

Tribal Governance in India: An Analysis

Ms. Aneesha Singla

How to cite this article: Ms. Aneesha Singla (2024). Tribal Governance in India: An Analysis. *Library Progress International*, 44(1), 648-659

Abstract

The Tribal cultures are an important and inseparable part of traditions of India. The tribal life is a good example of sustainable use of societal resources and sustainable environment practices in India and guides the world to achieve the UN Sustainable Development Goals. The evolutionary insights on the tribal government in India can be traced back into the British India by observing the tribal matter and affairs. The Constitution is the source of the power, governance and authority in India. The term 'tribal governance' arises from the constitutional provisions, constitutional text and structure it provides to govern themselves especially in the matters of grassroot level democracy. The most important feature of the administration of justice in the tribal areas is that the appeal from such court of trial and the from the village council shall be exercised only by the civil courts under the jurisdiction of the Supreme Court or the High Courts while neither the Regional Councils nor the District Council shall act as the court of appeal from the village court of trial and the village council. The Constitutional safeguards to the tribal community in India are one of the striking features of the Constitution in the form of the fifth and the sixth Schedules, apart from these safeguards there are specific safeguards provided in the constitutional scheme that have been designed in order to provide the institutional and statutory framework on the tribal affairs and development.

Key Words: Tribal Governance, Tribal Culture, Biocultural Rights, Indigenous Communities, Constitutional, Legislative & Institutional Framework.

INTRODUCTION

The Tribal culture is an inseparable part of the composite culture of India. The tribal culture and identities contribute in the development of the cultural diversity of India. The traditional values have been practiced for the ages in the land of India. The Tribal cultures are the considerable and inseparable part of traditions of India. The tribal life is a good example of the sustainable use of societal resources and sustainable environment practices in India and guides the world to achieve the UN Sustainable Development Goals. The Tribal ways of life, tribal social and political institutions, customary tribal laws, traditional knowledge and value system and their customs and traditions play a considerable role in strengthening the process of nationalism in India.ⁱ The Constitutional framework, institutional framework and the special measures, along with suitable actions taken before and after the commencement of the Constitution of India ensure the protection of the tribal culture and practices, their protection and promotion and democratic, effective, appropriate and meaningful participation of the tribal peoples in the decision-making process. The participatory mechanism evolved from the British India and its development since the commencement of the Constitution is considerable. The Constitutional and Legislative Frameworks for promoting and protecting the tribal identities and cultures are the striking and inseparable part of the tribal governance in India.ⁱⁱ The Schedule Fifth and Sixth of the Constitution of India is the source of the tribal governance in India. The Constitutional provisions along with the above said Schedules carry the extensive and detailed provisions on the tribal governance and making it meaningful, workable and effective. The National Commission for Scheduled Tribes in India, as a Constitutional institution plays an important role in advising the Government of India and promoting the

tribal Governance in India. The Commission brings the sensitivity, effectiveness and responsiveness towards tribal issues and concerns itself towards advising on tribal subject matters and policy formulation and also the implementation aspects for tribal affairs. The effective implementation of the existing legislative and constitutional provisions specially designed for the Schedule Fifth and Sixth of the Constitution and supportive mechanism promotes and strengthens the tribal governance and desired objectives.ⁱⁱⁱ

The considerable development in the area of the tribal governance was made in the year of the 2009 by the Standing committee of the Inter-sectoral issues, coincidentally, recommended, by submitting its Report on the “Standards of Administration and Governance in Scheduled Areas”. The report recommended that the Constitutional provisions for the purpose of the tribal affairs would be monitored and fine-tuned by the Governor of the State in accordance with local conditions, circumstances and tribal affairs in the light of legislative actions and policy especially the Central and State legislations. The report mentioned that the Constitution provisions specially the Fifth and Sixth Schedules largely remained as a dead letter since the commencement of the Constitution. Therefore, the Commission prepared a special report on the good governance in the Tribal Areas, Councils and Scheduled Areas that aimed to find out the actual working and recommended to take suitable measures for enacting and implementing the legislative and constitutional provisions related to the tribal governance.^{iv}

The President of India, during the Conference of the Governors, remarked that the Fifth Schedule of the Constitution placed a special responsibility on shoulders of the office of the Governor with respect to the administrative matters in the Scheduled Areas and Scheduled Tribes, and such specific role and power lies in the wisdom of the Governor office in order to carry such responsibilities. The said Schedule empowers the Governor to direct whether any particular enactment or legislation shall apply in the said areas directly or with modifications or alterations or not to be applied at all. The office of the Governor shall make such rules and regulations on the basis of the circumstantiality of the situations only for the purpose of the peace and good governance. The President further viewed that the special provisions in the form of Fifth and Sixth Schedules requires the pro-active role of the Governors. The President further pointed out in the light of the judgments of the Court and the debates in the Constituent Assembly of India, that the Governor is bound by the advice of the Council of Ministers. It is immediately required that the Government should seek legal opinion in order to make special provisions and to rest such ambiguity arising from the implementation of the provisions of the above said schedules.^v

The President of India further pointed out the implications arising out from the Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 as it has been extended to the nine States namely Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan under the Fifth Schedule. However, the Act is yet to implemented and local enactments framed should comply with provisions, aims and objectives of the PESA Act, 1996.^{vi} The President further highlighted that the Governors should promote the quality of the government-citizen interface making it citizen centric and such interface should focus at the grassroot level democracy which would further determine the quality of the administration and governance. Therefore, it is the constitutional responsibility of the Governor’s office that they urge the State Government to promote the informed discussions on the subject matters in the above- discussed Schedules to carry out the most optimal path for the administrative and good governance.^{vii}

HISTORICAL BACKGROUND OF TRIBAL GOVERNANCE IN PRE-CONSTITUTIONAL ERA

The evolutionary insights on the tribal government in India can be traced back to the British India by observing the tribal matter and affairs. The historical development in the tribal governance started from the Scheduled District Act, 1874 during the British India. The Act of 1874 was the first piece of legislation that paved the way towards the direction to establish the tribal government in India by notifying certain tribal areas as Scheduled Districts for the purpose of enforcing or not enforcing the enactments in such Scheduled Districts. The Act of 1874 empowered the Local Governments for extending an enactment in the Scheduled Districts or any part thereof, as it thinks fit. The local government in order to exercise such power and functions in the Scheduled Districts appointed an officer for the purpose of civil and criminal administration, settlement, superintendence and collection of the public revenue, the matters related to the rent and all the

remaining aspects related to administration in such Scheduled Districts. The local Government was further empowered in order to establish and regulate the procedure to be followed in the administrative and criminal matters by the officers so appointed subject to the operation of any enactment. The local government was further empowered to authorise any officer by whom the powers, jurisdiction, the duties and functions in the Scheduled Districts were to be performed or exercised.^{viii}

The Government of India Act, 1919 was a considerable development in the tribal governance in the British India. Part I of the Act provided that the Governor General in council is empowered to declare any part of the British India territory as 'backward tract' by public notification and direct the sanctions as mentioned in the Act, the application of the principal Act or any other Act shall apply or not to apply or apply with certain modification as the Governor General thinks fit or may authorise the Governor in council for applying the legislation with alterations or restrictions in such Backward Tract declared so.^{ix}

The Government of India Act, 1935 is the source of the Fifth and Sixth Schedules of the Constitution of India. The Act of 1935 is the genesis of developments in the tribal governance and tribal affairs in the independent India. The Act was an important contribution in the development of tribal affairs in order to identify the backward tribal areas administered by the Governor in exercising the power vested in him or through the legislature or through his personal discretion. Section 92 of Chapter V of the Part III of the Act carried the heading as the 'Excluded Areas and Partially Excluded Areas' under the Act of 1935. The Act provided that the executive authority of a Province extends, as per the said Act of 1935, to the excluded or partial excluded areas for the purpose to decide whether to apply the legislations of Federal or the Provincial Legislation unless the Government by public notification so directs the Governor to give effect to the provision of the Act of 1935 in any excluded or partial excluded area or part thereof. The Governor was further empowered to make special regulations for the peace and good governance measures in any of the abovesaid area or any Province by making such modifications and exceptions as he thinks fit.

The above discussed Acts during the pre-Constitutional era contributed a lot in making of the Schedules Fifth and Sixth in the Constitution of India by the Constituent Assembly.^x

CONSTITUTIONAL FRAMEWORK ON BIOCULTURAL RIGHTS IN INDIA

The Constitution is the source of the power, governance and authority in India. The term 'tribal governance' arises from the constitutional provisions, constitutional text and structure it provides to govern themselves especially in the matters of grassroot level democracy. The Schedule Fifth and Sixth of the Constitution are the source of the tribal governance in India. The Constitution designed the functional structure between the Union and the State legislatures while the local governance is subject to the State legislature in order to govern the local rural and urban. There are special constitutional provisions for the administration of the tribal areas with special reference to Schedule Fifth and Sixth of the Constitution.^{xi} These schedules act as the authority over the tribal affairs by the Union and the State legislatures. The Schedules Fifth and Sixth carry a different governance mechanism and establishes different jurisdiction in the tribal affairs subject to the local conditions and cultural diversity among the tribal and sub-tribal groups. Prior to the Panchayat (Extension to Schedule Areas) Act, 1996 (PESA) all power, authority and jurisdiction lied with the Union while after the enactment of PESA such power, authority and jurisdiction now lies with State executive power irrespective of all the States whether empowered by the Fifth and Sixth Schedules of the Constitution, paying due consideration to the tribal diversity in India. The Schedule Fifth empowered the States to extend their executive powers in order to protect, promote and manage the tribal affairs according to the local circumstances. The scope of both the schedules is very wide, and it covers the States having majority of tribal population, that makes it possible to protect and promote the sub-tribal groups and other sub-cultural minority groups among the tribal population.^{xii} The Governor of the State, according to the PESA is authorised to make special regulations for the purpose of good tribal governance and to maintain peaceful environment in tribal affairs. Therefore, the Governor is the sole and absolute legislature for the administrative matters in the Scheduled Areas and Scheduled Tribes.^{xiii}

The Constitution of India carries the detailed and effective provisions. The constitutional framework on the tribal affairs ensures the effective and meaningful participation of the tribals in the form of representation in the national politics and the services under the State. The constitution of India ensures through both the Schedules that tribal groups in India are able to maintain their cultural identities and their occupational patterns while enjoying autonomy in matter of local administration in their respective areas through the constitutional framework for the tribal administration such as the tribal Regional Councils and the autonomous districts, the Tribal Advisory Council and the mechanism as set out in the constitutional scheme. The Sixth Schedule of the Constitution deals with tribal states of Assam, Meghalaya, Tripura. The two Schedules of the Constitution of India are the source of the tribal governance in India.

SCHEDULE FIFTH

Para 2 of the Schedule Fifth states that the executive power of the State extends to the Scheduled Areas in the tribal affairs.^{xiv} Para 3 further carries the provision of Report of the Governor to be sent to the President of India relating to the administration of the tribal affairs. Part B of the Schedule Para 4 carries the provision for the Tribes Advisory Council for the purpose of the representation of the tribals in their affairs. The Tribes Advisory Council advises the Governor pertaining to the advancement of the scheduled areas and the welfare of the tribals. The Governor is empowered to prescribe rules and regulations related to the appointment of the members, conduct of its meetings, procedure to be followed and consequential and incidental matters thereto. One of the important provisions is in the form of the Para 5 of the Schedule that carries the provision relating to the applicability of the laws in the scheduled areas. This para highlights that the Governor is the sole legislative source and authority for the purpose of the application of the laws in the Scheduled Areas. The same para empowers the Governor to modify, amend, repeal, restrict, prohibit and apply an Act of Parliament or of the Legislature of the State in the Scheduled Areas. Part C of the Schedule carries the meaning of the term ‘Schedule Areas’ and empowers the president to declare by order any area to be so. The President can declare any area as a Schedule Area or can increase any existing Schedule Area, alter the boundary by way of rectification, alter the boundary of any State in order to admit into the Union or establish a new State or declare the territory not previously included into the Scheduled Area or rescind orders made hereinunder in consultation with the Governor of the State. Part D of the Schedule states that the power to amend the Scheduled lies only with the Parliament.

SCHEDULE SIXTH

The Sixth Schedule of the Constitution deals with tribal States of Assam, Meghalaya, Tripura and Mizoram. Para 1 of the Schedule deals with the formation of Autonomous districts and Autonomous Regions in the states of Assam, Meghalaya, Tripura and Mizoram. It states that the Governor, may, by public notification include, exclude, create, increase, diminish or unite any area of the Autonomous District or Tribal Areas, alter the name and define the boundaries of any autonomous district.^{xv} The Governor is further empowered to make orders for any consequential or incidental matters related thereto.^{xvi} Para 2 of the Schedule talks about the constitution of the tribal District Councils and the Regional Councils. The constitution of the District Councils and the Regional Councils is partially through nomination by the Governor and partially through elected members. Para 2 states that there shall be a separate Regional tribal Council for each autonomous region and it carries the provisions relating to the District Councils for each autonomous district within a District. Therefore, the Constitutional framework on the administrative mechanism for the tribal affairs in India is designed to protect the interests of the tribal communities in order to ensure democratic participation of the tribal communities and other sub-tribal cultural groups. The Governor shall authorise the rules regarding power, functions and jurisdiction in the affairs and subject matters of the tribal local affairs. Para 2 further entrusts the Governor to frame rules for the District and Regional tribal Councils in consultation with the existing tribal councils and other tribal representative organisations. The Governor is further empowered under the said para for the composition and allocation of the tribal councils, delimitation of the tribal territorial constituencies in the electoral matters, the qualifications for the voting and for being elected. Para 3 of the Schedule carries the powers of the councils in legislating over the subject matters. The Regional and District Councils enjoy ample power in legislating over the subject matters related to the allotment, occupation, setting apart or use of the any land in the jurisdiction of the councils. The Councils can make laws related to the land, forest, and use of the forest reserves and forest land for the purposes of the agriculture, non-agriculture, grazing, residential purposes and for any other purpose that protects and promotes the interests of the tribals.^{xvii}

Para 4 of the Schedule carries the provisions relating to the administration of justice in the autonomous districts or regions. This provision relates to the Preamble idea of the UN Declaration on the Rights of Indigenous People as it respects the indigenous knowledge systems, and traditional value system of the indigenous peoples. Article 20 of the UN Declaration carries the provision that the traditional justice system based on the traditional value system, is the right of the indigenous.^{xviii} While clause (4) of para 4 states that the Regional Councils under their jurisdiction may constitute village councils for the purpose of the civil matters and the courts for the trial of suits, between the members of the tribal community. The Regional Councils are empowered to appoint persons to be the presiding officers and members of such courts of trial and the village councils for the purpose of the administration of justice.

The most important feature of the administration of justice in the tribal areas is that the appeal from such court of trial and the from the village council shall be exercised only by the civil courts under the jurisdiction of the Supreme Court or the High Courts while either the Regional Councils nor the District Council shall act as the court of appeal from the village court of trial and the village council. The Regional Council and the District Council with the prior permission of the Governor can make rules regarding procedure to be followed and the enforcement of the orders and decisions of the village council and of the court of trial.^{xix}

Para 5 of the Schedule further empowers the Regional and District Councils for trial of cases, offences and suits in certain matters under the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973. The Governor may grant the powers to the Regional and District Councils in the suit and the trial for the offences punishable with death, transportation for life, imprisonments for a term not less than five years under any law that is applicable for time being in such councils. Therefore, the Governor is empowered as a sole legislative authority responsible for the administration of justice in the Scheduled Areas and Autonomous Districts.^{xx}

Apart from the administration of justice, the Schedule empowers the District Councils in matters of education and social development. Para 6 carries the provision relating to the primary education and establishment of primary schools. The District Council is responsible for establishing, the primary education centres, the protection and promotion of occupational activities such as fisheries, roads, waterways, primary health care such as dispensaries, local markets, ferries and all the local activities that impact their livelihood, with the prior approval of the Governor. Further, the Governor is empowered to promote the interests of the tribal communities by making rules and regulations for carrying any economic activity in such tribal area.^{xxi}

Para 8 further empowers the Regional Council and District Council to assess and collect the land revenue in respect of the land within their territorial jurisdiction or land or forests land, as the Governor prescribes, in accordance to the principles for the time being followed in the assessment and collection of the land revenue, followed by the State generally. Para 8(2) further empowers the Regional and District Councils to authorise and establish an authority to levy and collect the taxes, tolls, on the buildings and lands and on the residents within the prescribed areas. Para 8(3) empowers further the District Councils in the boundaries of the Autonomous District to levy and collect the taxes on matters related to the trade, employment and callings, boats, animals and vehicles, entry of the goods for sale in the local market, tolls on the passenger carriers and the goods carriers, for the dispensaries, road and the maintenance of schools. Clause (4) states that the Regional Council and the District Council may make regulations for the purpose of the taxation but with the prior assent of the Governor of the state.^{xxii} Para 9 of the Schedule further gives a share to the District Councils of royalties accruing from licences or leases granted by the Government of the state for the purpose of the extraction and prospecting of the minerals, in the autonomous district as agreed by the Government and the District Court. Clause (2) of Para 8 states that if any dispute arises in matters of sharing of the royalties, licencing or lease it shall be settled by the governor, whose decision shall be final.^{xxiii} Para 12 of the Schedule further carries the provisions for application of the Acts of Parliament and of the Legislature of the State to autonomous regions and autonomous districts of the State of Assam. Clause (a) of Para 12 of the sixth Schedule states that no Act of the Parliament or of the Legislature of the State of Assam on the matters enumerated in the Para 3 of the Schedule with respect to the law making powers of the Regional Council and District Council and no Act of the Legislature of the State of Assam w.r.t. restricting or prohibiting the consumption of any non-distilled alcoholic liquor in the jurisdiction of such Councils, shall be applied. Further, it states that the public notification

is compulsory to be given by the District Council in case it wants to apply the abovesaid legislations to the areas under its jurisdiction. Clause (b) of the Para 12 further empowers the Governor, by public notification, to modify, restrict and alter the Act of the State legislature and of the Parliament before applying it to such regions or declare that it shall not be applied in such areas. The Governor may make such public notification or order with retrospective effect under Para 12 Clause (2). Similarly, Paras 12A, 12AA, 12B, carry equivalent special provisions as discussed above for the States of Meghalaya, Tripura and Mizoram respectively.^{xxiv}

Para 13 of the Schedule carries the provision related to the Budget of the District Council as it states that the annual financial statement in the case of estimated receipts and expenditure of Consolidated Fund of the state pertaining to the autonomous districts and autonomous councils shall be shown separately. Such estimated expenditure and estimated receipts shall be placed first before the District Council for discussion and thereafter before the Legislature of the State. The Constitution ensures strong and independent financial position of the tribal councils. Para 14 carries the provision for appointment of commission to inquire into the administrative matters of the autonomous regions and autonomous districts. The Governor, at any time, as he thinks fit, can appoint a commission to examine the matters specified by him w.r.t. the administration of the autonomous region and autonomous district or any matter enumerated in the clauses (c), (d), (e) and (f) of the Para 1(3) of the Schedule or in order to inquire about the general administration and prepare a report related thereto. The matters mentioned above are the general matters, there are specific matters also which can be inquired into such as the matters related to the medical and health facilities, provisions related to the education and means and mode of the communication in the district, regions and autonomous region and autonomous councils, the need of any new or special legislation in such area, the administration of laws, regulations, rules and any other policy matter. The Governor may also define the procedure to be followed by such appointed commission. The report of the commission along with the recommendations of the Governor shall be laid before the legislature of the concerned State and the same shall be done by the Minister concerned with the explanatory memorandum about the action proposed by the Government.^{xxv} Clause (3) of the Para 14 states that the Governor while allocating the business to the Ministers may place one of his Minister charged with the welfare of the such autonomous regions and autonomous districts in the State.^{xxvi} Para 15 carries the provision relating to the suspension or annulment of resolutions of District and Regional Councils. The Governor at any time if apprehends that any resolution or an act of a Regional or the District Council can endanger the safety of India or prejudice the law and public order and safety, can annul or suspend such resolution or act as the case may be, and take such necessary steps to control the situation and maintain law and order, and while doing so, he may suspend the council even by preventing the continuance of such act or resolution. Such order of the Governor in annulling the act, regulation of the councils under Clause (1) of the Para shall be laid, as soon as possible, before the Legislature of the State. It shall continue for a period of the twelve months from the date of making such order, unless it is revoked by the Legislature. Further provided that if the Legislature passes a resolution approving the continuance of the order, such order shall continue in force for a further period of twelve months from the date of making such order, unless the Governor cancels that order.^{xxvii}

Para 16 of the Schedule talks about the dissolution of a Regional Council and District Council. The Governor is empowered, on the recommendation on the Commission appointed under Para 14 of the Schedule, to dissolve the District and the Regional Councils by public notification and direct immediate fresh election to be held for the purpose of the reconstitution of the Council. The Governor, further under the sub-clause (b) after the approval of the Legislature of the State, can assume the administration of such area or appoint the said commission or any other body for the same, for a period not exceeding twelve months. The Governor is the sole authority for taking any action or the controller of any of the authority or body placed for the administration of the matters or affairs connected to the area or any matter in question until the election is pending. The Governor, if satisfied that the situation in the said area is such that it cannot be administered in accordance with the provisions of this Schedule, he may by public order, assume all the functions and powers to himself and appoint any authority or person for the same for not more than six months.^{xxviii}

Para 17 carries the provision for the exclusion of areas from the autonomous district in the States of Assam, Meghalaya, Tripura and Mizoram for the purpose of the Legislative Assembly elections. Any area comprising of the autonomous

district shall be excluded from such reserved constituency for that district, instead it shall be included in the unreserved constituency.^{xxix}

OTHER CONSTITUTIONAL SAFEGUARDS IN THE PROTECTION AND PROMOTION OF THE TRIBAL RIGHTS

The safeguards for the tribal community in India are one of the striking features of the Constitution in the form of the Fifth and the Sixth Schedules. Apart from these, there are specific safeguards provided in the constitutional scheme that have been designed in order to provide the institutional and statutory framework on the triable affairs and development.^{xxx}

Article 342(1) states that after consultation with the Governor of the State, the President can designate any tribal communities or the tribes as the 'Scheduled Tribe' in any of the State or in the Union territory.^{xxxi} Article 342(2) further vested powers in the Parliament for the purpose of the inclusion or exclusion of any tribe or tribal group or part of any such tribal group in the 'Scheduled Tribes' under Article 342(1). Article 244 carries the provisions related to the administration of Tribal and Scheduled Areas. Clause (1) of Article 244 states that the provisions related to the Fifth Schedule shall apply to the Scheduled Areas and Scheduled Tribes in states other than States of Assam, Meghalaya, Tripura and Mizoram and the provisions of the Sixth Schedule apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.^{xxxii} Article 244A further provides the formation of an autonomous State within the state of Assam comprising of certain tribal areas and the creation of a local legislature or the Council of Ministers or both for the purpose of the tribal affairs designated thereto. Article 244 is comprehensive in the sense that it carries extensive provisions for the tribal governance and administration for tribal development.^{xxxiii}

Schedule Seventh carries Entry 15 in the Concurrent list which provides for the development of the vagrants, nomadic and migratory tribes. The objective behind placing it in the Concurrent List is that such tribes are widespread in India, in every micro geographical unit and in the form of a distinct tribal cultural identities, even among the distinct tribal groups in the sub-tribal groups. The Eleventh Schedule further under Entry 27 carries the provisions related to the welfare of the Schedule Tribes along with the weaker sections and the Schedule Castes at the village level that ensures democratic, meaningful and effective participation of the tribals in the decision making.^{xxxiv}

Part III of the Constitution in the form of the Fundamental Rights also empowers the State to make special provisions for advancement of the backward classes, weaker sections, Scheduled Castes and Schedule Tribes. Article 14 provides for the equality before law and equal protection of law but it allows reasonable classification in the favour of the tribal communities that are designated as backward and weaker sections by the State seeking to bring them with the mainstream of the society.^{xxxv} Article 15(4) further empowers the State to make special provisions for the purpose of the advancement of the Scheduled Tribes while Clause (5) of the said Article carries the provisions related to the promotion of education among the members of the tribal groups. Article 16 prohibits discrimination on certain grounds and promotes the interests of the tribals. Clause (4) and (4A) carry the provisions related to the reservation in matters of appointment and promotion in the services under the State in favour of the Scheduled Tribes.^{xxxvi} Article 19(5) imposes reasonable restrictions on the Fundamental Rights of the citizens especially for the purpose of protection of the interests of the Scheduled Tribes. Article 29 carries the Fundamental Rights in the form of the Cultural and Educational rights protecting the rights and interests of any section of the citizens having a distinct language, culture and script.^{xxxvii}

Part IV in the form of the Directive Principles of State Policy provided various non-justiciable rights of the citizens specially for the Schedule Tribes and Scheduled Castes.^{xxxviii} Article 46 carries the provision for the protection of educational and economic interests of the Scheduled Tribes along with the other weaker sections and the Scheduled Castes; further it talks about social justice in order to mainstream the Scheduled Tribes.^{xxxix}

Article 338A establishes the National Commission for Scheduled Tribes, a constitutional body for monitoring the overall welfare and preventing any injustice to the tribals.^{xl}

SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is popularly known as the Forest Rights Act, 2006. This is an Act that recognises the centuries old practices of the tribal peoples in the form of rights and provide the legislative back up for such rights. The Act establishes the ownership rights of the tribes on their forests, forests land, forest dwelling and their traditional territories. The Striking feature of the Act is that it recognises along with the Scheduled Tribes, other forest dwellers who engaged in such occupations since centuries and the other forest persons who are residing in the forests since generations and are dependent on the forests but such rights, interests and practices could not be recorded. The Act provides a framework to record such occupational, forests and cultural rights so vested and the procedure and nature of the evidence required for the purpose of recognising such rights and vesting them in the ancient communities. The Act further elaborates on the recognition of the forest rights of forest dwellers, Scheduled Tribes, and traditional forest dwellers and also establishes authority of tribals for the sustainable use of the such land and forests resources and responsibilities related thereto like- conservation and management of the biodiversity, maintenance of the environment and ecological balance, strengthening and promoting the conservation regime while ensuring the sustainable management of forest and land, food security, sustainability and livelihood of the forest dwellers, Scheduled Tribes, and traditional forest dwellers.^{xli}

The Act pointed out that the forest rights were not adequately recognised and protected on the basis of the traditional practices, occupation patterns and structure, ancestral tribal lands and forest land, and habitat since centuries. The process of the consolidation of forest by the State during the colonial times meted out injustice to these communities and even after independence, the Government is very slow in such recognition. The Act further mentions that all such non-recognition and delays resulted in the historical injustice to the tribes and other forest dwellers. The recognition of the historical injustice under the preambular ideas of the Act is similar to the concerns highlighted by the UN Declaration on the Rights of Indigenous People, 2007. The UN Declaration pointed out the practices that caused deprivation of the indigenous, other distinct cultural communities and tribal peoples. The UN Declaration further stresses on the responsible factors behind such historical injustice and identified colonisation which resulted in displacement and dispossession of the indigenous and tribal peoples from their land, resources, ancestry and traditional territories. The UN Declaration further concerns about the right to development of such indigenous communities that had been denied to them because of the prevailing reasons. Similarly, the Forest Rights Act, 2006 concerns about such historical injustices and colonial practices that caused the dispossession of the tribes in India and created social, economic and political barriers in their participation in the society and denied their role in the social development of the country.^{xlii}

The rights, practices and occupation of the Scheduled Tribes and other forests dwellers are integral to the very sustainability of the environment, cultures and forests ecosystem and to the very survival of these communities. The Act further pointed out the necessity to address the issues that are long standing like- insecurity of occupations, tenurial, traditional practices and accessibility to the forest rights to the Scheduled Tribes, traditional forest dwellers and other forest dwellers and also recognises those forest dwellers who were forced to leave, displaced and migrated due to the State interventions in the guise of development.^{xliii}

Section 2 of the Forest Rights Act carries extensive and detailed definitions such as Section 2(a) defines ‘community forests resources’ as customary common forest and forest land in the customary and traditional territories or the occupations and practices carried out by the tribes and the forest dwellers in the traditional boundaries of the tribal villages or the seasonal use of the land and forest. The seasonal use of the land and forests for the occupational purposes and in the case of the pastoral communities, ancestral forest and land including the reserved forests, protected areas and protected forests, National Parks and Sanctuaries to which traditional access was there, are included in the definition. Section 2(c) carries the provisional related to the ‘forest dwelling Scheduled Tribes’. The meaning of the term is interpreted that the members of the Scheduled Tribe community on the basis of their residence and primary dependence on the forests and forests land related occupations practising bona fide livelihoods, occupations and it includes the ST pastoralist communities. Clause 2(o) carries the definition of the ‘other traditional forest dweller’. It means any member of the tribal community who has been continuously residing in the tribal or forest area for at least three generations prior to the 13th December 2005 having bona fide livelihood needs dependent on the forests or forest lands in such tribal or forests areas. The word generation comprises of the span of twenty-five years, as per the explanation appended to S.2(o). These

provisions, in theory, are related to Article 1 of the UN Declaration on the Rights of Indigenous Peoples, 2007 that acknowledges the rights of the indigenous peoples both at individual and community levels as the Forest Rights Act, 2006 does so in Section 3(1).^{xliv}

Chapter II, Section 3 of the Act carries the various forest rights that most of these rights have been recognised in the nature of the biocultural rights by the United Nations Declaration on Rights of Indigenous Peoples, 2007. Clause (1) states the nature and scope of these rights for the purpose of this Act therefore the applicability of these rights is only within the scope of the Act. The Section 3(1) states that the Rights enumerated that secure both the community tenure and individual tenure shall be the forest rights and indirectly the biocultural rights of the Scheduled Tribes and forest dwelling scheduled tribes and other traditional forests dwellers that are still connected to the tribal land and forests land. Section 3(1) is carrying the similar provision as the UN Declaration reflects in Article 27 acknowledging the tenure system of the indigenous peoples as per their customary practices by paying due considerations to the traditionally owned land, used or otherwise occupied. The Article also respects the traditional practices and processes followed in such tenure systems and recognises, protects and promotes the same.^{xlv}

Section 3(a) acknowledges the right to live and hold the forest for the purpose of the self- cultivation, occupation or for livelihood by the community or individual occupation of the members of the forest dwellers Scheduled Tribes, and other forest dwellers. Clause (b) further acknowledges the community rights still continued in the erstwhile princely States or any Zamindari and intermediary system, if still exists. Clause (c) further recognises the right to ownership within the traditional boundaries of the tribal communities or within the boundaries of tribal village along with access to collect and produce, dispose of the minor forest produce and its use for any other occupational and livelihood purposes. Section 3 of the Forest Rights Act in accordance with Article 26 of the UN Declaration provide an extensive list of the rights to land and the ownership of the resources and traditional territories. Article 26(2) stated that indigenous peoples have historical rights to hold and own the land, forest, traditional resources and traditional territories for utilisation or disposing of such property, as ownership is an absolute right. Article 26(3) further mandated that the State gives the legal protection and recognition to the right to ownership in matters of land, forests, traditional territories and resources. Section 3 of the Forest Rights Act resonates the same spirit for the abovementioned rights.^{xlvi}

Section 3(i) recognises and grants the rights related to the protection of the community forest resources or right to regenerate, conserve and manage such rights arising out and related to the community forest resources while Article 29(1) of the UN Declaration similarly, acknowledged the right to protect and conserve environment and the community resources, especially the productive capacity of the land and resources.^{xlvii}

The UN Declaration carried the same provision relating to the right to practice the customs w.r.t. the health and social services, right to access the medicinal plants, minerals, animals and traditional medicines. Similarly, Article 31 further acknowledges the traditional and customary rights related to the traditional cultural expressions, traditional knowledge as well as other cultural and customary manifestations.^{xlviii} Section 3(m) of the Forest Rights Act, 2006 carries the provision of the *in situ* rehabilitation. The displaced and deprived tribes due to the illegal eviction from the forest or land without receiving any legal entitlement for the purpose of the rehabilitation. Similarly, Article 10 of the UN Declaration provides for just and fair compensation and relocation of land and resources on which the indigenous and tribal can continue their occupations.^{xlix}

Chapter III of the Forest Rights Act under Section 4 talks about the restoration, recognition and vesting of the forest and tribal rights and all the matters related thereto. Section 4(1) overrides all other laws and vests all the forest rights u/s.3 in the forest dwelling STs and other traditional forest dwellers, subject to the provisions of the Act. Section 4(2) further states that no forest dwellers, or any forest rights holder be displaced and resettled in the name of wildlife conservation in the Sanctuaries and National Park. Clause 2(a) lays the process of recognition and vesting of the biocultural rights. Clause 4(d) talks about the rehabilitation, resettlement and other possible alternatives packages, for the secure livelihood of the displaced and migrating tribes and forest dwellers.¹

CONCLUSION

There are adequate safeguards for the welfare of the tribals, forest people, indigenous and local communities given not only in the constitutional but also the legislative framework of the country. Many special provisions have been enacted thereunder for the protection and promotion of the indigenous peoples, yet in practicality, these safeguards remain largely on paper, continuing the historical injustice towards them. In the aspect of tribal governance, the Constitution is very much praiseworthy for its special and distinct measures in the form of creation of Scheduled Tribes, Scheduled Areas and Tribal Areas under the Schedules Fifth and Sixth specially and entrusting the tribal governance in the hands of Regional and District Councils and keeping them immune from the state enacted laws for rest of the country, recognising their special, distinct and traditional nature of needs, livelihood, occupation, lifestyle, culture, language and knowledge systems which is affirmation of the right of self-determination guaranteed by the UN Declaration on the Rights of Indigenous Peoples, 2007.

ⁱ V.G. Thresiamma, “Making of the Indian Constitution and Debate on the Issue of Tribal Development” 70 *Indian Journal of Political Science* 183-186 (2011).

ⁱⁱ C. R. Bijoy, “Adivasis Betrayed: Adivasi Land Rights in Kerala” 34 *Economic and Political Weekly* 1329-34 (1999).

ⁱⁱⁱ Patricia Mukhim, “Sixth Schedule and Tribal Autonomy”, *The Statesman*, July 14, 2013, available at <https://www.thestatesman.com/supplements/north/sixth-schedule-and-tribal-autonomy-5573.html> (last visited on September 10, 2021).

^{iv} Angel H. Syiem, “The United Nations Declaration on The Rights of Indigenous Peoples vis-a-vis The Sixth Schedule of The Constitution of India: A Study on Tribal Right to Self-Governance” 1 *Indraprastha Law Review* (2020).

^v Views expressed by the President Regarding Role of the Governors in the Conference of Governors of the States held in September (2008).

^{vi} Report of MPs and Experts to Make Recommendations on the Salient Features of the Law for Extending Provisions of the Constitution (73rd) Amendment Act, 1992 to scheduled areas” 14-19 (1994).

http://www.odi.org.uk/projects/00-03-livelihood-options/forum/sched-areas/about/bhuria_report.htm. (last visited 13th October 2024).

^{vii} Ministry of Rural Development, Government of India, Report of The Task Force on Convergence (2008).

^{viii} Virginius Xaxa, “Tribes as Indigenous People of India” 34 *Economic and Political Weekly* 3592- 3595 (1999).

^{ix} Prathama Banerjee, “Writing the Adivasi: Some historiographical notes” 53 *Indian Economic and Social History Review* 26-22 (2016).

^x Constituent Assembly Debates 1946-1949, Lok Sabha Secretariat, New Delhi. Fourth Reprint Volumes I to IX 5 Volumes (2003).

^{xi} Angel H. Syiem, “The United Nations Declaration on The Rights of Indigenous Peoples vis-a-vis The Sixth Schedule of The Constitution of India: A Study on Tribal Right to Self-Governance” 1 *Indraprastha Law Review* (2020).

^{xii} Third Report of the Standing Committee, “ Inter-Sectoral Issues relating to Tribal Development: Raising Standards of Administration in Tribal Areas” (2009).

^{xiii} V.G. Thresiamma, “Making of the Indian Constitution and Debate on the Issue of Tribal Development” 70 *Indian Journal of Political Science* 183-186 (2011).

^{xiv} The Constitution (Seventy-third Amendment) Bill, 1991, Statement of Objects and Reasons. Illustrative is the report of the first-ever National Commission to Review the Working of the Constitution that entirely overlooked the Schedule (1991).

^{xv} Report, “Observations on the State of Indigenous Human Rights in India” The United Nations Human Rights Council Universal Periodic Review (2016).

- ^{xvi} V.G. Thresiamma, "Making of the Indian Constitution and Debate on the Issue of Tribal Development" 70 *Indian Journal of Political Science* 183-186 (2011).
- ^{xvii} Report, "Constitutional and Civil Rights to Protect Scheduled Castes and Scheduled Tribes from Atrocities and The Law against Witch Hunting" National Human Rights Commission, India (2021).
- ^{xviii} Sajal Basu, *Ethno-regionalism and Tribal Development: Problems and Challenges in Jharkhand* (New Delhi: Sage Publications, 2009).
- ^{xix} Govinda Chandra Rath, "Tribal Development in India: The Contemporary Debate" 92 (New Delhi: Sage Publications, 101, 2006).
- ^{xx} National Commission to Review the Working of the Constitution, Report of the National Commission to Review the Working of the Constitution, 1 (New Delhi: Government of India, 2002).
- ^{xxi} Rann Singh Mann, "Tribes of India: Ongoing Challenges" 49 (New Delhi: M.D. Publications, edn. 1st, 53, 1996).
- ^{xxii} H.L. Harit, "Tribal Areas and Administration" (New Delhi: M.D. Publications, 1996).
- ^{xxiii} B. D. Sharma, *The Fifth Schedule*, vol. 1 (New Delhi: Sahyog Pustak Kuteer Trust, 78, 2000).
- ^{xxiv} Madhu Sarin, "Devolution as a Threat to Democratic Decision-making in Forestry? Findings from Three States in India" 197 (Working Paper, London: Overseas Development Institute, 2, 2003).
- ^{xxv} Umang Singhal, "Analysis of Constitutional Rights of Indigenous People in India" 5 *Journal of Constitutional Law & Jurisprudence* 17-23 (2022).
- ^{xxvi} 37th Report of the Standing Committee, "Urban and Rural Development: Implementation of Part IX of the Constitution" (New Delhi: Government of India, 2002).
- ^{xxvii} Peter H. Russell, "Recognizing Aboriginal Title: The Mabo Case and Indigenous Resistance to English- Settler Colonialism" (Toronto: University of Toronto Press, 155, 2005).
- ^{xxviii} Ministry of Environment & Forests, Government of India, "National Environment Policy (New Delhi: Government of India" 27, 2006).
- ^{xxix} Dr. Prakash Chandra Mehta, "Tribal Development in 20th Century, Siva Publishers and Distributors" (Udaipur, 2000).
- ^{xxx} Report, "Working Group on Democratic Decentralisation & PRIs" Planning Commission and Ministry of Panchayati Raj (2006).
- ^{xxxi} Article 339. Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes (2) The executive power of the Union shall extend to the giving of directions to a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.
- ^{xxxii} Article 244(1) Fifth Schedule Sec.3. Report by the Governor to the President regarding the administration of Scheduled Areas. —The Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.
- ^{xxxiii} S. G. Deogaonkar, "Tribal Administration and Development" Concept Publishing Company (New Delhi, 1994).
- ^{xxxiv} A.K. Pandey, "Tribal Society in India" (Manak Publications Pvt. Ltd., New Delhi, 1997).
- ^{xxxv} S. Waseem Ahmad and M. Ashraf Ali, Social Justice and the Constitution of India" 67 *The Indian Journal of Political Science* 769-775 (2006).
- ^{xxxvi} P.C. Jain, "Planned Development Among Tribals" Prem Rawat for Rawat Publications (New Delhi, 1999).
- ^{xxxvii} Rudolfe Heredia, "Tribal Education need for Literative Pedagogy of Social Transformations" *Economic and Political Weekly* (1995).

^{xxxviii} A. David Ambrose, "Directive Principles of State Policy and Distribution of Material Resources with Special Reference To Natural Resources- Recent Trends" 55 *Journal of the Indian Law Institute* 11-18 (2013).

^{xxxix} B.K. Roy Burman, "Modernisation of Tribal people on Indias Borders" *Ethnographic and Folk Culture Society U.P* (1973).

^{xl} Report, "Working Group on Democratic Decentralisation & PRIs" Planning Commission and Ministry of Panchayati Raj (2006).

^{xli} Study Report, "Status of Implementation of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Scheduled Castes and Scheduled Tribes Research and Training Institute Government of Odisha (2017).

^{xlii} M. Sarin, S. Lele and A. Menon, "Undoing Historical Injustice: Reclaiming Citizenship Rights and Democratic Forest Governance through Forest Rights Act- Democratizing Forest Governance in India" (Oxford University Press, 2014).

^{xliii} Report National Committee on Forest Rights Act, 2006, "*Manthan*" Government of India (2010).

^{xliv} Ligia Noronha, Nidhi Srivastava, Divya Datt and P. V. Sridharan, "Resource Federalism in India: The Case of Minerals" 44 *Economic and Political Weekly* 22-26 (2009).

^{xlvi} O.C. Kurian, "Implementing the Forest Rights Act: Lack of Political Will?" *Oxfam India* (2015).

^{xlv} S. Sundara Rami Ready, "Fundamentalness of Fundamental Rights and Directive Principles in the Indian Constitution" 22 *Journal of the Indian Law Institute* 402-406 (1980).

^{xlvii} Anand Chakravarti, "Conscience of the Constitution and Violence of the Indian State" 47 *Economic and Political Weekly* 36-38 (2012).

^{xlviii} CFR-LA, "Promise and Performance of the Forest Rights Act, 2006, Odisha FRA 10th Anniversary Report Community Forest Rights Learning and Advocacy Supported by Rights and Resource Initiative and Oxfam India (2006).

^{xlix} Manju Arora Relan, "The Forest Right Act, 2006: Victory and Betrayal" 52 *Journal of the Indian Law Institute* 486-501 (2010).

^l Kurup, A., 2008. "Tribal Law in India: How Decentralized Administration is Extinguishing Tribal Rights and Why Autonomous Tribal Governments are Better" 7 *Indigenous LJ*, 87 (2008).