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## **SAFEGUARDING TRIBAL RIGHTS: EXPLORING LEGAL HURDLES AND TRIBAL CENTRIC LEGISLATION**

### **ABSTRACT:**

*India is one of the countries in the world in which the tribal population consist of over 8.6% of its total population. Before independence era these minority communities were mostly in a state of isolation as they were being exploited and could not cop up with the majority communities properly, after independence India has provided special arrangements to these communities and tribal people in terms of making domestic laws for these communities on the other hand various efforts had been made to integrate these communities with all other communities living across India. By Implementing the existing legislation for these communities and introducing new laws that shall be in consistent with the human rights movement across the world the social and economic rights of these communities must be protected at any cost. The main issue of concern that India is facing is safeguarding the rights of these tribal people. The present paper focuses on the current legal issues faced by the Tribal people of India which includes cultural, educational, and legal issues Also the evolution of laws for these tribal communities in both national as well as international level moreover the Judiciary's role in protection and upliftment of these tribal people has also been highlighted.*

**KEY WORDS:** TRIBAL RIGHTS, PESA, CONSTITUTIONAL PROVISIONS

## **INTRODUCTION:**

The term “Tribe” refers to a set of people who lives in a harsh and underdeveloped situation. People see them as they are ancient forest dwellers while being the original settler of the humanity these people are deprived of their basic necessities. Tribes in India are primarily defined by their geographical condition and different culture. These kind of community because of their prevalent societal standards and caste structure are viewed as socially second-class citizens, and also, they are treated as untouchables in some or the other way. Because of illiteracy and economic as well as financial backwardness these peoples were force to do the works that can be deemed as inferior.

In a country like India, the welfare of the people is given top priority in all decisions, and India's commitment to helping the less fortunate is stated in the very basic line of constitution. Even after 77 years of independence the status of tribal people in India has not been improved despite the country’s rapid advancement, this growth is moving at a very slow pace. Even though both central and state government is working very hard towards the development of these communities by making a wide range of policies and programmes over the years but still there is many more to achieve until the tribal culture is established in rest of the world. Tribal people should be given the same right as others as being a part of the country they are entitled to all other privileges as well. The Indian Constitution's fifth and sixth schedules include several measures for the tribal people, but the question raised there is since just providing opportunities does not guarantee the welfare of any group in a big country like India. There has been a constant debate over the years about how the central should deal with these tribal communities. There are several viewpoints on how to address the issues confronting native groups. Some think that it is critical to prioritise the preservation of tribal identities, while others argue that the way to improvement rests in assimilating these people. Meanwhile, a third group believes that an approach that promotes integration is the best solution.

## **Review Of Literature:**

1. **Makwana M.H. and Pais Richard, (2011), ‘Back ward classes and Social Justice’** Focused mainly on issues relating to constitutional safeguarding of scheduled tribes and social inequalities. Moreover, also looked on the reservation policy of India in the context of social justice and their historical background. The authors mainly elaborated

the advantages of the reservation policy within India and how crucial the beneficiaries are for the social change within the country.

**2. Gupta Dr. Pallavi, (2012), 'Backward class reservation and concept of creamy layer'**

The Author here sought to examine the socio economic situation among the tribal people. She focused on cultural diversity of different castes, languages, religions, regions. She has brought into picture the fact that educational, social, and economic inequalities among the communities have been existing from past many decades within different societies in India.

**3. Agarwal A.N, (2013), 'Tribals of Odisha':**

The author mainly demonstrated three indicators i.e., Health, Education and Economy with respect to the socioeconomic condition of the tribal community in the state of Odisha. As per the author Education is the most important factor towards the overall human development as it shows a person productivity and earning potential by imparting specialized skills within himself. Moreover, economic growth is also needed in order to satisfy the basic human needs in day-to-day life.

**4. Jain Neepa, (2013), 'Article 21 of Constitution of India and Right to livelihood':**

The tribals in India should not be restricted to their traditional norms rather than that they should be assured all other facilities like all other citizens in order to develop themselves. The author moreover talked about Article 21 of the constitution of India which guaranties for right to life including right to livelihood and work.

**5. Subramanyachary P., (2013), 'Status of Scheduled Tribes in Andhra Pradesh':**

Emphasized on the need to various programmes and schemes among the states where there is a large number of tribal populations is situated for the development of Scheduled Tribes. The study also focused on the illiteracy rate, lack of healthy food, and where there is ineffective implementation of schemes and lack of medical resources in many tribal areas.

**6. Meena Dr. S.P., (2015), 'Human Rights of Tribes: Problems and Perspective':**

Author investigated upon various issues regarding the basic rights of tribal people in India. Author brought into attention the urgent need and taking necessary steps to protect the dignity and safeguarding the rights of tribal people. He examines how fundamental rights are violated, particularly when tribal people are the victims of state violence.

### **Research Questions:**

- Whether the Indian constitution really effectual for the Tribal Development?
- Why the tribal living is getting into a problematic stage if the constitution of India has provided enough benefits to these communities?

### **Hypothesis:**

If we focus on the development and implementation of tribal-centric legislation, then it can play a crucial role in addressing these hurdles.

### **Objectives:**

- To identify and analyse the legal hurdles and barriers that currently impede the protection and preservation of tribal rights in various regions.
- To examine existing tribal-centric legislation and policies, both at the national and international levels, and evaluate their effectiveness in addressing tribal rights issues.

### **Research Methodology:**

The researcher would conduct an analytical and comparative study of the legal framework dealing with using primary data, consisting of primary documents as well as secondary data including articles, journals, comments, etc.

### **Tentative Chapterisation:**

**Chapter 1: Legal Hurdles and Barriers Faced by Tribes.**

**Chapter 2: Existing Tribal Centric Legislations**

**Chapter 3: The Role of Judiciary**

## **Chapter 1: Legal Hurdles and barriers faced by tribes**

### **Tribals in Indian Setup:**

**“When we live in alignment with who we are and how we want to live, we will attract and find like-minded individuals.” - Akiroq Brost**

Human being have come a long way from living in cave to living in a big size house or apartment. Tribal existence was once the primary way of life. People began to migrate to less densely populated locations as time passed and economic factors came into play. This transition resulted in the modernization of certain tribal communities, and people from these modernised communities began to exert influence on the old tribal way of life, resulting in complicated dynamics within society.

Indian society has been broadly classified into 3 types: Urban, Rural and Tribal society<sup>1</sup>. The tribal community in India is very different from one another from their unique vocabulary to their way of living, these peoples are basically distinguished from the other citizens of the country. From past many decades these communities were seen as not progressing community only because these people could not adopt modernization because of which they were seen as uncivilized and illiterate ignoring their basic core.

### **Problems that is faced by the Tribals:**

#### **Cultural Problem:**

Individuals who are well-educated, well-known, and civilised frequently fail to recognise tribal cultures' rich cultural heritage, unique rituals, and distinct way of life. It is embarrassing for those who consider themselves to be learned, question their religious beliefs, pressure them to convert to another religion, and impose alternative propaganda on them.

Spreading rumours about different religion and making an attempt to spread ideology of their religion or Large- scale religion conversion of tribals by Christian missionaries in bordering areas<sup>2</sup> as well would not make anyone more popular rather it will lead to more confusion and

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<sup>1</sup> Kapur 2018 “Urban and rural disparities in India”

<sup>2</sup> Fareed, M. F. (2015, April 23). To stop 'tribal conversion'. The Indian Express.

<https://indianexpress.com/article/cities/lucknow/to-stop-tribal-conversion-adityanath-outfit-to-take-on-christian-missionaries/>

chaos among the tribes. Moreover, this discrimination is still exists in schools, the small kids are still called “Adivasi Student”.

This cultural difference between the well-established civilized people of society and the tribals of the society is increasing day by day and the only way to get over this problem is, the different section of society and the government must work together in order to bring a cultural harmony between all class of people.

### **Educational Problem:**

Article 15(4) & Article 46<sup>3</sup> of the constitution of India assures its citizen and laid down a duty over the government to frame provisions for the advancement of socially and educationally backward class and it is the duty of state to protect them from any kind of injustice and protect them from being exploited.

But till date the total literacy rate among the tribal population is only 58.96%<sup>4</sup> and from past 3 decades the country’s literacy rate has been increased by 28.21% but among the scheduled tribes it has only increased by 11.7%<sup>5</sup>.By seeing the data it has been clear that tribals are facing a major issue because of lack of literacy.

These peoples who live in very remote area does not even consider Education as vital component for their lives rather they consider it as a mere privilege. Education is the only way by which these communities can be made aware of their rights in the society.

### **Legal Problem:**

The constitution of India through Article 15<sup>6</sup> guarantees all its citizen that they are free from any kind of discrimination towards them but still Even today Adivasi communities are subjected to every kind of discrimination and many tribals are treated as untouchables and are restricted to visit others home. Major population in the tribal community works as a contract labourers.

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<sup>3</sup> The Constitution of India, 1950, Art. 15(4), 46

<sup>4</sup> Government of India. (2001). Census of India, 2001: Tribal Population. Retrieved September 5, 2023, from <https://censusindia.gov.in/2011-Common/CensusData2011.Html>

<sup>5</sup> Census of India. (2011). Literacy Rate Census, 2011. Retrieved September 5, 2023, from <https://www.mapsofindia.com/census2011/literacy-rate.html>

<sup>6</sup> The Constitution of India, 1950, Art. 15

Article 46<sup>7</sup> ensures to promote the educational and economic interest of weaker section of society but this section of society is regarded as the poorest section. As per a report by Lakdawala and Tendulkar committee<sup>8</sup> 27.5% and 37.2% of the tribe's population respectively lives in poverty for the year 2005.

### **Differences in Tribal Autonomy: Northeastern vs. Peninsular Tribes**

Indian tribal communities differ from one another in terms of philosophy and how they are viewed. Tribal communities are spread across the country in two separate zones: the northeastern region and the southern and central regions, where they share habitat with non-tribal groups. The problem originates from the perception that tribes in the northeastern region enjoy greater autonomy and independence, whilst tribes in the southern and central regions are under the control of state governors. As a result, there is a noticeable difference in how these two tribes are regarded.

This disparity between the 2 group of tribe is very evident from the Constitution itself where they are as per different schedule and are not regulated as per the common law. The peninsular tribes are discussed in the 5<sup>th</sup> Schedule of the constitution while on the other hand the 6<sup>th</sup> schedule of the constitution talks about the north-eastern tribes.

In the year 1996 the Indian Parliament passed Panchayat (Extension to scheduled areas) Act (PESA), after which the tribal communities of peninsular region went through decentralization and gained more local control and power.

PESA required the state to create a separate system of governance for these communities for achieving their goal as per their level of advancement but it did not amend the 5<sup>th</sup> schedule of the constitution. The sole aim of this act was to promote the promote interest of peninsular tribes but it failed to protect the tribal interest.

As per the drafters of Panchayat (Extension to scheduled areas) Act directing state to make laws based on tribal customs, tradition and their resource management would fix the problem but it did not.<sup>9</sup> They didn't realize that when a different system of government is introduced, it

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<sup>7</sup> The Constitution of India, 1950, Art. 46

<sup>8</sup> Lakdawala and Tendulkar committees' reports, 2005 (last visited September 5, 2023), <https://niti.gov.in/writereaddata/files/presentation%20for%20regional%20meetings-%20NITI%20AAYOG.pdf>.

<sup>9</sup> Panchayats Extension to Scheduled Areas Act, 1996, No. 40, Acts of Parliament, 1996 (India).

can push aside the laws and institutions that indigenous people have traditionally used.<sup>10</sup> One of the primary reasons for the government's failure to protect tribal interests is not the PESA itself but how it has been implemented.

### **Challenges faced by Tribes in relation to imposed law**

The main aim of PESA was that the state law would respect tribal customs and traditions<sup>11</sup> but the act has resulted in decline in tribal self- governance tradition. The tendency to disregard tribal customs is not just due to a lack of concern at the regional level but also because of a legal framework that compels tribes to embrace non-tribal ideas. The Indian Parliament has essentially eliminated the traditional tribal governance system by promoting a system of local government designed for non-tribal communities as outlined in Part IX of the Constitution. The Bhuria Committee of Parliament first proposed the idea of implementing non-tribal governance. Many tribal communities, though, have had trouble adjusting to these non-tribal systems of governance.

PESA was introduced during a time when India was going through major changes due to globalization and liberalization, which attracted foreign investment (FDI). This led to the growth of the mining sector, particularly in tribal areas. Multinational businesses (MNCs) regrettably entered the picture when these areas opened up to Foreign Direct Investment (FDI), which had negative effects for the indigenous tribal groups who witnessed the exploitation of their resources by these MNCs with little compensation.<sup>12</sup>

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<sup>10</sup> Galanter, M. (1972). The Aborted Restoration of 'Indigenous' Law in India. Retrieved from <https://www.jstor.org/stable/178060>

<sup>11</sup> PESA, 1996, S. 4(a), No. 40, Acts of Parliament, 1996 (India).

<sup>12</sup> CIVILSDAILY. (2017, September 20). B2B, Panchayats (Extension to Scheduled Areas) Act, 1996: Background, Important Provisions, Associated Problems. Retrieved from <https://www.civildaily.com/panchayats-extensionto-scheduled-areas-act-1996-background-important-provisions-associated-problems/>



## **Chapter 2: Existing Tribal Centric Legislations**

### **The Fifth and Sixth Schedule of the Constitution**

Prior to the Panchayats (Extension to Scheduled Areas) Act (PESA), the Fifth Schedule operated under a centralised system in which local communities, notably tribal ones, were administered in their local affairs by provincial governors.

States could extend their executive jurisdiction to the Scheduled Areas under the Fifth Schedule. Additionally, it gave the governors of each state the authority to create rules that would ensure these territories would remain peaceful and run smoothly.<sup>13</sup> The Governor held the exclusive legislative power over the Scheduled Areas and Scheduled Tribes, allowing them to enact laws on subjects listed in the Union, State, and Concurrent Lists of the Constitution. Furthermore, the Governor had the authority to exclude the application of any federal or state laws in the Fifth Schedule regions. This gubernatorial authority had broad scope, with only two limitations: (i) consulting a Tribes Advisory Council before making regulations<sup>14</sup>, and (ii) obtaining Presidential approval for the regulations to take effect.<sup>15</sup>

On the other hand, the Sixth Schedule has consistently provided significant autonomy to tribal communities. This schedule partitions the tribal regions in India's northeastern states into self-governing areas, each designated for a specific tribal group. The elected councils in the Sixth Schedule regions hold administrative powers, have the authority to legislate on a range of matters, and even exercise judicial functions using traditional legal systems that incorporate elements of federal law. Moreover, these councils maintain financial independence and operate without being subject to the executive control of the state governments.

There were two major reasons for the disparate treatment between the tribal communities. First, it was thought that tribes living in Fifth Schedule areas lacked the ability to govern themselves. Second, unlike the tribal regions covered by the Sixth Schedule, some tribal populations in peninsular India coexisted with a small non-tribal population, rendering the implementation of tribal autonomy in such situations impractical.

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<sup>13</sup> Constitution of India, 1950, Sch. V ¶ 2

<sup>14</sup> Constitution of India, 1950, Sch. V ¶ 4

<sup>15</sup> Even in the aftermath of PESA, the Governor's authority remains unaffected. Thus, the most likely reading suggests that the Governor retains the ability to legislate for the Fifth Schedule territories, as long as such acts are consistent with the self-governing powers protected by PESA.

### **The Panchayat (Extension to Scheduled Areas) Act 1996**

In 1996, Parliament utilized its reserved legislative powers to extend the provisions of Part IX of the Constitution exclusively to the Fifth Schedule regions<sup>16</sup>. As a result, each town or hamlet that was home to a group of people who managed their affairs according to their traditions and practises was able to exercise some degree of self-governance. Following the passage of PESA, communities residing in Fifth Schedule areas, which were mostly tribal, were required to hold democratic elections, follow the structured Panchayat system defined in Part IX, and wield the necessary authority to function as self-governing entities.<sup>17</sup> Although PESA was promoted as a piece of legislation intended to improve tribal representation in the Fifth Schedule territories, tribal groups nevertheless face economic marginalisation and cultural exploitation equal to that of colonial times. Tribal communities have not been given the opportunity to achieve the status and dignity that Parliament had envisioned for them as responsive and self-sustaining organisations. Local tribal populations rarely benefit from genuine development, and tribal local governments are typically left out of development efforts. These societies frequently discover that they are Subordinate to outsiders in both the economic and cultural spheres<sup>18</sup>. Faced with these difficulties, numerous native communities have resisted newcomers, authorities, and private businesses in an effort to affirm their unique character. For instance, the Kamatapur tribal movement has advocated for the creation of a separate state while voicing concerns about neglect, exploitation, and prejudice in the Bengal region<sup>19</sup>. A prohibition on corporate consortiums attempting to mine bauxite from one of India's most resource-rich regions has been demanded by tribal organisations in the neighbouring state of Orissa<sup>20</sup>. It becomes evident that both PESA and the Fifth Schedule suffer from inherent structural deficiencies and ideological biases. These issues impact not only the involvement of states in tribal governance but also influence tribal rights concerning natural resources. Additionally, these frameworks may not always align with traditional governance structures of local communities.

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<sup>16</sup> Constitution of India, 1950, Article 243-M(3A)(b) permits Parliament to expand the applicability of the provisions within Part IX to the Scheduled Areas, with the provision that specific exceptions and adjustments may be outlined in such legislation.

<sup>17</sup> Constitution of India, 1950, Article 243G outlines powers that are subject to several exceptions and adjustments, spanning from overarching principles to the precise delineation of tribal administrative authority.

<sup>18</sup> Rath, G. C. (2006). *Tribal Development in India: The Contemporary Debate* (pp. 15-28). Sage Publications.

<sup>19</sup> Sarkar, I. (2006). *The Kamatapur Movement: Towards a Separate State in North Bengal*. In G. C. Rath (Ed.), *Tribal Development in India: The Contemporary Debate* (p. 112).

<sup>20</sup> Down to Earth. (2007, February 25). *Orissa's Kashipur Alumina Project Rekindles Tribal Wrath*. Down to Earth.

## **Tribals & The Constitution of India**

Article 15<sup>21</sup> of the Indian Constitution, in its fourth clause, grants the state the authority to enact legislation and establish provisions aimed at the empowerment of economically and educationally underprivileged communities, including scheduled castes and tribes.

Article 23 is crucial since it forbids acts like human trafficking, begging, and numerous types of forced labour. For Scheduled Tribes in particular, this article is essential. The Bonded Labour System (Abolition) Act of 1976 was passed in response to Article 23 in order to confront and end these exploitative practises.

The Scheduled Tribes are particularly affected by Article 24, which forbids the employment of minors under the age of 14 in dangerous occupations like mining and factories. This is especially important because a sizable percentage of children working in these dangerous occupations are from Scheduled Tribes.

The National Commission for Scheduled Tribes (NCST) is empowered under Article 338A to oversee the application of the various safeguards and protections afforded to Scheduled Tribes (STs) by the Constitution, existing law, or government instructions. It also enables the NCST to assess the effectiveness of these preventative actions. According to Article 342(1), the President has the power to designate tribes or tribal communities, or particular segments or subgroups within these communities, as Scheduled Tribes with regard to any State or Union Territory after consulting with the Governor. When applied to a State, this designation is made public by formal notification. According to Article 275(1) of the Indian Constitution, Parliament is empowered to distribute money from the Consolidated Fund of India to the revenues of particular States that it deems to be in need of help. According to statute, Parliament may choose different levels of aid for various States.

The Indian Constitution includes various clauses aimed at safeguarding and advancing the interests and rights of the Scheduled Tribes in various domains, facilitating their integration into the broader national fabric.

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<sup>21</sup> The Constitution of India, 1950, Art.15

### **The Recognition of Tribal Autonomy in International Law:**

The widespread recognition of the inalienable right to autonomy among tribal tribes provides another convincing argument in favour of supporting self-governing local governments. The previous International Labour Organisation (ILO) Convention 107 was replaced by the more recent ILO Convention 169, the only legally enforceable international convention addressing Indigenous peoples and land rights. While Convention 107<sup>22</sup> had primarily placed an emphasis on assimilation and integration, Convention 169<sup>23</sup> places more of an emphasis on protecting the lands, customs, and distinctive identities of Indigenous peoples. By requiring that States party to the agreement respect the customs and institutions of Indigenous and tribal populations, ILO agreement 169 takes a unique stance. It recognises their right to continue existing as unique individuals inside the national societies of their own countries, giving them the power to create their own institutions and determine the direction of their own development. In order to reverse the integrationist strategies that had been associated with the deterioration and absorption of these communities, ILO Convention 169 was created. Ironically, the ILO Convention 169's cherished concepts of tribal autonomy were initially in line with the foundational ideas of independent India's tribal policy. Five decades ago, India's first Prime Minister, Jawaharlal Nehru, introduced the Panchasheel concept, emphasising that tribal tribes might advance and prosper when the State took a modest, enabling role. The bureaucratic control that Nehru had warned against eventually led India to stray from the idea of autonomy as evidenced in the 1989 Convention, but over time these values appeared to have been lost. India has recently taken a more accommodative position on the subject of indigenous communities' autonomy. India voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UN Declaration) in September 2007. This proclamation recognises a number of rights connected to autonomy that are inalienable to Indigenous peoples around the world. Although the UN Declaration is not legally binding, it is frequently referred to as a text that helps develop international norms and represents broad global agreement on Indigenous rights. The UN Declaration has helped to establish this area of international law in conjunction with other developments.

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<sup>22</sup> Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries. (1957, June 26). 328 U.N.T.S. 247. (Entered into force 1959, June 2).

<sup>23</sup> Convention Concerning Indigenous and Tribal Peoples in Independent Countries. (1989, June 27). 28 I.L.M. 1384. (Entered into force 1991, September 5). (ILO Convention 169).

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### **Chapter 3:**

#### **The response of the Indian judiciary in protecting the rights of the tribal peoples**

**Right to Food:** The tribal perspective on the right to food in India encompasses various aspects. It involves preserving traditional food systems and land rights, ensuring access to nutritious food and healthcare, promoting food sovereignty and diversity. It recognizes that food security is intricately linked with their socio-economic, cultural, and ecological contexts.

- **Kapila Hingorani vs State of Bihar**<sup>24</sup> The concept of the Right to Food extends beyond addressing hunger and malnutrition. It encompasses the idea that future instances of malnutrition can be eliminated through legal interventions or similar measures that hold the government responsible for fulfilling its obligations under this right.

**Right to Shelter:** The Apex Court has interpreted the meaning of life under Article 21 of the Constitution to include within its meaning, the right to shelter. The court in various judgements has differentiated between a mere animal-like existence and a decent human living, while entering the ambit of right to shelter. Thereby bringing out the need for a respectable life.

- **Shantistar Builders vs Narayan Khimalal Totame**<sup>25</sup>: In this case the court made a clear distinction by stating that the right to life encompasses not only basic necessities like food and clothing but also a suitable living environment. It is important to recognize the distinction between the shelter needs of animals and humans. The Constitution aims to ensure the holistic development of every child, which can only be achieved if they have a proper home.

**Right to Work:** The Right to Work in India is governed by various labor laws and regulations as well as constitutional provisions. The Constitution of India in its Directive Principles of State Policy (Part IV), highlights that the Right to Work is a Fundamental Right and it calls upon the state to provide opportunities and facilitate work and employment to all its eligible citizens. The state should ensure that there is no discrimination in matters of employment on the grounds of religion, caste, race, sex or place of birth.

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<sup>24</sup> Kapila Hingorani vs State Of Bihar, Writ Petition (civil) 488 of 2002, 09/05/2003

<sup>25</sup> AIR 1990 SC 630

- **Murlidhar Dayandeo Kesekar vs Vishwanath Pandu Barde**<sup>26</sup> : In this landmark case, the Supreme Court Observed that, ‘The preamble, the directive principles, and the fundamental rights, including the right to life, have been deemed by the Supreme court as crucial for economic empowerment and social justice for tribes. The main objective of a welfare state is to achieve a significant level of social, economic, and political equality. This includes enabling individuals to express themselves through their work as citizens and ensuring access to leisure and social justice. What sets apart a welfare state is its belief that the community, acting through the state, has a responsibility to provide the necessary means for all members to attain a minimum standard of economic security and civilized living. This also includes the ability to secure social status and preserve good health. Therefore, it is imperative for the welfare state to take proactive measures in assisting the collective responsibility of the community towards its members in order to achieve these goals.

**Right to Education:** The Right to Education in the perspective of Tribal Rights is a complex issue, that takes into the consideration the unique socio-economic and cultural experiences of the Tribal people while including them in the standard education system through various schemes, special training and awareness. There are many points to be considered while discussing the Right to Education for tribals: Cultural Sensitivity, Access to quality education, customized Curriculum, scholarship and financial support, etc.

- **Mohini Jain vs State of Karnataka**<sup>27</sup>: The Hon’ble Supreme Court has put emphasis on the protection of life and personal liberty as well as the right to education as a right that is guaranteed under Article 21 and 21 A of the Constitution of India. The court said that, the concept of the "right to life" encompasses all the essential rights that courts must uphold in order to ensure a dignified and fulfilling existence. This includes the freedom to pursue various activities and range of conduct. The right to education is closely linked to the right to life. In fact, without access to education, both right to life and an individual's dignity guaranteed under the Article 21 cannot be fully

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<sup>26</sup> Murlidhar Dayandeo Kesekar vs Vishwanath Pandu Barde & Anr on 22 February, 199 SCC, Supl. (2) 549 JT 1995 (3) 563.

<sup>27</sup> Miss Mohini Jain vs State Of Karnataka And Ors on 30 July, 1992, 1992 AIR 1858, 1992 SCR (3) 658

guaranteed. It is the responsibility of the State Government to make every effort in providing educational opportunities for all its citizens at every level.

### **Landmark case of Samtha vs State of Andhra Pradesh<sup>28</sup>:**

The Andhra Pradesh State Government was engaged in extraction of resources and mining in Vishakhapatnam, which is home to tribes like Kondadora, Bagata, Parjha, Kondh, Kutia, and Valmiki. The areas where these tribal communities resided were under the Scheduled Areas, which enjoys protection from being commercially exploited. However, the Andhra Pradesh Government, disregarded the rights of the tribal communities and started mining activities in these Scheduled Areas. It is pertinent to note that these tribes have a very important connection with their lands and natural resources. The process of mining and extraction of resources gained momentum in the 1990s, especially after the liberalization, privatization, and globalization policies. There were concerns in areas surrounding Vishakhapatnam district where large corporates like Birla Periclases were given mining leases. These concerns raised questions about whether the transfer of land to non-tribals violated the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, specifically Section 3(1)(a).

To address these concerns, an NGO called Samata decided to legally challenge the decision of the state government to give tribal land for mining purposes. Eventually, this case reached the Supreme Court of India. The Supreme Court in what is considered as a landmark pronouncement interpreted Section 3(1)(a) broadly and concluded that even government land cannot be transferred to non-tribals in Scheduled Areas unless explicitly exempted by law. The court put special emphasis on the fact that the state should maintain a balance between protecting the rights of the tribal communities on their land and the nation's energy security. The government made several attempts to amend the Fifth Schedule of the Constitution for the purpose of weakening the effect of the Samata judgment. But it was upheld by the Supreme Court in March 2000.

This judgment established protective frameworks for governing land relations in Scheduled Areas and acknowledged the deep attachment tribal communities have with their lands and resources.

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<sup>28</sup> Samata v. State of Andhra Pradesh & Ors, Supreme Court of India, Appeal (Civil) 4601–4602 of 1997, judgment of 11 July 1997, para 116



Ultimately, the Samata judgment played a pivotal role in safeguarding tribal communities' land rights and interests not only in Vishakhapatnam but also beyond. It underscored society's responsibility to respect and preserve their cultural heritage while recognizing their economic ties to ancestral lands.

### **CONCLUSION:**

With the adoption of PESA in 1996, the Indian Parliament made it clear that it wanted to abandon a command-and-control style of tribal rule. But by choosing decentralisation, lawmakers reportedly combined a good idea with a bad solution. Decentralisation, which includes a number of subtypes like devolution, deconcentration, delegation, and divestiture, has proven useful when national or provincial governments sought out localised solutions for local problems, but it is obviously unsuitable for tribal governance.

Indian tribal communities are inherently susceptible because of their low social position. In this situation, law and justice play a critical role in ensuring social fairness and equality in society. It's important to recognise that the current legal system does not effectively protect the interests of these tribal communities. The discrepancies between the state's theoretical approach and the actual application of these laws are examined in this article. The inherent restrictions in the current legal system and the difficulties in enforcing tribal rights worsen the problem and contribute to the state's lack of concern for these communities.

### **SUGGESTIONS:**

Every living creature progresses through stages of comprehension and maturity. In this environment, there is a distinct set of unwritten standards that coexist with official restrictions, known as norms. These rules might be especially distinct among people who are not deemed modernised and are thus labelled as tribal. These rules essentially influence how individuals interact with one another and coexist. It is critical to acknowledge that tribal norms differ greatly from those of modern, advanced cultures. These different standards shape the communities that comprise tribal populations. As a result, if these populations live in homes created by people from other cultures, they may not feel the same level of contentment and fulfilment. This study delves deeper into the relationship to conclude that, while the Indian Constitution has made efforts, these efforts have not materially benefited the people's lives.

The major focus should turn to empowering tribal groups themselves, allowing them to choose their own development path. As a bird is best able to create a nest, this method must prioritise sustainability. This distinct viewpoint might be viewed as a type of modernisation, where modernization implies more than simply delivering knowledge without a strong sense of attachment from the knowledge producers.

Rather than simply following constitutional duties, the government should actively engage with native communities. By doing so, it can provide real help that truly fulfils their requirements and promotes their development. This proactive strategy will very certainly generate major rewards.

To pave the road for a brighter future, the government must align with indigenous people' goals and knowledge, especially when they are in positions to propose solutions tailored to their specific requirements. While the role of governance should not be underestimated, it is critical to recognise that effective governance cannot function in isolation.

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