

**TRIBAL COMMUNITIES AND THE INDIAN
CONSTITUTION: SOCIO-ECONOMIC RIGHTS OF TRIBES
IN INDIA AND THE CHALLENGES OF CLIMATE CHANGE**

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Climate change remains a pressing global concern, despite longstanding warnings from environmentalists and academicians. Those most vulnerable to climate change are often deeply connected to nature, relying on it not just for culture and identity but also for subsistence. Many tribal communities in India live in social isolation, employing traditional and conservative lifestyles. Their relationship with the environment differs significantly from that of non-tribal populations, making the impact of climate change on tribes more profound.

The constitutional framework that was laid down in an era succeeding the Second World War saw the tribal populace as ‘distinct people’, the administration of whom was attempted to be done effectively through the current Fifth and Sixth Schedules of the Indian Constitution. These two Schedules, along with the Panchayat (Extension to Scheduled Areas) Act, 1996 created a legislative framework that directly impacts tribal autonomy in administration and affects the socio-economic rights of tribes in India. This legislative web and its interactions with tribal participation in administration becomes an important area of study, especially in light of an impending climate crisis. Upon such analysis, possible constitutional remedies to counter the effects of growing industrialisation and more importantly, the absence of effective participation of tribal groups in decision-making can be discerned.

Against this backdrop, this paper aims to explore the constitutional protections and remedies available to India’s tribal population, faced with the effects of climate change, by tracing the participation of tribal groups in law-making and analysing the existing legal framework on tribal rights.

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INTRODUCTION

Despite regular warnings from environmentalists, climate change continues to grow as a rampant concern worldwide. In 2022, the Sixth Assessment Report of the Working Group II of the Intergovernmental Panel on Climate Change (“**IPCC**”)² extensively discussed the worrisome and possible consequences for India if no action is taken to curb the negative impact of climate change. Climate change will strike those the hardest who are connected innately to nature, not only as a marker of their culture or identity, but also for their subsistence and livelihood. One of the most noticeable vulnerable groups under such categorisation is the tribal population of India,³ which accounts for about 8.6% of the total

² Intergovernmental Panel on Climate Change, Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (2022), https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf.

³ Here ‘tribal population’ refers to the population falling under the heads of Scheduled Tribes (“**STs**”) as notified under Article 342 of the Indian Constitution but also the Particularly Vulnerable Tribal Groups (“**PVTGs**”) whose population was accounted for in the Census of 2011.

population, and roughly translates to 10.43 crore tribal people in the country.⁴

The general definition for a tribe is “*a social group bound together by kin and duty and associated with a particular territory.*”⁵ Though all tribes may not share the exact same traits, tribes with certain variations as per regions, are classified as groups or communities living in isolation geographically and being homogenous and self-contained, as opposed to non-tribal groups.⁶ The most relevant definition of tribes in India, to facilitate a discussion on the Fifth and Sixth Schedules, is found in the Constitution in the form of Scheduled Tribes.⁷ This definition is significant to the discussion at hand for the representative nature and the administrative ambit of the Fifth and Sixth Schedules and cannot be effectively analysed without laying out precisely who is governed under these Schedules.

Several tribes in India have not only been socially disconnected from the rest of the country, but have also been using extremely conservative facilities and ways of living.⁸ The relationships that the tribal communities share with the environment as a whole are strikingly unique. Natural resources, most specifically land, have held great significance for tribal populations in India, not only for sourcing their livelihood but also for

⁴ Office of the Registrar General & Census Commissioner, India, 2011 Census Data, Population Enumeration Data.

⁵ *Tribe*, OXFORD DICTIONARY OF SOCIOLOGY (Oxford University Press, 4th ed., 2014).

⁶ Virginius Xaxa, *Empowerment of Tribes* in Debal K. Singha Roy (ed.), SOCIAL DEVELOPMENT AND THE EMPOWERMENT OF MARGINALISED GROUPS: PERSPECTIVES AND STRATEGIES 203 (Sage India, 1st ed., 2001).

⁷ INDIA CONST. art. 342, cl. 1. It states that “*The President [may with respect to any State [or Union territory], and where it is a State 3, after consultation with the Governor thereof], by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State [or Union territory, as the case may be.]*”

⁸ The digital divide that exists between the tribal and non-tribal populations in the country leads to a further marginalization of the tribes as it adversely impacts their ability to cope with sudden or unforeseen challenges, as was also witnessed during the COVID-19 pandemic. See Saksham Malik and Nausheen Akhtar, *Digital Divide and the Scheduled Tribes in India: Extent, Consequences, and Challenges*, SOCIAL & POLITICAL RESEARCH FOUNDATION (2022), https://sprf.in/wp-content/uploads/2024/12/SPRF-2022_DP_Digital-Divide-and-ST.pdf, at 5-6.

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defining their community identity.⁹ Hence, the impact of climate change on tribal populations cannot be dismissed as a generalised one.

It is in the light of the above considerations that this paper seeks to cover the ambit of constitutional remedies available to the tribal populations in India, so as to ensure protection of their socio-economic rights in the face of an impending global climate crisis. To achieve this, the paper shall look at the historical trajectory of the constitutional representation of tribes, the current status and challenges with respect to the realisation of the rights of tribal people and will discuss the possible remedies against the impact of climate change under the current constitutional set-up.

THE INDIAN CONSTITUTION AND TRIBAL REPRESENTATION

It is often alleged that the current Indian legal understanding of the tribal people and their identity has heavily relied on colonial ideas of the same.¹⁰ The initial understanding of tribal identity for colonial scholars and settlers was led by a Brahmanical understanding of the differences between the Aryans and native non-Aryans.¹¹ The “*Colonial Epistemology*”, as author Vinita Damodaran terms it, was built on the Brahmanical idea of caste and was reliant on ideas of race as prevalent during the eighteenth and nineteenth centuries.¹² A major point of debate and discussion during this period was The Tribal Question. The Tribal Question signified a raging, multi-faceted debate on the question of tribal rights and protection of tribal agency in India, with regards to the use of

⁹ Carol Upadhyaya, *Law, Politics and Adivasi Identity* in NANDINI SUNDAR (ED.), *LEGAL GROUNDS: NATURAL RESOURCES, IDENTITY, AND THE LAW IN JHARKHAND* 30 (Oxford University Press, 2009).

¹⁰ Saagar Tewari, *Framing the Fifth Schedule: Tribal agency and the making of the Indian Constitution (1937–1950)*, 56 *MOD. ASIAN STUD.* 1556-1594 (2022) (“Tewari”).

¹¹ Vineeta Damodaran, *Colonial Constructions of Tribe in India: the case of Chotanagpur*, 33(1) *INDIAN HISTORICAL REV.*, 162-193 (2006) (“Damodaran”).

¹² Damodaran, *supra* note 10 at 163.

scheduling as an effective instrument for the same.¹³ The main warring contentions regarding the Tribal Question were closely intertwined with the Anthropological versus Nationalist debate¹⁴, also referred to sometimes as the Elvin-Ghurye Debate.¹⁵ This section looks at the prevalent notions of tribal identity prior to the making of the Indian Constitution and discusses the kind of tribal agency exerted in the Constituent Assembly, while contrasting the pre-constitutional position with the existing constitutional and legal position.

A. THE PRE-CONSTITUTIONAL POSITION OF TRIBAL RIGHTS IN INDIA

The ancient Indian idea of tribal identity was largely based on demarcating a clear difference between Aryans and non-Aryans, or the '*Dasas*'.¹⁶ Thus, the differentiation between upper-castes and tribals, who were termed as the successors of Ravana, was given considerable attention. This Brahmanical understanding was relied on by various authors in the 18th and 19th centuries to build upon the erstwhile caste system as seen in the later-Vedic ages.¹⁷ Such works were relied upon by colonial legislators, leading

¹³ Tewari, *supra* note 10, at 1558-1560. See also K.S. Singh, *Tribes, partition and independence* in S. Settiar and Indira B. Gupta (eds.), PANGS OF PARTITION 259-276 (MANOHAR PUBLISHERS, 2002).

¹⁴ The anthropologists, who primarily saw the Tribal Question as an issue of governance, believed that implementing electoral democracy would negatively impact tribal people. Therefore, they advocated for 'excluding' or 'partially excluding' the mainly tribal areas of British India from the legislative authority of elected assemblies and councils. In contrast, nationalists strongly opposed this policy of territorial segregation, viewing it as another tactic by the British to 'divide and rule'. They believed that the Tribal Question needed a legislative resolution because the enduring backwardness of tribal communities was arguably a result of the arbitrary colonial administrative system.

¹⁵ In scholarly discourse, the tribal issue is often framed as an ideological debate involving Verrier Elwin and G. S. Ghurye. They represent contrasting viewpoints known as 'Isolation/Protection' versus 'Intervention/Assimilation', as they debated the best policy approach to protect the interests of tribal communities within the British Indian empire.

¹⁶ Damodaran, *supra* note 11 at 163.

¹⁷ *Id.* at 165. The works of authors such as G.W. Stocking Jr., George Grey, Thomas Williams, Francis Galton and Alfred Russel Wallace were greatly relied upon for collection of data for Victorian ethnography. As Damodaran also notes in her work, after Darwin gave his theory of evolution, works on evolutions by W.W. Hunter, Herbert Risley and Forsyth, discussed ideas on caste and tribe as well.

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to them making their own bifurcations within the tribes. The colonial understanding of tribes then further split into classifying the North-eastern tribes of India as the “*true wild tribes of India*” while the central Indian tribes were classified as the “*broken tribes*” because the colonial administration could better recognise the North-eastern tribes with the Victorian ethnographical definitions of tribe.¹⁸

The 19th century Victorian ideas of civilisation greatly aided and encouraged the Brahmanical migration and occupation of tribal lands while simultaneously constructing an idea of a tribal model that identified tribes as uniform groups with set laws and structures for their governance.¹⁹ The encouragement of Brahmanical migration to tribal areas was not only a move to increase a geographical relocation of non-tribal populations to the tribal areas but was also a catalyst to promote the exploitation of the resources present in these areas. The first example of it being the Forest Act, 1878, which was then amended and re-introduced as the Indian Forest Act, 1927, that led to the isolation of village communities from their symbiotic relations with the natural resources, causing oppression of forest-dwellers.²⁰ This legislation prevented the usage of local forests, which eventually led to several adverse consequences for the forest-dependent communities, mostly the tribals.²¹

¹⁸ *Id.* at 164-165. The colonial administration, as Damodaran writes, found characteristics such as essential unity, clear customary law and unambiguous legitimacies as present in the northeastern tribes. Thus, those tribes were found to be better suited for assigning administrative autonomy and maintenance of public tranquility. *See also* Igor Kopytoff, *The Internal African Frontier: The Making of African Political Culture* in Igor Kopytoff (ed.), *The African Frontier; The Reproduction of Traditional African Societies* 3-87 (Indiana University Press, 1987).

¹⁹ Damodaran, *supra* note 11, at 164.

²⁰ The enforcement of the Indian Forest Act, 1927, gave the British government the right to acquire control over the reserved forests and the forest resources in these forests. *See* The Indian Forest Act, 1927, §§ 3-5, No. 16, Acts of Parliament, 1927, (India).

²¹ Jean Dreze, *Tribal evictions from Forest Land -Annexure 2*, PRS LEGISLATIVE RESEARCH (Mar. 2005), https://prsindia.org/files/bills_acts/bills_parliament/2005/bill53_2007010353_Nac_note_on_tribal_eviction.pdf.

The British, especially in the later part of the colonial period, viewed the tribal populace as a “*helpless and primitive*” group of people that required special attention. However, the Crown and the erstwhile Wavell administration did not wish to make excessive expenditures or efforts for securing the rights of the tribes.²² Nevertheless, under the administration of Pethick-Lawrence as the Viceroy, greater efforts were made towards securing the rights of the tribal minorities in India.²³ Due consideration was also paid to the recommendations of the Sapru Committee²⁴ by Lord Wavell himself, to suggest that areas inhabited by tribal people “*should be under the control of a commissioner who is selected for his special knowledge of, and sympathy for, the tribal people.*” There was also a great difference of opinion amongst the Provincial Governors in India, on the issue of the establishment of a central advisory board for tribal administrations, who stated that it could potentially violate the provincial autonomy. The idea of establishing such a central advisory authority was ultimately dropped.²⁵

Though we find more deliberation on actions regarding tribal welfare in colonial times, the impact of these ideas can be later seen in the constitutional mandate that India made for itself, providing greater relevance to the pre-constitutional set-up on tribal governance.²⁶

²² Tewari, *supra* note 10 at 1565.

²³ Tewari, *supra* note 10 at 1566.

²⁴ The suggestion to appoint a European special officer who was ‘sympathetic’ towards the indigenous people was an integral aspect of the anthropologists’ input into the scheduling discourse. By the mid-1940s, these concepts were embraced by Indians, albeit with a new title (commissioner) and the vision of Indians (rather than Europeans) fulfilling these constitutional roles. *See* Tej Bahadur Sapru, M. R. Jayakar, N. Gopaldaswamy Ayyangar and Jagdish Prasad, *Constitutional proposals of the Sapru Committee* (1945) <https://www.constitutionofindia.net/historical-constitution/sapru-committee-report-sir-tej-bahadur-sapru-1945/>.

²⁵ Tewari, *supra* note 10, at 1567.

²⁶ The Sapru Committee's proposal for a commissioner with expertise and empathy towards tribal communities was implemented under Article 338 of the Indian Constitution, establishing the Office of the Commissioner of Scheduled Castes and Tribes. This commissioner would visit tribal regions annually and submit reports to the Government of India regarding their welfare. Similarly, Wavell's concept of central financial grants for tribal welfare was incorporated into Article 275 of the Indian Constitution.

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The prevalent mindset regarding tribal populations amongst members of the British administration, along with Victorian ideas of civilisation, manifested themselves as policy decisions around the 1940s. The contemporary political thought followed by the different political parties with warring ideas on assimilation and protectionism were also rampantly expressed in the constitution-making proceedings, which shall be discussed in detail in the next part.

TRIBAL REPRESENTATION IN THE CONSTITUTION- MAKING PROCESS: 1945-1950

A. CONSTITUTIONAL PROPOSALS AND THE DEBATES ON SCHEDULING

The Fifth and the Sixth Schedules of the Constitution of India have been particularly significant for India's tribal policy ever since its inception and finalisation in 1950. These Schedules contain provisions regarding the governance of tribal areas, devolution of powers, safeguards for traditions and land rights of the tribal people.²⁷

The Cabinet Mission Plan of 1946 proposed the establishment of an advisory committee on the rights of minorities, citizens and excluded areas which would provide full representation to such interested parties.²⁸ The issue with the Cabinet Mission Plan, 1946, however, was that even though it appeared to be inclusive and acknowledging the interests of all sections of the Indian population, it was largely focussed on the participation of the Indian National Congress ("**Congress**"), the Muslim League, and the groups affiliated to these parties.²⁹ As Tewari puts it, despite certain novel inclusions being made into it, the Cabinet Mission Plan, 1946 more or less followed the "*protective framework of exclusion and partial exclusion*" as had already been seen in the Government of India Act, 1935.³⁰ The Government of India Act, 1935,³¹ for the first time introduced the terms

²⁷ S. G. Malhotra, *Tribal autonomy undermined*, 49(13) EPW, 221–245 (2014).

²⁸ Tewari, *supra* note 10 at 1567.

²⁹ Tewari, *supra* note 10 at 1568.

³⁰ *Id.* at 1568.

³¹ Government of India Act, 1935, 26 Geo. 5 & 1 Edw. 8 c. 2, §91 (Eng).

“*excluded and partially excluded areas*” and discussed how the British Crown had the power to include any area within the ambit of excluded or partially excluded areas. These were regions which majorly housed tribal populations and were believed to need special administrative provisions. Section 92 of the Government of India Act, 1935 discussed how in the administration of these areas, no Federal or Provincial law would be applicable unless the Governor so stipulated through a public notification.³²

B. THE CONSTITUENT ASSEMBLY AND REPORTS OF THE SUB-COMMITTEES ON TRIBAL, EXCLUDED AND PARTIALLY-EXCLUDED AREAS

The failure of the inclusionary policy as contained in the Cabinet Mission Plan gave rise to serious questions regarding the fate of *scheduling* as a policy instrument. During the colonial era of governance, scheduling was done to add certain areas to a notified list of places where special administrative regimes applied and where the laws applicable to the rest of British India were not applied.³³ It was so because the British, who were supporters of the Protectionist side of the debate on Tribal Area governance, were always in favour of scheduling but they were not accelerating the process of their exit from India. The Indian political parties were not supportive of the process of scheduling, as they believed that scheduling was just another manifestation of the British policy of divide-and-rule. This led to a strong mobilisation effort by the All India Excluded and Partially Excluded Areas Association (“**AIEPEAA**”) which collaborated with the Congress, to fight for ensuring that scheduling was not done in the Constituent Assembly, to ensure that the indigenous populations could work in tandem with the rest of their country-men

without the creation of another minority problem.³⁴ In this direction, the AIEPEAA on January 20, 1947, organised a conference in Delhi where an appeal was made for treating tribal people on the same footing as other

³² Government of India Act, 1935, 26 Geo. 5 & 1 Edw. 8 c. 2, §92 (Eng.).

³³ Tewari, *supra* note 10 at 1558.

³⁴ *File No. G-59* (Sept. 20, 1946), AICC PAPERS, at 49 (1947).

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citizens.³⁵ This conference was inaugurated by the then-Congress president J.B. Kripalani, who condemned the British policy of creating special administrative zones for tribal populations that set them apart from the rest of the country acting as exclusionary areas of isolation.³⁶ Four days after this conference, an Advisory Committee was elected by the Constituent Assembly to discuss representational democracy for tribal areas. This particular committee created a framework of pamphlets that created a framework in which the Nationalists were seeking to solve the Tribal Question.³⁷

The above-mentioned Committee then created three sub-committees: one each for provincial areas of Assam, non-Assam areas and the North-Western Frontier Province (“**NWFP**”) and Baluchistan. The sub-committees were expected to do ground research in the allotted areas and submit reports accordingly.³⁸ However, post-partition, it was declared that the sub-committee for the NWFP and Baluchistan did not need to perform the ground research. Since the areas to be covered were vast, the sub-committees missed their deadlines. The Assam sub-committee submitted its report in July, 1947 while the other non-Assam Areas sub-committee submitted its report in two drafts - one in August 1947 and the other in September 1947.³⁹ While the sub-committee report on the non-Assam areas formed the basis for the enactment of the Fifth Schedule, the sub-committee report on Assam acted as the foundation for the Sixth Schedule of the Indian Constitution.⁴⁰ When it comes to actual community

³⁵ Tewari, *supra* note 10 at 1558.

³⁶ *Id.*

³⁷ Constituent Assembly of India, *Advisory Committee (tribal and excluded areas), excluded and partially excluded areas—I and II*, GOVERNMENT OF INDIA PRESS (1948).

³⁸ Tewari, *supra* note 10 at 1571.

³⁹ The Assam sub-committee presented its report on July 28, 1947. The second sub-committee submitted its report in two parts: the initial interim report covering Madras, Bombay, Bengal, Central Provinces, and Orissa in August 1947; followed by the second report addressing Bihar, United Provinces, and Punjab in September 1947.

⁴⁰ *See* North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee, Report of the Sub-Committee on the North East Frontier (Assam) Tribal and Excluded Areas (1947). *See also* Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee, Report of the Excluded and Partially Excluded Areas (Other than Assam)

representation of the tribal communities in the two sub-committees that formed the fundamentals of the current tribal policy in India, there were only two Adivasi members in the sub-committees, Jaipal Singh Munda and Devendra Nath Samanta.⁴¹

The most vocal and important tribal representative in the Assembly was Jaipal Singh Munda. Munda's role was significant not only as the representative of the Chhota Nagpur tribes,⁴² but also as an important non-Congress tribal voice. While the Congress largely followed the Nationalist or Assimilation train of thought, Munda was of the firm opinion that to actually correct the wrongs of the past, the dispossession and exploitation done against the Adivasis had to be stopped, including that which was done by non-British actors.⁴³ Though Munda was not a member of the Congress, he was not completely against the inclusion of tribals in the non-tribal population's activities. He even advocated for the inclusion of non-tribal actors in his Adivasi Mahasabha, as he believed that the cooperation between Adivasis and non-Adivasis would be of paramount importance to pave the way for a more just future for the tribal populace in the New India of Nehru's vision that sought to integrate the tribal population with the mainstream to make it an equal partner in the nation's progress.⁴⁴

Munda also periodically raised concerns about the inadequate Adivasi membership in the Assembly and the absence of sufficient Adivasi representation in the decision-making in the Assembly.⁴⁵ However, he also showed faith not particularly in the Congress's vision but in Nehru's vision

Sub-Committee (1947) <https://www.constitutionofindia.net/committee-report/joint-report-of-the-excluded-and-partially-excluded-areas-other-than-assam-and-the-north-east-frontier-assam-tribal-and-excluded-areas-sub-committee/>.

⁴¹ Tewari, *supra* note 10 at 1572.

⁴² Pooja Parmar, *Undoing Historical Wrongs: Law and Indigeneity*, 49(3) OSGOODE HALL L. J. 491, 504 (2012). The chairman of the Constituent Assembly presented Singh on December 11, 1946, identifying him as the spokesperson for the “*aboriginal tribes of Chhota Nagpur*”.

⁴³ *Id.* at 505.

⁴⁴ KL Sharma, *Jharkhand Movement in Bihar*, 11 EPW 41 (1976).

⁴⁵ Jaipal Singh, CONST. ASSEMB. DEB., ¶1.9.66 (Dec. 19, 1946), <https://www.constitutionofindia.net/debates/19-dec-1946/>.

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for a New India as he aimed to best portray the real sentiments of the populace's hearts.⁴⁶

C. FRAMING OF THE FIFTH AND SIXTH SCHEDULES IN THE CONSTITUENT ASSEMBLY

The clashes between Munda's thoughts and that of the Congress are very important in light of the then-prevailing contemporary events in the period 1945-1950. During this period, alongside constitutional discussions, several political uprisings and movements emerged in predominantly tribal regions of the subcontinent. These movements can be categorised into two types: those within British India (such as the Warli revolt in Bombay and the Tebhaga movement in Bengal) and those within princely states (including the Telangana revolt in Hyderabad and political protests in Orissa). A notable aspect of these movements was that the majority were led by Communist leaders.⁴⁷ This prevailing scenario further led the Congress to be convinced that an assimilation approach was best suited for the tribal areas so as to prevent the rise of the Communist influence in these areas as the Congress considered the Communists to be "*violent, lawless and anti-Indian.*"⁴⁸ These movements led in tribal areas focussed on several political demands, mainly that of land alienation, where the Communists emphasized on the return of occupied land to the Adivasis by the landlords while the Congress sided with the local interest groups as they lent it aid, electorally and materially.⁴⁹ These contemporary instances and the Communist-Congress clash have been discussed briefly to establish a connection between the erstwhile political atmosphere of the period between 1945-50 and the influence it had on constitutional decision-making in the Assembly.

⁴⁶ Jaipal Singh, CONST. ASSEMB. DEB., ¶1.9.71 (Dec. 19, 1946), <https://www.constitutionofindia.net/debates/19-dec-1946/>.

⁴⁷ See S. R. CHOWDHURI, LEFTISM IN INDIA, 1917-1947 (SAGE Publications, 2nd eds., 2017).

⁴⁸ Leslie J. Calman, *Congress confronts communism: Thana district, 1945-47*, 21(2) MOD. ASIAN STUD. 330 (1987).

⁴⁹ Tewari, *supra* note 10 at 1577.

After the sub-committees submitted their reports, Patel suggested a joint meeting which was convened on 25th August 1947. This gathering acknowledged common issues like land protection, backwardness, illiteracy, healthcare, and communication across various regions. Despite Jaipal Singh Munda's repeated requests to discuss the sub-committee reports, this matter was delayed. The final discussions commenced on 5th September 1949 when Dr. B.R. Ambedkar presented the draft Fifth Schedule to the Constituent Assembly. This occurred on a Monday, with the draft being circulated among assembly members just the previous Friday.

Ambedkar introduced three significant changes to the original draft, and these suggestions were likely an impact of the contemporary Community-Congress clash, which has been discussed above. *First*, the provision for a Tribes Advisory Council (“**TAC**”) in states with Scheduled Areas or Tribes was amended, granting discretion to the President, allowing for the creation of a system of checks on the exercise of administrative autonomy by the tribes. *Second*, the Council was rendered ineffective in its role as representative of tribal interests before the governments, for the governors were allowed to override its advice on laws from Parliament or local legislatures. Ambedkar defended this, suggesting that it was preferable for the governor's discretion not to be unconditionally controlled. *Third*, the original draft's unamendable nature was altered, allowing the Parliament to make changes with a simple majority later on. Ambedkar argued that this flexibility was necessary to adapt to evolving circumstances, preventing the creation of rigid, unchangeable structures within the Constitution.⁵⁰

On behalf of the Drafting Committee, K.M. Munshi gave two reasons for the amendments in the Draft Constitution. *First*, that the earlier draft did not take into account the necessary variations needed in state-specific situations and *second*, that the earlier draft only catered to provinces while, post-independence, the scenario had considerably changed due to the accession of the princely states.⁵¹ Ultimately, Ambedkar's amendments were approved, while Jaipal Singh Munda's proposals failed to gain

⁵⁰ SAVYASAACHI, TRIBAL FOREST-DWELLERS AND SELF-RULE: THE CONSTITUENT ASSEMBLY DEBATES ON THE FIFTH AND SIXTH SCHEDULES 72 (INDIAN SOCIAL INSTITUTE, 1998).

⁵¹ Tewari, *supra* note 10 at 1590.

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Assembly approval, dominated as it was by Congress members. Despite Munda's objections, the TAC was established in a purely advisory role without supervisory authority. The Indian National Congress controlled the reception of Jaipal Singh's ideas, agreeing to include the Fifth Schedule but significantly limiting its effectiveness through late-stage amendments.

THE EXISTING CONSTITUTIONAL AND LEGAL PROVISIONS AND THEIR IMPACT ON THE GOVERNANCE OF TRIBAL COMMUNITIES IN INDIA

A. THE PRESENT CONSTITUTIONAL FRAMEWORK ON TRIBAL GOVERNANCE IN INDIA: AN ASSESSMENT

When it comes to the interaction with administration and governance of tribal areas, the most relevant provisions are contained in the Fifth Schedule,⁵² the Sixth Schedule⁵³ and the Panchayat (Extension to Scheduled Areas) Act, 1996 (“**PESA**”).⁵⁴ The Fifth Schedule of the Constitution contains special provisions related to the administration and governance of Scheduled Areas in various states of India where indigenous tribal communities predominantly reside. Enacted to protect the interests and welfare of these tribal populations, the Fifth Schedule outlines specific measures aimed at ensuring their socio-economic development, preserving their culture, and safeguarding their rights over land and resources. Similarly, the Sixth Schedule pertains to special provisions for the administration of tribal areas in the states of Assam, Meghalaya, Tripura, and Mizoram. These areas are predominantly inhabited by tribal communities, and the Schedule aims to safeguard their unique socio-cultural identity, promote self-governance, and ensure socio-economic development within these autonomous districts.

⁵² INDIA CONST. sch. 5.

⁵³ INDIA CONST. sch. 6.

⁵⁴ The Panchayat (Extension to Scheduled Areas) Act, 1996, No. 40, Acts of Parliament, 1996 (India) (“**PESA**”).

The term ‘*Scheduled Areas*’ denotes the tribal regions to which either the Fifth Schedule⁵⁵ or the Sixth Schedule applies.⁵⁶ The mechanisms for application and governance under these two Schedules vary greatly as per the jurisdictions that they govern. Prior to PESA, the Fifth Schedule was a fully centralised system in which provincial governors oversaw the affairs of the communities, the bulk of which were tribal. The Schedule gave each state’s governor the ability to “*make regulations for the peace and good government of any area in a state which is temporarily a Scheduled Area*”,⁵⁷ as well as the ability for the states to extend their executive authority to Scheduled Areas.⁵⁸ For Scheduled Areas and Tribes, the Governor served as the exclusive legislature, having the authority to enact legislation on any topic listed in the Union, State, and Concurrent lists of the Constitution. Essentially, the authority given to the Governor was of a very wide nature⁵⁹ and subject to only two bars on exercise: *first*, that the Governor would consult the TAC before enacting any regulation, and *second*, all the regulations thus enacted would require Presidential assent before becoming effective.⁶⁰

On the other hand, the tribes have traditionally had a great deal of autonomy under the Sixth Schedule. It assigns a specific tribe to each of the ‘*autonomous*’ territories that comprise the tribal areas in the North-eastern states of India.⁶¹

⁵⁵ For applying the Fifth or Sixth Schedule to an area, certain criteria are to be fulfilled such as: (i) the preponderance of tribal population, (ii) compactness and reasonable size of the area, (iii) the ability to form a viable administrative entity such as a district, and (iv) the area’s lack of economic development (its ‘backwardness’) as compared to neighbouring regions.

⁵⁶ The application of the Fifth and Sixth Schedules are done vide Article 244 of the Constitution of India.

⁵⁷ INDIA CONST. sch 5 ¶ 2.

⁵⁸ *Id.*

⁵⁹ See *Ram Kirpal Bhagat v. State of Bihar*, (1969) 3 SCC 471; *Hota Venkata Surya Sivarama Sastry v. State of A.P.*, AIR 1967 SC 71 at 74.

⁶⁰ INDIA CONST. sch. 5, ¶ 4.

⁶¹ INDIA CONST. sch 6, ¶ 1.

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The elected councils in the Sixth Schedule areas have the power to enact legislation on a wide range of topics,⁶² exercise judicial jurisdiction through conventional legal systems that incorporate elements of federal law,⁶³ and have administrative authority. The councils operate independently of the states' executive branch and are financially self-sufficient. Although the Sixth Schedule's design renders every administrative and legislative action taken by the councils subject to gubernatorial consent, higher courts have construed the governor's jurisdiction as being significantly limited.⁶⁴

In *Pu Myllai Hlychho v. State of Mizoram*,⁶⁵ the Supreme Court of India made it clear that courts must respect the legislative, executive, and judicial autonomy that the Sixth Schedule bestows upon District and Regional Councils, despite the fact that it is neither a stand-alone statute nor a constitution inside a constitution.⁶⁶ There were two main causes for the disparity in treatment among the tribes. *First* of all, it was thought that the tribes living in Fifth Schedule areas lacked the capacity for self-governance.⁶⁷ *Second*, some tribal populations in peninsular India co-existed with a minority non-tribal population, in contrast to the Sixth Schedule districts; in such circumstances, autonomy for the tribes seemed unfeasible. These were issues that had been long resolved before the

⁶² INDIA CONST. Sch. 6, 2(4). This paragraph states that “*laws can be made to regulate social customs, land use, forest management, and cultivation; or to appoint Chiefs or Headmen, and administer villages or towns. These laws become enforceable after the assent of the Governor of the state is received.*”

⁶³ The Councils are authorized to establish their own justice dispensation system with tribal courts that adjudicate disputes “between the parties all of whom belong to Scheduled Tribes”. See INDIA CONST. Sch. 6, 4(1) and ¶ 4(2). See also *State of Meghalaya v. Richard Lyngdoh*, 2005 SCC OnLine Gau 371, ¶ 17.

⁶⁴ *T. Cajee v. U. Jormanik Siem*, AIR 1961 SC 276. In this case, the Indian Supreme Court held that “*the administration of an autonomous district shall vest in the District Council and this in our opinion [is] comprehensive enough to include all such executive powers as are necessary to be exercised for the purposes of the administration of the district.*”

⁶⁵ *Pu Myllai Hlychho v. State of Mizoram*, (2005) 2 SCC 92.

⁶⁶ *Id.*, ¶21. (“*The Sixth Schedule to the Constitution is a part of the Constitution and cannot be interpreted by forgetting the other provisions in the Constitution.*”).

⁶⁷ See Ajay Skaria, *Shades of Wildness: Tribe, Caste, and Gender in Western India*, 56 J. ASIAN STUD. 726, 730-731 (1997).

country gained its independence.⁶⁸ So essentially, the founding fathers reinstated the colonial stereotype that the tribes' best interests rested more on skilful and compassionate leadership and protection from economic exploitation by their (non-tribal) neighbours than on swift political advancement.⁶⁹ When it stated that "*the tribals... need to be taken care of by the protective arm of the law, so that they may prosper and by an evolutionary process join the mainstream of the society,*" the Supreme Court even later backed this paternalist reasoning.⁷⁰

B. ENACTMENT OF PESA AND THE APPLICATION OF PART IX TO THE SCHEDULED AREAS

Thereafter, in 1996, the Parliament, in exercise of its legislative authority, enacted PESA to extend the application of Part IX of the Constitution to Scheduled Areas.⁷¹ Consequently, any habitation or hamlet "*comprising a community and managing its affairs in accordance with traditions and customs*" was now enabled to exercise self-governance to a constricted extent under the PESA.⁷²

Post this enactment, the tribal communities living in the Scheduled Areas as per the Fifth Schedule were directed to undertake democratic elections,

⁶⁸ The Government of India Act 1935, which introduced special measures for the protection of the tribes in India, had earlier reclassified the tribal regions of the country into "Excluded" and "Partially Excluded Areas" based on the preponderance of tribal communities and the feasibility of introducing civil administration in those regions. See Apoorv Kurup, *Tribal Law in India: How Decentralized Administration is Extinguishing Tribal Rights and Why Autonomous Tribal Governments Are Better*, 7(1) INDIGENOUS L. J. 87, 96 (2008). ("**Kurup**")

⁶⁹ Kurup, *supra* note 68, at 96.

⁷⁰ See Amrendra Pratap Singh v. Tej Bahadur Prajapati, (2004) 10 SCC 65, ¶15. The reasoning adopted by the Supreme Court in this particular case, supported the paternalistic outlook regarding the tribal populations, by stating that they would need the law to protect them from exploitation and to help them prosper.

⁷¹ INDIA CONST. art. 243-M(3A), cl. (b). This provision allows "*Parliament ... [to] extend the provisions of this Part [IX] to the Scheduled Areas... subject to such exceptions and modifications as may be specified in such law.*"

⁷² PESA, § 4(g). It discusses the provision for giving half of the seats in the elected governments and the seat of the Chairperson at all levels in the Panchayat Hierarchy to tribal people to give greater regard and primacy to the tribal communities, both major and minor, in their governance.

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to follow the tiered structure as laid down in Part IX and to exercise the powers which were deemed “*necessary to enable them to function as institutions of self-government.*”⁷³

On the contrary, while decentralising authority to local communities, states were required to ensure that (i) their laws respect customary law, social and religious practices, and traditional management practices of community resources,⁷⁴ and (ii) the Gram Sabhas (consisting of individuals listed in the electoral rolls for the village-level Panchayat)⁷⁵ are capable of safeguarding and upholding the traditions and customs of the people, their cultural identity, community resources, and the customary methods of dispute resolution.⁷⁶

Many view the PESA as a logical extension of both the Fifth Schedule and Part IX of the Constitution.⁷⁷ However, despite its seemingly harmless nature, this top-down approach over the past decade has gradually deprived tribal communities of self-governance and their right to their community’s natural resources. This top-down system of hierarchy makes the tribal populations vulnerable to enactments and enforcements of law that can compromise their socio-economic rights in the interests of exploitation of natural resources in Scheduled Areas. We will now be looking at the aforementioned legal provisions and the forest frameworks in more detail in section C(II).

⁷³ INDIA CONST. art. 243G. The powers are subject to a number of “*exceptions and modifications ranging from general guidelines to specific demarcation of tribal administrative authority.*”

⁷⁴ PESA, § 4(a).

⁷⁵ PESA, § 4(c).

⁷⁶ PESA, § 4(d).

⁷⁷ See Ministry of Panchayati Raj, Planning at the Grassroots Level: An Action Programme for the Eleventh Five Year Plan, 84 (2005-06), http://planningcommission.nic.in/plans/stateplan/sp_scy2stat.pdf.

THE CHALLENGES OF CLIMATE CHANGE FOR TRIBES AND THE POSSIBLE IMPACT ON THEIR SOCIOECONOMIC RIGHTS

The above sections have dealt with how Indian tribes have been perceived by constitution-makers and policy makers. This section seeks to focus on how tribes perceive their connection to nature and how constitutional and legal provisions have affected their vulnerabilities in the governance hierarchy. In this section, we will be looking at *first*, how natural resources are an intrinsic part of tribal identity; *second*, how the politics over the natural resources has seeped into the execution of laws and affected the tribal people; *third*, what the potential impact of climate change will be on the socio-economic conditions of the tribes.

Indigenous tribes, across the globe, treat nature with a deep respect. For instance, for the Maori tribes of New Zealand, humans and nature are seen as kin to each other in view of their interdependence.⁷⁸ All natural resources, especially forests, hold immense significance in the lives of tribal and rural communities, playing a central role in their identity and livelihood.⁷⁹ The connection between tribals and forests is deeply intimate, as these communities have historically relied on forests for sustenance, shaping their entire social and cultural existence around forest resources.⁸⁰ Over thousands of years, forests and indigenous populations have co-evolved with tribes actively contributing to forest conservation through traditional practices.

Forest policies and legislation have been developed over time to govern the complex relationship between tribals, forests, and government authorities.⁸¹ However, these policies have undergone transformations, particularly with the progressive assertion of state monopoly rights over

⁷⁸ United Nations Environmental Programme, *Indigenous People and Nature: A tradition of conservation* (2017) <https://www.unep.org/news-and-stories/story/indigenous-people-and-nature-tradition-conservation>.

⁷⁹ B. Karthikeyan, *Tribes of Nilgiris and Environmental Laws*, 4(13) INT'L J. HUM. AND SOC. SCI. 242, 243 (2014).

⁸⁰ *Id.*

⁸¹ Arun Bandopadhyay, *The Colonial Legacy of Forest Policies in India*, 38 SOCIAL SCIENTIST 53-76 (2010).

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vast forest areas.⁸² For tribal communities, forests are not merely a source of material resources but also integral to their spiritual and cultural heritage.⁸³ Forests serve as repositories of traditional knowledge, medicinal plants, and sacred sites that hold profound significance in tribal rituals and ceremonies.⁸⁴ The rich biodiversity of forests sustains unique cultural practices, including hunting, gathering, and handicrafts, which are intrinsic to tribal identities.

The displacement of tribal populations from forests due to evolving forest policies has disrupted this delicate equilibrium, leading to social dislocation, loss of cultural heritage, and economic hardships. Evicted tribes often struggle to adapt to unfamiliar environments, losing access to traditional livelihoods and facing marginalisation in mainstream society. Forests are not only vital ecosystems but also cultural landscapes that shape the identities and livelihoods of tribal communities in India. Preserving forest rights and promoting inclusive conservation practices are essential not only for biodiversity conservation but also for safeguarding the rich heritage and well-being of indigenous peoples who depend on forests for their survival and cultural continuity.

The sheer interdependence that tribes have with their natural habitats, coupled with their isolation from mainstream society and the fewer educational and occupational opportunities that they get, make conservation of climate and the natural environment all the more important for tribes, especially the forest dwellers. While phenomena like climate change and global warming have become exceedingly worrisome for all people, they are exceptionally significant for vulnerable groups like tribes who will lose a lot more than the general citizenry in case of failure in protection of natural resources.

⁸² A great shift is seen in the treatment of tribal possession of land, right from the colonial regime where the Acts of 1874 and 1927 were extremely exploitation-driven laws that completely disregarded the tribal interests in nature and forests.

⁸³ Carol Upadhyaya, *Law, Politics and Adivasi Identity* in NANDINI SUNDAR (ED.), *LEGAL GROUNDS: NATURAL RESOURCES, IDENTITY, AND THE LAW IN JHARKHAND* (Oxford University Press, 2009).

⁸⁴ *Id.*

A. THE POLITICS OVER NATURAL RESOURCES: PRESENT LEGAL FRAMEWORK AND THE DISEMPOWERMENT OF TRIBES

Despite having been around for so long, neither the Fifth Schedule nor the PESA has allowed for the recognition of tribal communities as “*viable and responsive people’s bodies*” as per the legislative intent that was enshrined in its creation.⁸⁵ Tribal governments working locally are often not included in the development schemes representationally and the intended benefits of the said schemes hardly reach down the ladder, creating a situation where outsiders are allowed to benefit at the cost of the tribal population’s interests.⁸⁶ The natural resources have acted as life-support for the tribes, but over the years large corporations have been allowed to have a greater control over these resources, impacting tribal livelihoods.⁸⁷ The non-tribal occupations that happened in the tribal areas over the years have resulted in non-tribal acquisitions that have become *de facto* tribal displacements, due to intensity and volume of the occupational impact.⁸⁸ Tribes are amongst the worst affected groups by operations like mining and hydroelectric projects which exploit natural resources in tribal areas which are generally resource dense, leading to an aversion of the tribes’ interests.

B. PESA AND ITS ADVERSE CULTURAL, SOCIAL AND RELIGIOUS IMPACT ON TRIBAL POPULATIONS IN SCHEDULED AREAS

A number of issues arose post the enactment of the PESA. First, the decentralization was not effectively carried out in states with tribal populations, being subject to unnecessary delays, and second, while legislating under the PESA, the state machinery is rarely cognisant of the social, religious and cultural practices of the local tribal communities.⁸⁹

⁸⁵ H.L. Harit, *Tribal Areas and Administration* in RANN SINGH MANN (ED.), TRIBES OF INDIA: ONGOING CHALLENGES 53 (M.D. Publications, 1996). *See also* Kurup, *supra* note 68, at 97.

⁸⁶ Govinda Chandra Rath, *Introduction* in GOVINDRA CHANDRA RATH (ED.), TRIBAL DEVELOPMENT IN INDIA - THE CONTEMPORARY DEBATE 28 (Sage Publications, 2006).

⁸⁷ Kurup, *supra* note 68, at 98. *Id.*

⁸⁸ *Id.*

⁸⁹ Kurup, *supra* note 69, at 99. Virginius Xaxa, *Empowerment of Tribes* in DEBAL K. SINGHA ROY (ED.), SOCIAL DEVELOPMENT AND THE EMPOWERMENT OF MARGINALISED GROUPS: PERSPECTIVES AND STRATEGIES 220 (SAGE Publications, 2001).

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Certain scholars trace this apathy seen in state behaviour to the first national commission on Scheduled Areas and Scheduled Tribes (“**Dhebar Commission**”), which is alleged to have favoured the creation of a minimum number of Scheduled Areas under the Fifth Schedule because it considered the Fifth Schedule to be a temporary mechanism until a full emancipation of the tribes was completed.⁹⁰

One of the major resources that tribes have had a hard time securing for themselves has been land. Land acquisition is done for various reasons in tribal areas, gradually shrinking the areas that the tribal populations live and work on. In India, the right to property can no longer be exercised as a fundamental right but only as a legal right,⁹¹ which can be overlooked in case the acquisition is done by the state by awarding just compensation and under the authority of law.⁹² The authority of law in the matter of acquiring tribal lands is provided under §4(i) of PESA which explicitly permits the acquisition of lands in Scheduled Areas.⁹³ The issue ignored here is that land and property do not mean the same to the tribes as they do to the general populations; for tribes, land is not just property, but rather a part of their social, cultural, and historical identity. Keeping in mind this connection, the threshold for acquisition of tribal land should ideally have been much higher under PESA but the low threshold still persists. The only bar that PESA provides against the state acquisition of land is that the state agencies are to consult the local governments before acquiring land in Scheduled Areas.⁹⁴ There is also no clarity as to what manner the consultations are to be done in or what is the standard with respect to procedural safeguards for protection of the ecosystem or tribal interests in the area in the face of the proposed “*public purpose*” of the project. Since there can be no judicial interference in the matter of

⁹⁰ Kurup, *supra* note 68, at 101. See *Report of the Scheduled Areas and Scheduled Tribes Commission 1960-61*, GOVERNMENT OF INDIA (1961).

⁹¹ INDIA CONST. art. 300A. Religious minorities are the only denomination guaranteed the fundamental right “*to own and acquire movable and immovable property.*” See INDIA CONST. art. 26(c).

⁹² INDIA CONST. art. 300A.

⁹³ PESA, § 4(i)

⁹⁴ PESA, § 4(i).

consultation, in absence of a clear provision in PESA, procedural clarity or consultation thresholds cannot be defined by the courts too.⁹⁵

C. DEPRIVATION OF TRIBAL POPULATION’S LAND RIGHTS VIA RAMPANT LAND ACQUISITIONS

In 2017, the Centre for Policy and Research conducted a comprehensive country-wide study of land acquisition disputes since India's independence⁹⁶ titled ‘*CPR Land Rights Initiative report on Land Acquisition in India: A Review of Supreme Court cases from 1950-2016*’ (“**the Report**”). One of the key findings of the report was that the political and social disputes surrounding land acquisition arise from the inherently coercive nature of the process, leading to a significant power imbalance between the state and those losing their land. Much of this imbalance can be attributed to the Land Acquisition Act, 1894,⁹⁷ which created unequal conditions, exacerbated by executive disregard for legal norms.⁹⁸ Consequently, this situation resulted in profound inequity for the land losers.

The report also concluded that efforts to reform the land acquisition process under the Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“**LARR Act**”) must be supported by the government to rectify these disparities.⁹⁹ The report acknowledges that specific provisions of the LARR Act represent positive steps towards addressing the power asymmetry inherent in the Land Acquisition Act, 1894. These provisions empower both title-holders and those losing their livelihood to claim compensation and rehabilitation, adjust compensation rates to reflect current market realities, and introduce consent and social impact assessments.¹⁰⁰

⁹⁵ Such acquisitions are considered policy decisions in which, the Indian Supreme Court has made clear, the courts “will not interfere”. See *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664. See also *R.K. Garg v. Union of India*, (1981) 4 SCC 675 at 413.

⁹⁶ Namrata Wahi, et al., *Land Acquisition in India: A Review of Supreme Court Cases from 1950 to 2016*, CENTRE FOR POLICY RESEARCH (2017) (“**The Report**”).

⁹⁷ Land Acquisition Act, 1894, 51 Vict. (Eng.).

⁹⁸ The Report, *supra* note 96, at 29.

⁹⁹ *Id.*, at 9.

¹⁰⁰ *Id.*, at 15.

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Another finding was that by empowering previously marginalised land losers to seek redress under the LARR Act, the legislation can prevent extrajudicial conflicts, which often impede legitimate development projects. Therefore, it is crucial for the government to comply with, rather than undermine, the LARR Act to prevent such conflicts and promote sustainable development.¹⁰¹ In addition to legal reforms, administrative and bureaucratic reforms are essential to complement and effectively implement the LARR Act. The report emphasizes that legal changes alone are not sufficient to ensure fairness and efficiency in land acquisition.¹⁰² Without administrative and bureaucratic improvements, the objectives of the LARR Act will not be fully achieved, and existing inequities and inefficiencies will persist.

A similar legal deprivation can also be seen in the case of forest access for the tribal communities. Historical records show that non-tribal landowners consistently displaced tribal populations deeper into forested and hilly regions.¹⁰³ As a result, many tribal landholders became

unrecorded tenants or labourers in less fertile uplands, or bonded or semi-bonded workers in more fertile lowlands or forested areas. The British administration prioritized timber and other forest-related revenues, leading to laws designed to expel local residents.¹⁰⁴ Land settlement initiatives were introduced, granting transferable land titles to individual males upon payment. This shift meant that the state and courts mediated land relationships, effectively erasing the community's legal identity.¹⁰⁵

¹⁰¹ *Id.*, at 16.

¹⁰² *Id.*, at 22.

¹⁰³ Ramachandra Guha, *Forestry in British and Post-British India: An Historical Analysis*, 18 EPW 1882 (1983), at 1887 (“**Guha**”).

¹⁰⁴ *Id.* at 1883-1884.

¹⁰⁵ Satyakam Joshi, *Tribes, Land and Forests: Emerging Legal Implications with reference to PESA and FRA*, NATIONAL SEMINAR ON “GOVERNANCE, RESOURCES AND LIVELIHOODS OF ADIVASIS IN INDIA: IMPLEMENTATION OF PESA AND FRA”, (2018) available at http://nirdpr.org.in/nird_docs/srsc/srsc230217-22.pdf (“**Joshi**”).

The government enacted the Indian Forest Act, 1927,¹⁰⁶ allowing for the declaration of any government-owned forest or wasteland as a reserved area through official notification. However, due to incomplete rights settlement, large areas remained unsurveyed. Most tribal cultivators, unaware of administrative complexities, lacked official land titles. Forest areas were categorized as reserved, protected, or unclassified.¹⁰⁷ The Wildlife Protection Act of 1972 facilitated the creation of protected areas and wildlife habitats, leading to Adivasis losing access to lands and livelihoods dependent on forests. Unfortunately, rights settlements were incomplete, rendering all Adivasis as ‘encroachers’ when they cultivated lands they had worked for generations.¹⁰⁸

The Forest Conservation Act recognised the traditional rights of tribal people on forest land yet these rights were not adequately protected.¹⁰⁹ The forest department continued to view Adivasis as encroachers and destroyed their crops. Additionally, the department-initiated plantations on tribal lands to facilitate eviction strategies. Presently, forests remain reserved as resources, under the control of the Forest Department (“**FD**”).¹¹⁰

Ramachandra Guha argued that before 1947, forests served British imperial interests, shifting to the needs of the mercantile and industrial bourgeoisie post-independence. India had the opportunity to rectify this, yet the 1952 policy only adopted the phrase “*rights and concessions*.”¹¹¹ Forests were narrowly viewed as a source of timber, disregarding their complex ecological roles. The colonial government converted land without individual titles into state property, turning forest dwellers into ‘*encroachers*’. This trend continued post-independence. The Forest Conservation Act of 1980 (“**FCA**”) emerged as a crisis response under Prime Minister Indira Gandhi in the 1970s.

¹⁰⁶ See Indian Forest Act, 1927, 17 Geo. 5 (Eng.).

¹⁰⁷ Joshi, *supra* note 105, at 4.

¹⁰⁸ *Id.* at 5.

¹⁰⁹ *Id.* at 2.

¹¹⁰ The Forest Conservation Act, 1980, No. 69 of 1980, Acts of Parliament, §2.

¹¹¹ Ramachandra Guha, *Forestry in British and Post-British India: An Historical Analysis*, 18 EPW 1882 (1983).

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Remote sensing data highlighted significant forest cover decline (about one million hectares annually over a decade), prompting the Act to prevent forestland use for roads, dams, and buildings.¹¹²

The central government assumed sole authority in granting such permissions, neglecting small yet vital activities like school construction, electric poles, or bridges, which led to grievances. Uttarakhand, birthplace of the Chipko movement, witnessed the Jangal Kato (forest felling) Andolan in the 1980s against the Act. The FCA, a two-page document, reinforced the 1927 Act, granting the Minister decision-making power over forest lands. Tribal individuals, rooted in forests for ages, were viewed as encroachers under the FCA, sparking eviction fears.¹¹³

Tribal communities, NGOs, and radical activists protested against the Act, criticising its intention to deny customary resource rights, leading to forest degradation. Nationwide demonstrations ensued, compelling the government to address demands. The forest policy underwent a transformation in 1988, recognising the role of village communities in forest preservation and management, and paving the way for Joint Forest Management (“**JFM**”). JFM involved transferring certain rights to village communities for natural resource utilization.¹¹⁴ However, the absence of defined rights holders and unclear rights and sanctions impeded the establishment of social institutions. The top-down approach and limited people’s participation in planning contributed to JFM’s failure. The failure became evident in 2002, when the Inspector General of Forests directed state authorities to prepare eviction programs due to encroachment concerns, resulting in mass evictions of Adivasis.¹¹⁵

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (“**FRA**”) marked a significant milestone in the

¹¹² Joshi, *supra* note 105 at 5.

¹¹³ RAMACHANDRA GUHA, *THE UNQUIET WOODS: ECOLOGICAL CHANGES AND PEASANT RESISTANCE IN THE HIMALAYA* (University of California Press, 1st ed., 2000).

¹¹⁴ Madhu Sarin, *Who Is Gaining? Who Is Losing? Gender and Equity Concerns in Joint Forest Management*, NATIONAL SUPPORT GROUP FOR JFM, SOCIETY FOR WASTELAND DEVELOPMENT (1996).

¹¹⁵ Joshi, *supra* note 105, at 10.

struggle of Adivasis and forest dwellers. The Act aimed to rectify historical injustices, granting forest communities a primary role in forest management. The Act's statement of object and reason attributed the delay in recognising forest rights to colonial rule's economic interests, persisting post-independence in the state's enthusiasm to protect natural resources.¹¹⁶ Tribal people's limited understanding of regulatory frameworks hindered their rightful claims, leading to insecurity and fear of eviction.

The FRA sought to vest forest rights and occupation with forest-dwelling communities integral to forest ecosystem survival, emphasising upon unrecorded rights. Court judgements favouring Adivasi rights often align with broader rights hierarchies, upholding Adivasi rights when deemed consistent with the “*greater common good*” or “*sustainable development*.” However, when these rights conflict with development projects, limitations are imposed.¹¹⁷

D. THE POTENTIAL CONSEQUENCES OF CLIMATE CHANGE ON THE SOCIOECONOMIC CONDITIONS OF TRIBES

“*Climate change affects us all, but it does not affect us all equally. The poorest and most vulnerable – those who have done the least to contribute to global warming – are bearing the brunt of the impact today.*”¹¹⁸ These words by the erstwhile United Nations Secretary General Ban Ki-moon, ring especially true when we look at how vulnerable tribes are in the face of climate change. If we are to define climate change, the most detailed definition to it has been provided by the IPCC, in its report, where climate change is defined as:

“A change in the state of the climate that can be identified (e.g., by using statistical tests) by changes in the mean and/or the variability of its properties and that persists for an extended period, typically decades or longer. Climate change may be due to natural internal

¹¹⁶ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2 of 2007, Acts of Parliament, 2006, Statement of Object.

¹¹⁷ See T.N. Godavarman Thirumulkpad v. Union of India & Ors., (1997) 2 SCC 267 (India); Narmada Bachao Andolan v. Union of India, [2000] 10 S.C.C. 664 (India).

¹¹⁸ Ban Ki Moon, *Address to the High-Level Segment of the UN Climate Change Conference at Bali*, UNITED NATIONS (2007) available at <https://www.un.org/sg/en/content/sg/speeches/2007-12-12/address-high-level-segment-un-climate-change-conference>.

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*processes or external forcings such as modulations of the solar cycles, volcanic eruptions and persistent anthropogenic changes in the composition of the atmosphere or in land use.*¹¹⁹

The IPCC is an intergovernmental panel established in 1988 by the World Meteorological Organization (“**WMO**”) and the United Nations Environment Programme (“**UNEP**”).¹²⁰ Scientists from around the world assess climate change research papers to produce a comprehensive report used by policymakers to develop strategies against climate change.¹²¹ The previous assessment report in 2014 provided the scientific foundation for the Paris Agreement in December 2015, and was adopted by 200 states at COP21.¹²² The three working group reports of the fifth assessment cycle presented various climate impact projections based on different emission scenarios.¹²³ Each scenario indicated a global mean temperature increase exceeding 1.5 degrees Celsius by 2100 compared to pre-industrial levels.¹²⁴ Consequently, many nations, including India, are committed to reducing carbon emissions and achieving carbon neutrality by 2030.¹²⁵

¹¹⁹ Glossary, *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, CAMBRIDGE UNIVERSITY PRESS, 541-562 (2018).

¹²⁰ About the IPCC, Intergovernmental Panel on Climate Change, available at <https://www.ipcc.ch/about/>.

¹²¹ *Id.* For further clarity on the collection of data by the IPCC and the publication of reports, please refer to https://www.ipcc.ch/site/assets/uploads/2024/04/IPCCFactSheet_WhatisIPCC.pdf vii sit.

¹²² What is the Paris Agreement? *The Paris Agreement*, UNFCCC Secretariat available at <https://unfccc.int/process-and-meetings/the-paris-agreement>.

¹²³ Intergovernmental Panel on Climate Change, *Climate Change 2014 Synthesis Report - Summary for Policymakers* (2014) available at https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf at 2-3., IPCC.

¹²⁴ *Id.* at 4-6.

¹²⁵ Ishani Kumar Singh, *IPCC Climate Change Report 2022 and its Implications for India*, WCS-INDIA (June 29, 2022) <https://india.wcs.org/Newsroom/Blog/ID/17734/IPCC-Climate-Change-Report-2022-and-its-Implications-for-India>.

Millions of indigenous individuals worldwide manage their forests and agriculture, which contributes sustainably to the capture and removal of greenhouse gases (“GHGs”) from the global atmosphere. However, in many regions, tribal and indigenous populations face challenges in protecting their natural resources and ecological wealth from deforestation and destructive activities such as mining for minerals, energy, oil, and gas¹²⁶. Indigenous communities advocate for sustainable production and consumption systems¹²⁷ in various local, regional, and international forums, highlighting the importance of these efforts. Of the 68.5 million individuals globally displaced by force, an average of 21.5 million have been displaced each year since 2008 due to climate-related factors.¹²⁸ In 2017 alone, 18.8 million people across 135 countries¹²⁹ experienced the impacts of storms, flooding, and tropical events.¹³⁰

While climate change affects everyone, vulnerable communities face significant challenges due to socio-economic factors such as poverty and limited access to natural resources. Indigenous and tribal communities, representing 15% of the world's poorest populations and safeguarding 80% of the planet's biodiversity, are among the first to encounter the direct consequences of climate change.

¹²⁶ *On the impoverishment of indigenous peoples in UN: State of the World's Indigenous Peoples*, UNITED NATIONS (2019), <https://www.un.org/development/desa/indigenouspeoples/publications/state-of-the-worlds-indigenous-peoples.html>.

¹²⁷ Tauli-Corpus and Lynge, *Indigenous Women, Climate Change Impacts, and Collective Action*, 29 HYPATIA 601 (2014).

¹²⁸ *UNHCR Figures at a Glance Global Trends: Forced Displacement in 2017*, UNHCR (2018) <http://www.unhcr.org/en-us/statistics/unhcrstats/5b27be547/unhcr-global-trends-2017/>; See also *Global Report on Internal Displacement 2016*, INTERNAL DISPLACEMENT MONITORING CENTRE (2016), <http://www.internal-displacement.org/globalreport2016/>.

¹²⁹ *Global Report on Internal Displacement 2018*, INTERNAL DISPLACEMENT MONITORING CENTRE (2018) http://internal-displacement.org/sites/default/files/publications/documents/IDMC-quarterly-update_2018-QU2.pdf/.

¹³⁰ The *Global Report on Internal Displacement 2018* stated that weather-related hazards triggered the vast majority of the new displacements, with floods accounting for 8.6 million, and storms, mainly tropical cyclones, 7.5 million.

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Indigenous and tribal communities are among the most vulnerable populations for several reasons. Their heavy dependence on natural resources makes them particularly susceptible to changes in resource availability and quality. The World Bank predicts that 13 million people in East Asia and the Pacific will collapse into poverty by 2030 out of the 100 million people worldwide who will be forced further into poverty because of climate change.¹³¹ In India, indigenous peoples face additional challenges due to existing discrimination and their traditional lifestyles, which have led to their marginalisation as excluded communities.¹³²

WHY IS CLIMATE CHANGE A BIGGER CONCERN FOR INDIAN TRIBES?

Climate change impacts in India could add about 50 million more poor people than otherwise projected by 2040 because of falling wages, rising food prices and slower economic growth, warned the Overseas Development Institute (“**ODI**”) Report in 2021.¹³³ In 2022, the Sixth Assessment Report of the IPCC¹³⁴ discussed how despite minimal contribution to global warming over the past century, India is amongst countries that face the highest risk from climate change’s impact, ranging from heat waves to cyclones and urban and rural displacement.¹³⁵

¹³¹ *Climate-Informed Development Needed to Keep Climate Change from Pushing More than 100 Million People into Poverty by 2030*, THE WORLD BANK (2015) available at: <https://www.worldbank.org/en/news/feature/2015/11/08/rapid-climate-informed-development-needed-to-keep-climate-change-from-pushing-more-than-100-million-people-into-poverty-by-2030>.

¹³² *Id.* ¶ 7.

¹³³ Angela Picciarrello, Sarah Colenbrander, and Rathin Roy, *The costs of climate change in India: a review of the climate-related risks facing India, and their economic and social costs*, OVERSEAS DEVELOPMENT INSTITUTE (June 8, 2021) <https://odi.org/en/publications/the-costs-of-climate-change-in-india-a-review-of-the-climate-related-risks-facing-india-and-their-economic-and-social-costs/> (“**ODI Report**”).

¹³⁴ IPCC Report, *supra* note 2.

¹³⁵ Nitin Kumar, *India faces the highest risk from climate change's impact, says IPCC*, BUSINESS STANDARD (Mar. 20, 2023) https://www.business-standard.com/article/current-affairs/india-at-forefront-of-climate-change-impact-indian-ippc-authors-123032001046_1.html.

As per the IPCC's Sixth Assessment Report, Working Group II, there are discernible impacts of climate change that are attributed to human activities, which have intensified recently with the occurrence of new extreme natural events.¹³⁶ These events have resulted in significant losses to both ecosystems and human societies. The sixth assessment report details various impacts including diminished food and water security, effects on social and economic systems, and impaired functioning of critical infrastructure due to heatwaves, air pollution, among other factors. It also forecasts detrimental effects on climate-sensitive sectors like forestry, fisheries, agriculture, energy, and tourism, along with humanitarian challenges such as climate-induced migration.

India is recognised as a global hotspot in the IPCC report¹³⁷ and domestic assessments like the Climate Vulnerability Index due to its geographical and socio-economic vulnerabilities. The National Action Plan on Climate Change is India's primary climate strategy, comprising eight sub-plans, each overseen by a different ministry.¹³⁸ However, there is no single statutory framework or body exclusively addressing climate change.

Like many nations, despite efforts to combat climate change, India is unlikely to fully meet IPCC recommendations unless policies prioritise climate action over all other development goals. Nonetheless, India's vulnerability is evident not only in the IPCC report but also in regional studies within the country.

States such as Assam, Andhra Pradesh, Maharashtra, Karnataka, and Bihar are particularly susceptible to climate-related hazards such as floods, droughts, and cyclones.

In such dire foreshadowing for India, the concerns for the socioeconomic rights of tribes intensify. India is home to approximately 360 tribal groups or communities speaking over 100 languages and dialects. As per the 2011

¹³⁶ See *Introduction*, IPCC Report, *supra* note 2, at 126, ch. 1.1.1.

¹³⁷ IPCC Report, *supra* note 2, at 67.

¹³⁸ Prime Minister's Council on Climate Change, *National Action Plan on Climate Change*, GOVERNMENT OF INDIA (June 30, 2008) https://moef.gov.in/uploads/2018/04/NAP_E.pdf.

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census, the tribal population in the country was 1,210,193,422, constituting 8.6% of the total Indian population.¹³⁹ Regions across several states or provinces, including Andhra Pradesh, Chhattisgarh, Odisha, Jharkhand, Madhya Pradesh, Rajasthan, Uttarakhand, Himachal Pradesh, West Bengal, and the North-East, inhabited by tribal people (Scheduled Tribes or STs), are designated as ‘Scheduled Areas’. These tribal communities primarily reside in forested and mountainous regions, closely connected to nature, with most Adivasis depending on forests and forest resources for their livelihoods.¹⁴⁰

Amongst vulnerable tribal groups, there is a further classification done on the basis of gender, for the impacts of climate change even on indigenous populations will not be gender neutral.¹⁴¹ Climate-induced displacement leading to loss of identity and risks associated with living in slums or informal settlements affect indigenous and tribal women differently from men. The United Nations Human Settlements Program (“**UN-Habitat**”) has cautioned that women, especially those from impoverished backgrounds, are frequently excluded from climate change planning and discussions, heightening their risk of injury or death during natural disasters.¹⁴² Discriminatory policies and conservative practices contribute to segregating certain communities into high-risk areas, with indigenous and tribal populations often excluded from decision-making processes,

¹³⁹ As per the figures provided for in the Census figures for 2011.

¹⁴⁰ GS Bandhopadhyay, *Climate Change, Endangered Environment and Vulnerable Aboriginals of India – A Critical Study*, RESEARCH ASSOCIATION FOR INTERDISCIPLINARY STUDIES CONFERENCE (2019).

¹⁴¹ Indigenous and tribal women face greater vulnerability to social and economic threats from climate change compared to both non-indigenous communities and indigenous men. These threats encompass exposure to crime and violence, limited access to social services, inequality, and a disproportionate concentration in occupations or industries with insecure and hazardous working conditions, often resulting in violations of labour and human rights. See *Guaranteeing indigenous people's rights in Latin America: progress in the past decade and remaining challenges*, ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN (2014), https://repositorio.cepal.org/bitstream/handle/11362/37051/4/S1420782_en.pdf.

¹⁴² *UN-Habitat: Cities and climate change: global report on human settlements 2011*, GLOBAL REPORT ON HUMAN SETTLEMENTS (2011).

education, healthcare, and knowledge of assistance and relief services.¹⁴³ These factors significantly increase the vulnerability of indigenous women to even minor shocks or disruptions.

Tribal women play vital roles in both traditional and non-traditional livelihoods, unpaid caregiving, and food security. However, due to growing economic insecurity, many are compelled to seek employment in the informal economy, engaging in activities such as agricultural labour in rural areas or domestic work in urban settings.¹⁴⁴ Despite juggling income generation, social responsibilities, and household chores, indigenous and tribal women often face violence from within and outside their communities, despite their significant contributions to their populations' financial, economic, and cultural well-being.¹⁴⁵

The effects of climate change on marginalised tribal women in India have been harsh and distressing. They face discrimination both as women and as indigenous people, impeding their access to resources and opportunities.¹⁴⁶ Historically, Adivasi/indigenous women have played key roles in preserving cultural identity and local resources sustainably. They have been integral as food producers and custodians of biodiversity, contributing to the maintenance of ecosystems and traditional practices in

¹⁴³ THE INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT (IFAD) 2002, <https://www.ifad.org/en/web/knowledge/publication/asset/39578687>.

¹⁴⁴ D. Vinding and E. Kampbel, *Indigenous women workers: with case studies from Bangladesh, Nepal and the Americas*, WORKING PAPER ILO (2012) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_173293.pdf.

¹⁴⁵ Martin Oelz and Rishabh Kumar Dhir, *Indigenous Peoples in the World of Work Snapshots from Asia*, ILO, (2015), https://www.ilo.org/wcmsp5/groups/public/dgreports/gender/documents/publication/wcms_389366.pdf.

¹⁴⁶ *Breaking the silence on violence against indigenous girls, adolescents and young women: a call to action based on an overview of existing evidence from Africa, Asia Pacific and Latin America*, UNITED NATIONS CHILDREN'S FUND (UNICEF), UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN (UN-WOMEN), UNITED NATIONS POPULATION FUND (UNFPA), ILO, OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON VIOLENCE AGAINST CHILDREN (OSRSG/VAC) (2013) https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG_FINAL.pdf.

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medicine, pharmacology, botany, nutrition, and agriculture-based technologies crucial for biodiversity conservation.¹⁴⁷

Therefore, when it comes to an assessment of the impact that climate change may possibly have on India, the drastic upending of life that it will cause for indigenous Indian tribes cannot be ignored. With the issue of climate change quickly becoming a drastic concern, swift and effective steps taken at this juncture could somewhat lower the extent of predicted damage. A structured framework of curative and preventive action for ecological protection involving the corporations, the government and the citizens, can be one possible course of action to combat the intersectional adversarial impact of rampant climate change today, for a safer and better future. Considering the asymmetrical adverse impacts that climate change causes for indigenous women, it is also important to provide them with greater participation in policymaking to ensure an action plan that is not functioning in detachment from the ground realities that tribal groups face.

THE STATE'S RESPONSIBILITY TOWARDS TRIBES IN LIGHT OF THE CLIMATE CRISIS AND POSSIBLE REMEDIES

A. THE EXISTING CONSTITUTIONAL FRAMEWORK ON ENVIRONMENTAL RIGHTS IN INDIA

Article 48A of the Constitution states, “*The State shall strive to protect and improve the environment and safeguard the forests and wildlife of the country.*”¹⁴⁸ Similarly, Part IVA of the Constitution, introduced by the Constitution (Forty-Second Amendment) Act of 1976, outlines the Fundamental Duties of every Indian citizen. Article 51A(g) of this part emphasizes the importance of protecting the environment and forests.¹⁴⁹ Prior to 1976, forestry was within the state List, making it the responsibility of state governments to conserve and develop. The Government of India lacked statutory authority to intervene due to its classification as a state subject.

¹⁴⁷ INTERNATIONAL INDIGENOUS WOMEN'S FORUM DECLARATION, (2005) http://www.mdgfund.org/sites/default/files/FIMI%20project%20docs_0.pdf.

¹⁴⁸ INDIA CONST. art. 48.

¹⁴⁹ INDIA CONST. art. 51A, cl (g).

However, in 1976, the Central Government issued guidelines requiring states to consult the Government of India before diverting more than 10 hectares of forest land for non-forest purposes. Despite these guidelines, which were non-binding, many states disregarded them, resulting in continued diversion of forest lands at similar rates as before. Thereafter, by the 42nd Constitutional Amendment Act, 1976, the subject of Forests was moved from the State List to the Concurrent List.¹⁵⁰ Since the subject was placed under List III, both the Centre and the states could legislate on it, however, in case of a clash between the laws, the central law would have prevailed.¹⁵¹ At the central level, the Ministry of Environment, Forests and Climate Change (**MoEFCC**)¹⁵² is responsible for policy matters related to these subjects. Meanwhile, forest departments under the control of state governments implement national policies. The execution of environmental laws sometimes disrupts tribal settlements in India, leading to unexpected issues.

In India, environmental law and environmental rights have often been viewed solely from the individualistic perspective and not from a group rights perspective.

Group rights under the Constitution of India are mostly understood as conflict resolution mechanisms, and as useful tools in mitigating clashes between identity groups mostly defined along ethnic lines, which have been adopted by many post-conflict and ethnically divided societies.¹⁵³ Essentially, group rights are possessed by a group together instead of being available to each member severally. One of the best examples of group

¹⁵⁰ INDIA CONST. sch VII, List III, Entry 17A, as amended by the Constitution (Forty-second Amendment) Act, 1976.

¹⁵¹ INDIA CONST. art. 254.

¹⁵² The Ministry of Environment, Forest and Climate Change (MoEFCC) is the nodal agency for planning, promoting, coordinating and overseeing the implementation of environment and forest related policies and programmes in the central administrative structure of the Government of India. *See also* INDIA CONST. art. 48A.

¹⁵³ John McGarry, Brendan O'Leary, and Richard Simeon, *Integration or Accommodation? The Enduring Debate in Conflict Regulation* in SUJIT CHOUDHRY (ED.), CONSTITUTIONAL DESIGN FOR DIVIDED SOCIETIES: INTEGRATION OR ACCOMMODATION? 41-48 (Oxford University Press, 2008). *See also* Louise Tillin, *Asymmetrical Federalism* in SUJIT CHOUDHRY ET AL. (EDS.), THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION 574 (Oxford University Press, 2016).

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rights under the Constitution is that of rights of cultural and linguistic minorities as enumerated in articles 29¹⁵⁴ and 30¹⁵⁵ of the Indian Constitution.

B. THE JUDICIAL CREATION OF ENVIRONMENTAL GROUP RIGHTS

Progressive jurisprudence has been instrumental in propounding the right to clean environment both as a fundamental right available to an individual as well as a group right available to the entire citizenry whose right is being violated. For instance, in the case of *Vellore Citizens Welfare Forum v. Union of India*,¹⁵⁶ the Court recognised the threat and damage posed by tanneries in the country and as a result it imposed a fine on the tanneries for their actions.

Another similar case is that of *Indian Council for Enviro-Legal Action v. Union of India*¹⁵⁷ where the court was concerned with a matter relating to pollution and long-lasting damage to the sub-soil and water sources. In this case too, the court not only ordered the closure of these factories but also ordered them to pay fines for reversal of ecology in the area.

Moving forward, another landmark case is that of *Fatesang Gimba Vasava v. State of Gujarat*¹⁵⁸ where the petition had been brought forward by the poor adivasis in the State of Gujarat as they were being deprived of the forest rights conferred upon them by the State Government. The Court in this case observed that the sole purpose of granting certain special privileges to the residents of forest villages is to give them a source of livelihood and directed the State officials to restore the rights of the Adivasis and allow them, with the bamboo, to earn their livelihood.

A very significant case to discuss here is the *Niyamgiri Cave Case*, that is, the case of *Orissa Mining Corporation Ltd v. Ministry of Environment & Forest*,¹⁵⁹

¹⁵⁴ INDIA CONST. art. 29.

¹⁵⁵ INDIA CONST. art. 30.

¹⁵⁶ *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647.

¹⁵⁷ *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212.

¹⁵⁸ *Fatesang Gimba Vasava v. State of Gujarat*, AIR 1987 Guj 9 (India).

¹⁵⁹ *Orissa Mining Corpn. Ltd. v. Ministry of Environment & Forests*, (2013) 6 SCC 476.

where Dongoria Kondhs, a PVTG from Odisha, won a historic legal battle against Vedanta's claim for bauxite mining on the Niyamgiri Hill, which was a religious and divine symbol for the Dongoria Kondhs. In this particular case, to enforce the need for free and informed consent of the tribes, the Apex Court ordered for a referendum to be held for the approval of the mining among the members of the PVTG. Since all votes in the referendum were against mining, the court set aside Vedanta's claim to hold that certain areas were to be kept beyond the reach of exploitation.

There are also several other cases like the *Taj Trapezium Case*,¹⁶⁰ the *Kanpur Tanneries Case*,¹⁶¹ the *Calcutta Tanneries Case*,¹⁶² the *Oleum Gas Leak case*¹⁶³ and the *Sterlite Industries case*,¹⁶⁴ almost all of which, like the above-mentioned cases, do not just look at the right to a clean environment from an individualistic perspective, but from a group's perspective.

Most recently, on April 5, 2024, a three-judge bench led by the Chief Justice of India, in the case of *MK Ranjitsinh and Ors. v. Union of India*,¹⁶⁵ held that right against the adverse impact of climate change is entwined and embedded in the rights to life and equality guaranteed by the Indian Constitution. The Court once again reiterated that the State cannot shirk its obligations under Articles 48A and 51A(g) as these provisions may be non-justiciable but they highlight the importance of the environment and natural world, which are parts of the right to life under Article 21.

Be it the pollution of rivers, the pollution of air, the damage to soil and subsequent damage to agriculture or the point of indigenous people's rights, the rulings given by the Apex Court show how it has taken a group rights stance in these cases, recognising that each of these damages is not just violating the right of one person at one time but rather that of a larger group that is relying on these natural resources for its livelihood and survival.

¹⁶⁰ M. C. Mehta v. Union of India, (1997) 2 SCC 353.

¹⁶¹ M. C. Mehta v. Union of India, (1987) 4 SCC 463.

¹⁶² M. C. Mehta v. Union of India, (1997) 2 SCC 411.

¹⁶³ M. C. Mehta v. Union of India, (1997) 1 SCC 395.

¹⁶⁴ Sterlite Industries (India) Ltd. v. Union of India, (2013) 4 SCC 575.

¹⁶⁵ M.K. Ranjitsinh v. Union of India, Writ Petition (Civil) No. 838/2019.

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The aforementioned cases have been included in this section, to illustrate how despite the traditional interpretation of right to a clean and healthy environment as an individual right, the Supreme Court has on occasion, has enforced the same as a group right for people or communities living in a specific city/area or state. This judicial creation of a group right can, thereby, be read along with the Supreme Court's approach in *M.K. Ranjitsinh and Ors. v. Union of India* to hold that just as vulnerable parts of the population are entitled to a group right to clean and healthy environment, they are also contenders for a fundamental right to protection against climate change and its adverse impacts as a group.

C. POSSIBLE SOLUTIONS AND AVAILABLE CONSTITUTIONAL REMEDIES FOR TRIBAL COMMUNITIES

It is not only *via* relying on Court precedents that we can solve the problems that are lying before the indigenous communities in India. The solutions and remedies possible for tribal communities in India cannot just be seen in the route of litigation before the courts. Litigation too is a difficult to attain remedy for the tribal people for not all of them have access to the same level of education, resources and financial means to successfully present themselves as litigants before a court of law against the state or big corporations.

Both the government and forest dwellers, including tribes, share a common goal of preserving forests and natural resources. However, lawmakers often develop laws without adequately considering the welfare of tribes. When these laws are enforced, unexpected and complex issues arise. There are suggestions aimed at ensuring the preservation of tribal rights when framing environmental conservation laws.

First, a greater role needs to be constitutionally accorded to the tribal communities in their own administration via providing them with a larger say in the decision-making by the local governments. For this particular purpose adequate amendments can be made to Part IX, PESA, and the FRA to make the JFM system more sustainable for the tribal people while making it a more holistic process instead of a top-to-bottom model. It is

only by including tribal people in the law-making process and by integrating the JFM model in the tribal management, that we can be cognisant of the day-to-day challenges and the ground realities of tribal communities' lives.

Second, measures like renewable energy training, education on clean energy resources, introduction of gender sensitive policies, greater representation in decision-making roles, or capacity building initiatives for tribal women that focus on gender equality and women's empowerment are crucial. These would enable women in tribal communities to effectively address the impacts of climate change, as gender stereotypes continue to contribute to heightened challenges. Specifically for rural and tribal women, targeted policies are needed to support their efforts in responding to climate change. Without these policies, actions, and approaches, progress in social and economic development would be limited. Tribal women play a significant role in fostering positive environmental change and should be recognised as environmental champions. Thus, sufficient measures should also be taken to raise awareness about climate change amongst the tribal women.

Third, the NAPCC by the Government of India should be revamped so as to make the plan more cognisant of the needs of the multi-dimensionally poor and vulnerable groups of population in India, specifically tribal groups and PVTGs.

The current NAPCC and the Mission LiFE¹⁶⁶ constructed by NITI Aayog are more citizen-oriented than State-oriented in the sense that they expect the citizens and the corporations to act first to curb pollution and environmental damage at their own level before the State would come into the picture.¹⁶⁷ In the face of the grave impending damage that climate

¹⁶⁶ NITI Aayog, Mission LiFE: Lifestyle for Environment, Ministry of Environment, Forests and Climate Change (2022) available at https://www.niti.gov.in/sites/default/files/2022-11/Mission_LiFE_Brochure.pdf,

¹⁶⁷ *Id.*, at 5. Mission LiFE focuses on the ecological conservation and changes that individuals and communities can bring via alteration in resource consumption and utilization patterns.

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change would inevitably cause in India, unless immediate action is taken, the State cannot wait for other actors to curb the damage while it waits.

Especially for a welfare state like India, which has constitutionally clarified itself to be obligated to endeavour to commit to welfare of the citizens and whose courts have often accorded a somewhat paternalistic role to the State towards its citizens.

CONCLUSION

In the sections above, we have looked at how tribal populations have been perceived, defined, represented and administered in India, from the pre-constitutional era to the present day. Tribal regions have, starting from the colonial era, been treated as special areas requiring dedicated administration. However, the forced assimilation by encouraging non-tribal immigration into the tribal areas opened doors for fresh exploitation of tribal resources, which led to a continuing conundrum that remains unsolved, even after the passage of the FRA.

The aim of this paper has been to look into the possible constitutional resources that the tribal communities can exercise against an impending climate crisis. These remedies are sought in a bid to secure state assistance for tribal groups in preventing the violation of their socio-economic rights.

To establish the same, we have looked at the representation that the tribal groups have had in the constitutional and legislative decision-making, to establish how the current provisions and forest laws have failed to adequately involve them in the administration and industrial utilisation of their own habitats.

Tribal groups in India are especially vulnerable to climate crisis and ecological imbalances because nature and natural resources are not merely means of sustenance but also are an integral component of their identities—social, cultural and religious. The climate change crisis will affect the weakest sections of the society, first and the hardest. The impact that climate change and global warming will have on marginalised or

vulnerable groups will also not be uniform. Intersectional groups among the vulnerable groups, like women and children, will comparatively suffer more in such a case. In such a scenario, the constitutionally entrenched welfare state cannot be allowed to act as a mere spectator while vulnerable citizens face the consequences of global warming.

The rights to a clean environment, to a healthy natural world and to protection against the adverse impacts of climate change are all intertwined and embedded in the right to life of every citizen of the nation. To apply these entwined rights effectively and on a large scale, it is imperative that the state and the judiciary shift to a transformative re-reading of them—from a group rights perspective. Further, proactive steps like capacity building, promotion of clean energy, inclusion in decision-making forums, targeted research and data collection are the need of the hour, to not only protect the tribal groups against climate change damage, but also to ensure protection of their identities, socio-economic rights, and continued sustenance.