' real veto rights, thus worsening the situation in ISIBORO-SÉCURE where companies are exploiting the lack of*

²⁶³⁰ Ravi Prakash & Monika Rastogi, *The Legal History of Tribal Rights in India: Negotiating Identity, Autonomy, and Juridical Recognition Within a Plural Legal Order*, (2025).

²⁶³¹ *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

²⁶³² Uttam Kumar Sahoo & Geetanjoy Sahu, *Trend and Direction of FRA Implementation*, (2019).

²⁶³³ Felix Padel & Samarendra Das, *Out of This Earth: East India Adivasis and the Aluminium Cartel* (Orient BlackSwan 2010)

²⁶³⁴ Nicole Fabricant, *Mobilizing Bolivia's Displaced: Indigenous Politics and the Struggle over Land* – (Univ. of N.C. Press 2012)

clarity in the situation.²⁶³⁵ This also points to the huge difference between the recognition of rights in the constitution and the reality created by the bureaucracy.

12.2 Native Title Revolution Modal based on Australia²⁶³⁶

Mabo v Queensland (No 2) (1992) ruling of the High Court of Australia was a century-breaking decision that not only overturned the terra nullius doctrine but also implied that the indigenous people's native title rights governed by their traditional laws and customs were existing even before the British colonization of the land.²⁶³⁷ Following this, the *Native Title Act 1993* was enacted, which outlined the entire legal procedure of claiming, recognizing, and protecting the native title rights.²⁶³⁸ Moreover, such settlements covered large tracts of land and, consequently, the indigenous people's claim was further strengthened and they were able to share the land with other interests in a peaceful manner.

13 Policy Recommendations

Propose that the councils have their budgets and that the TAC vetoes are applied. The whole reparation is bigger than the sum of LARR 2013 monetized multiples, such as land-for-land exchanges, which are given priority to the rehabilitation of the NTFP economies that were killed in the Bargi (1990) and Narmada displacements where 90% of the people uprooted lost their sources of income with no good alternatives coming up. The money for cultural restoration,²⁶³⁹ which would be coming from the project royalties to the tune of 10–20% like in *Bolivia 2022 protocols and Australia's Native Title Revolution* would be the ones to measure spiritual injuries done by the sacred

site losses which in turn would facilitate the mental health crisis management and the Pathalgadi reclamation issues which were neglected during Godavarman evictions.²⁶⁴⁰ *Free, Prior and Informed Consent (FPIC) adoption as a mandatory condition or a guideline for LARR 2013.*

14 Conclusion

The radical transformation of tribal lands from 1947 onwards has been studied in detail by this colossal research which has revealed how the ancient voices were silenced through the use of Fifth/Sixth Schedules, colonial laws and hybrid compensations. The loudest amongst them have been the poor with 84% rates, the rebel Naxal shadows and the identity as sacred groves razed; all indicating an exploitative attitude. The FPIC triumphs in Bolivia with a 40% reduction in conflicts and Australia's 308 Native Title restorations, which stirred the world, have been very strikingly heard; it is now the turn of India to change its rights-based paradigms to self-determination through irreversible agreements and restorative audits. The Baiga march continues not only as evidence of tribal hardship but also as a demand for cooperation instead of aid. In India, the prominence of these voices will make it possible to have the realization of equality, human rights, and a truly Pluriversal India.

²⁶³⁵ Nancy Grey Postero, *Now We Are Citizens: Indigenous Politics in Postmulticultural Bolivia* – (Stanford Univ. Press 2007)

²⁶³⁶ Australian Human Rights Commission, Chapter 1,2: Looking Back on 20 Years of Native Title and the Social Justice Commissioner Role, in *Social Justice and Native Title Report 2013* (Mick Gooda ed., Nov. 12, 2013) (<https://humanrights.gov.au/resource-hub/by-resource-type/books/chapter-2-looking-back-20-years-native-title-and-social-justice-commissioner-role>)

²⁶³⁷ *Mabo v Queensland (No 2)* (1992) 175 C.L.R. 1 (Austl.)

²⁶³⁸ *Native Title Act 1993* (Cth) (Austl.)

²⁶³⁹ Laxmi & Sunil Kumar, *Human Rights of Indigenous People in India: A Legal Study*, (2025)

²⁶⁴⁰ Poornima Shukla, *Issue of Land Alienation and Displacement of Tribes*, (2016)