

ISSN: 2583-8725

Lex Scripta Journal

Quarterly Online and Print Edition

Law & Policy

“Join the League of
National & International Scholars”



EDITORIAL TEAM

DR. AJAY BHUPENDRA JAISWAL

Professor & Former Head
Department of Law
V.S.S.D. College, Nawabganj,
(C.S.J.M. University, Kanpur)

DR. MEGHA OJHA

Associate Professor | Legal Consultant
| Author | KLEF College of Law

PROF. DR. DEEVANSHU SHRIVASTAVA

Founding Dean and Professor,
GL Bajaj Institute of Law,
Greater Noida

DR. GAURAV GUPTA

Assistant Professor,
Faculty of Law, Lucknow

MR. TUHIN MUKHARJEE

Leadership Strategist | Business Coach
| Author | Speaker

MR. PRAKARSH PANDEY

Author and
Advocate, Allahabad High Court

MR. AMARESH PATEL

Assistant Professor
at Law School,
Amity University, Patna



**LEX SCRIPTA MAGAZINE OF
LAW AND POLICY (VOL-4, ISSUE-1)**

Copyright © 2025, LexScripta

ISSN-2583-8725

Vol - IV, Issue - I

Published by INTEGRITY EDUCATION INDIA

New Delhi

First Floor, 4598/12-B, 1st Floor,
Padam Chand Marg, Daryaganj,
New Delhi, Delhi 110002

Phone: +91 98 11 66 62 16 (M)

Phone: +91 70 11 60 56 18 (M)

Bengaluru

Jallahalli East

Bengaluru, Karnataka. India.

Phone: +91 98 11 66 62 16 (M)

Email: publisher.integrity@gmail.com

USA

New Jersey

14 Grandview Ave, Upper Saddle River,
NJ-07458, USA

Phone: +14805226504 (M)

London

37 Degree Media

64, Hodder Drive, Perivale, London UB68LL.
United Kingdom.

Phone: +44 7950 78 18 17 (M)

Website: integrityeducation.co.in

© Lex Scripta Magazine Of Law And Policy, 2025

Disclaimer

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Lex Scripta Magazine of Law and Policy), an irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known. No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

The Editorial Team of Lex Scripta Magazine of Law and Policy Issues holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Lex Scripta Magazine of Law and Policy.

[© Lex Scripta Magazine of Law and Policy. Any unauthorized use, circulation or reproduction shall attract suitable action under application law.]

For any Query / Feedback
Phone: +91 98 11 66 62 16 (Vineet Sharma)

Printed in India @ New Delhi

ISSN: 2583-8725

Lex Scripta Journal

Quarterly Online and Print Edition

Law & Policy

"Join the League of National
and International Scholars"



Lex Scripta Journal

Tribal Autonomy in India: An Analysis of Constitutional Safeguards and Legal Provisions

Author
Pratham Dubey
Dr. Vaishnavi Yashasvi



Tribal Autonomy in India: An Analysis of Constitutional Safeguards and Legal Provisions

Pratham Dubey

*LLM Criminal Law, Amity Institute of Advanced Legal Studies,
Amity University, Noida*

Dr. Vaishnavi Yashasvi

*Assistant Professor-II, Amity Institute of Advanced Legal Studies,
Amity University, Noida*

Abstract

Tribal autonomy in India represents a vital component of the constitutional vision aimed at protecting the cultural identity, land rights, and self-governance of indigenous communities. This research paper examines the constitutional and legal framework governing tribal autonomy, with particular emphasis on the Fifth and Sixth Schedules of the Constitution of India, as well as key legislations such as the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The study adopts a doctrinal approach to analyze the extent to which these legal provisions facilitate decentralization, participatory governance, and protection of tribal interests.

The paper critically evaluates the effectiveness of these safeguards in practice, highlighting the gap between constitutional intent and ground realities. It identifies persistent challenges such as inadequate implementation, administrative interference, lack of awareness among tribal communities, and conflicts between development policies and tribal rights. The role of judicial interpretation in strengthening or limiting tribal autonomy is also examined.

The study argues that while India has established a robust legal framework for tribal autonomy, its effectiveness is undermined by structural and institutional constraints. It emphasizes the need for stronger enforcement mechanisms, greater community participation, and policy reforms to ensure meaningful self-governance. The paper concludes by suggesting measures to bridge the gap between law and practice, thereby advancing the constitutional promise of autonomy, dignity, and justice for tribal communities in India.

Keywords : *Tribal Autonomy, Fifth Schedule, Sixth Schedule, PESA Act 1996, Forest Rights Act 2006, Indigenous Rights, Self-Governance, Constitutional Safeguards, Scheduled Areas, Tribal Governance.*

Introduction

The Indian Constitution and laws that protect tribal autonomy are a unique way to balance the goals of equality, unity, and development with the need to protect the social, cultural, and economic identity of indigenous communities. Scheduled Tribes in India have historically been in a structurally disadvantaged position due to being isolated geographically, being exploited by colonial powers, and having their land and resources systematically taken away. The framers of the Constitution knew that using the same legal and administrative systems in tribal areas would only make these inequalities worse, so they chose to create a different legal system for those areas. This regime is based on the idea of substantive equality and aims to protect tribal societies from being taken advantage of while allowing them to govern themselves within the framework of the constitution.

The Constitution of India contains this promise in a complicated way, with special provisions like Article 244¹ and the Fifth² and Sixth³ Schedules, as well as protections for specific regions under Articles 371A⁴ and 371G⁵. These provisions diverge from traditional governance frameworks by allowing the alteration or exclusion of general laws in Scheduled Areas and by acknowledging the validity of tribal customary law and institutions. In this sense, tribal autonomy is not seen as political separation but as self-regulation that is allowed by the constitution in areas like land, forests, social customs, inheritance, and settling disputes. This framework shows that the Constituent Assembly⁶ did not want forced assimilation and did want development that respected tribal ways of life. This was supported by leaders like Jaipal Singh Munda⁷ and the philosophical ideas behind Nehru's Tribal Panchsheel.

In addition to constitutional protections, a number of laws have been passed to make tribal autonomy a reality and stop historical wrongs, especially when it comes to land alienation. The Panchayats (Extension to Scheduled Areas) Act of 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 are two laws that aim to strengthen self-governance at the local level and restore traditional rights to land and forest resources. The Chota Nagpur Tenancy Act of 1908 and the Santhal Pargana Tenancy Act of 1949 are two examples of region-specific tenancy laws that make this protective framework even stronger by making it very hard for non-tribals to buy tribal land. These laws together show how important land is to tribal autonomy and how the State must protect tribal communities from being taken advantage of economically and moved.

Tribal autonomy, however, is constrained by constitutional parameters. Fundamental rights and statutory criminal law still apply to customary law and special rules. This causes tensions between group cultural practices and individual rights, especially when it comes to gender justice, child protection, and personal freedom. The cases of *Samatha v. State of Andhra Pradesh*⁸, *Madhu Kishwar v. State of Bihar*⁹, and *State of Nagaland v. Ratan Singh*¹⁰ show how careful and often deferential the courts are when trying to find a balance between tribal self-rule and constitutional morality. These decisions show that

¹ “The Constitution of India, art. 244.”

² “The Constitution of India, Fifth Schedule, paras 1–6.”

³ “The Constitution of India, Sixth Schedule, paras 1–12.”

⁴ “The Constitution of India, art. 371A.”

⁵ “The Constitution of India, art. 371G.”

⁶ “Constituent Assembly Debates, Vol. IX (1949).”

⁷ “Constituent Assembly Debates, Vol. V, Statements of Jaipal Singh Munda.”

⁸ “*Samatha v. State of Andhra Pradesh*, (1997) 8 SCC 191.”

⁹ “*Madhu Kishwar v. State of Bihar*, (1996) 5 SCC 125.”

¹⁰ “*State of Nagaland v. Ratan Singh*, AIR 1967 SC 212.”

there is still a debate going on between autonomy and accountability, tradition and change. This dissertation conducts a critical analysis of the constitutional, statutory, and judicial aspects of tribal autonomy in India. It examines the historical origins, legal justifications, and practical applications of specialized governance frameworks for tribal regions, focusing specifically on land rights, customary law, and local self-governance. The study examines tribal autonomy within the overarching constitutional ideals of justice, equality, and decentralization, aiming to determine if the current legal framework has effectively transformed constitutional commitments into tangible outcomes for tribal communities, or if it is still hindered by bureaucratic inertia, developmental challenges, and unresolved normative conflicts.

Rationale and Constitutional Basis for Grant of Tribal Autonomy in India

The constitutional recognition of past wrongs, structural inequality, and the unique socio-legal identity of Scheduled Tribes is what gives tribes in India their autonomy. Tribal communities represent a historically marginalised class, primarily due to geographical isolation, economic deprivation, and the systematic dispossession of land and resources, particularly during the colonial era. Applying the same legal and administrative frameworks to these communities was seen as neither fair nor just because it didn't take into account their customary laws, traditional ways of governing, and their shared relationship with land and forests.

From a constitutional point of view, tribal autonomy is a step away from formal equality and toward substantive equality, as stated in Articles 14, 15(4), and 46 of the Constitution. The people who wrote the Constitution knew that treating everyone the same under the law could keep inequality going if there are still social and historical disadvantages. As a result, unique constitutional provisions were planned to make sure that tribal groups could manage their social, economic, and cultural affairs without outside interference.

The debates in the Constituent Assembly show that people were aware of and rejected forced assimilation as a way to build a nation. Tribal leaders, especially Jaipal Singh Munda, stressed that tribal societies had their own legal and social systems that needed to be protected by the Constitution. So, autonomy was not seen as political separation, but as self-governance within the framework of the constitution. This meant that tribal people could handle issues related to land, customary practices, inheritance, and resolving disputes in ways that were in line with their traditions. Article 244 and the Fifth and Sixth Schedules put this idea into action by setting up different types of government for Scheduled Areas.

Tribal autonomy is also a legal way to protect against exploitation. Historical experience showed that if general property, contract, and revenue laws were allowed to work without limits, a lot of tribal land would be sold to people who weren't tribal. Constitutional autonomy gives the State the power to change or not apply regular laws in Scheduled Areas and to give Governors and Autonomous Councils the power to make rules. These kinds of agreements are meant to protect tribal land, stop economic exploitation, and keep social cohesion.

Additionally, the constitutional framework of tribal autonomy embodies principles of decentralisation and participatory governance, foreshadowing subsequent advancements in constitutional law, including local self-government and community-oriented decision-making. The Constitution gives legitimacy to indigenous legal systems by recognising tribal customary law and institutions, as long as they don't violate basic rights. This makes a legal system with more than one level, where tribal autonomy and constitutional supremacy can both exist.

Historical Marginalisation and Constituent Assembly Debates

The constitutional framework emerged against a backdrop of prolonged colonial neglect and contested integration of tribal societies. Under British rule, large tracts were designated “Excluded” or “Partially Excluded” Areas (starting with the Government of India Act 1935¹¹). These areas (for example in parts of Orissa, Central Provinces, Rajputana, hill regions of Madras, etc.) were administered differently: often under special regulations by the Governor or Commissioner, with limited political participation for tribals. Tribal land was frequently alienated by outsiders through land revenue laws and moneylenders, while administration oscillated between paternalism and neglect. Many tribes were criminalized under laws like the Criminal Tribes Act (1871)¹², reinforcing stigma. Christian missionaries and reformers like Verrier Elwin highlighted the cultural erosion and disenfranchisement of tribal communities. In short, colonial policies largely marginalized tribals, treating them as wards of the state rather than equal citizens.¹³

As independence approached, nationalist leaders acknowledged this legacy. The Constituent Assembly formed sub-committees to study tribal regions. The Excluded Areas Sub-Committee (outside Assam) was chaired by A.V. Thakkar¹⁴, with members including Jaipal Singh Munda¹⁵ and Devendra Nath Samanta. A parallel North-East Frontier (Assam) Tribal Areas Committee was chaired by Gopinath Bordoloi¹⁶. These bodies toured tribal areas, heard tribal voices, and produced reports. For example, the Thakkar Committee’s provisional report (Aug. 1947) reviewed conditions in Madras, Bombay, Bengal, Central Provinces, Orissa, and outlined draft schemes of administration. In a covering letter dated 18 August 1947, A.V. Thakkar noted that their recommendations would soon be final. Their findings shaped the Fifth Schedule’s design: a mix of tribal participation (advisory councils) and strong executive control (Governor’s powers).

Jaipal Singh Munda, a prominent tribal leader and Constituent Assembly member, was a strong advocate for tribal autonomy. He argued that tribals were a “nation within a nation” whose distinct identity and rights deserved constitutional protection. He famously cautioned that tribes should not be forced to assimilate (“We are not Hindus,” he declared) but allowed development on their own terms. Jaipal pushed for civil liberties and political safeguards for adivasis; for example, he urged inclusion of “safeguards against exploitation” and better education for tribal girls in the Constitution. Though specific quotes from the debates are sparse here, his influence is well attested in scholarship: he ensured that Fifth Schedule protections (such as anti-alienation clauses) found place in the final text and that tribal welfare was a constitutional priority.

The anthropologist Verrier Elwin also made key contributions. Elwin had lived with tribes in Central India and Assam and authored works arguing for tribal self-rule. He helped formulate Nehru’s “Tribal Panchsheel” (see below) and later served on bodies like the Rajya Sabha. Within the Constituent debates, he reported on tribal customs and lobbied for respecting those customs in law. The debates contain references to his ideas (often through others citing his work on tribal philosophy) and he later served on committees reviewing constitutional provisions for tribes.¹⁷

¹¹ “Government of India Act, 1935 (Excluded & Partially Excluded Areas provisions).”

¹² “Criminal Tribes Act, 1871 (repealed).”

¹³ “Ministry of Environment & Forests, *Forest Rights Act Implementation Guidelines* (2008).”

¹⁴ “Report of the Excluded and Partially Excluded Areas Sub-Committee (Chairman: A.V. Thakkar), 1947.”

¹⁵ “Constituent Assembly Debates, Vol. V, Statements of Jaipal Singh Munda.”

¹⁶ “Report of the North-East Frontier (Assam) Tribal and Excluded Areas Committee (Chairman: Gopinath Bordoloi), 1948.”

¹⁷ “Planning Commission of India, Report on Development Challenges in Extremist Affected Areas (2008).”

By late 1948, the Constituent Assembly had drafted special provisions balancing tribal autonomy with governance. The Thakkar Sub-Committee (Excluded Areas other than Assam) recommended a Fifth Schedule under Article 244(1), giving governors rule-making powers. The Bordoloi Committee (Northeast) influenced the Sixth Schedule model of democratically elected Autonomous District Councils. Notably, Appendix C to the debates (Annexure VIII)¹⁸ lists the Thakkar Sub-Committee's members (with Jaipal Singh Munda as member and A.V. Thakkar as Chairman). Their final recommendations (Appendix D of the reports) emphasized, for instance, appointing hill district officers and creating special development commissions. One extract notes an early draft advice: "All social law and custom is left to be controlled or regulated by the tribes". This captures the spirit of autonomy: the concept that tribal councils should oversee customary social norms and dispute resolution. Even where colonial-era rules survived (as in Nagaland), the Assembly envisioned leaving local law largely to tribal control.¹⁹

These debates also involved trade-offs. Some non-tribal leaders feared full self-rule might fragment the nation, while tribal leaders feared assimilation. Ultimately, a compromise was reached: tribal areas would have constitutional protections and separate laws, but they would remain part of India. The Fifth and Sixth Schedules, Articles 371A/G, and related measures were the result of that compromise. They institutionalized "limited autonomy" for Scheduled Areas (as one report put it) under a paternalistic Governor, while carving out greater self-government for certain Northeast tribal areas. This architecture was anchored in a liberal trust doctrine: the state acknowledges special tribal rights but retains a guiding hand.

Constitutional Framework for Tribal Autonomy

The Indian Constitution creates a dual-track system for tribal areas. Article 244 provides that **"the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State... other than the State of Assam."** Correspondingly, **"the provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam."** Thus, Fifth Schedule areas (found in many States) are governed by one set of special rules, while Sixth Schedule areas (in Northeast states like Assam, Meghalaya, Tripura and Mizoram) are governed by another. In effect, the Constitution carves out tribal areas for special governance. These provisions have the force of fundamental constitutional law: Article 244(1) explicitly incorporates entire Schedules into the constitutional framework.

Fifth Schedule (Article 244(1))

The Fifth Schedule of the Constitution of India, along with Article 244(1), governs the administration and control of Scheduled Areas in all States except for the Sixth Schedule States in the North-East. The States of Andhra Pradesh, Telangana, Odisha, Jharkhand, Chhattisgarh, Madhya Pradesh, Maharashtra, Rajasthan, Gujarat, and Himachal Pradesh currently have Fifth Schedule areas. Scheduled Tribes live mostly in these areas, and the constitution gives them special status to protect their rights.

¹⁸ "Constituent Assembly Debates, Annexure VIII (Lists of Tribal Committees)."

¹⁹ "Felix Padel & Samarendra Das, *Out of This Earth: East India Adivasis and the Aluminium Cartel* (Orient Blackswan 2010)."

The Fifth Schedule gives the Governor of the State a lot of freedom to make decisions. Some of its most important features are:

- a) the requirement for each State with Scheduled Areas to have a Tribal Advisory Council to give the Governor advice on how to improve the lives of Scheduled Tribes;
- b) the Governor's power to change or remove the application of any Central or State law in a Scheduled Area by public notice; and
- c) the authority to make rules for the "peace and good government" of those areas.

Specifically, paragraph 5(2)(a)–(c) of the Fifth Schedule gives the Governor the power to stop or limit the transfer of land by or between members of Scheduled Tribes, control the allotment of land to tribals, and control money-lending activities. These rules are meant to stop land alienation, economic exploitation, and debt bondage, which have historically hurt tribal communities. The Fifth Schedule sets up a system of rules and protections that puts land, forests, and money transactions under special constitutional oversight to protect tribal independence, culture, and economic security.

Sixth Schedule (Article 244(2))

Article 244(2) of the Constitution says that the Sixth Schedule applies to some tribal areas in the North-Eastern States of Assam, Meghalaya, Tripura, and Mizoram. The Sixth Schedule sets up Autonomous District Councils (ADCs) and, if necessary, Autonomous Regional Councils as constitutionally recognised institutions of self-government. This is different from the Fifth Schedule, which gives most of its powers to the Governor.

These Councils have a lot of power over certain areas, like land management, forest resources, agriculture, village administration, inheritance, social customs, and local taxes. They can make laws, carry them out, and even make some decisions in court. The Councils can make laws about the things listed in the Sixth Schedule. They can also set up Village Courts or traditional courts to settle disagreements according to customary law. In practice, tribal communities in areas governed by the Sixth Schedule have more freedom to govern themselves than those in areas governed by the Fifth Schedule. The Autonomous District Councils are protected by the constitution and serve as both governing bodies and courts at the district level. This allows tribal societies in the North-East to follow their own customs while still following the rules set out in the Indian Constitution.

Other Special Articles

Beyond the Schedules, the Constitution contains a number of special provisions tailoring autonomy for specific tribal regions. Two of the most important are Article 371A and Article 371G. Article 371A (Nagaland) provides that “*no Act of Parliament in respect of... religious or social practices of the Nagas, Naga customary law and procedure, administration of civil and criminal justice involving decisions according to Naga customary law, and ownership and transfer of land and its resources*” shall apply to Nagaland “*unless the Legislative Assembly of Nagaland by a resolution so decides.*”. In other words, Nagaland’s customary practices and land laws are constitutionally shielded from central interference unless the Naga Assembly opts in. Similarly, Article 371G extends this scheme to Mizoram, stipulating that no Central law touching Mizo “*religious or social practices, Mizo customary law and procedure, administration of justice according to Mizo customary law, [or] ownership and transfer of land*” applies to Mizoram unless its Assembly resolves so. These Articles thus enshrine autonomy by barring legislation on traditional matters without tribal consent. (For completeness:

Articles 371B and 371C contain analogous special provisions for certain tribes of Assam and Manipur; 371D–F cover Andhra/Sikkim but are less directly relevant here.)

In sum, the constitutional text provides tribal areas with legally entrenched autonomy: Governors (or District Councils) can regulate local matters, statutes may be excluded or modified, and in some cases tribal law is outright exempt from Indian law unless approved. As Article 243ZC²⁰ (added by the 73rd Amendment) confirms, ordinary Panchayat laws may not apply to Fifth Schedule areas except by a special parliamentary Act (the result is PESA). This federal architecture thus acknowledges tribal self-governance as a constitutional norm.²¹

Philosophical Foundation of Tribal Panchasheel

Jawaharlal Nehru, India's first Prime Minister, articulated a philosophical stance on tribal development known as the “**Tribal Panchsheel**”. These five principles were formulated in the 1950s (publicized in 1957) as guidelines for government policy toward adivasis, strongly influenced by Verrier Elwin's ideas. Nehru's Tribal Panchsheel declares:

- a) *Nothing should be imposed on the tribal people; they should develop in their own way.* There should be no forcible change in tribal life.
- b) *Tribal rights in land and forests should be respected.* The state must protect tribal ownership of ancestral land and commons.
- c) *Tribal youths should be given opportunities in administration and development, with preference to trained tribals when possible.*
- d) *The government must not overwhelm tribal areas with too many externally-driven schemes; avoid over-administering and let development be gradual.*
- e) *The measure of success should be the development of human character and well-being, not merely economic or population metrics.*

Nehru wrote that the success of policy should be judged “not by statistics or the amount of money spent, but by the development of human character”. Thus, the philosophical underpinning of tribal policy was to preserve cultural identity, land, and self-determination while facilitating welfare. This paternalistic yet respectful ethos contrasted sharply with assimilationist views. It foreshadowed constitutional protections: Nehru believed tribals had a “law of their own” and should be allowed to live under it as long as it was not anti-social, a view that informed provisions like Fifth Schedule regulations and Article 371A. In practice, Nehru's Panchsheel laid the groundwork for laws like PESA, emphasizing “consonance with customary law” and Gram Sabha empowerment (see below).²²

Legislative Instruments: PESA and the Forest Rights Act

Beyond the Constitution, two landmark statutes have sought to strengthen tribal autonomy by empowering local institutions:

a) Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA)²³

PESA extended democratic local self-government (Panchayati Raj) to Fifth Schedule areas. Recognizing that tribal communities have “**unique traditional governance systems**”, PESA vests Gram Sabhas (village assemblies) and Panchayats in Scheduled Areas with special powers. It mandates that the Gram

²⁰ “The Constitution of India, art. 243ZC.”

²¹ “Ministry of Tribal Affairs, Government of India, Implementation of PESA Act: Status Report (various years).”

²² “B. Shiva Rao, *The Framing of India's Constitution* (Indian Institute of Public Administration 1967).”

²³ “Panchayats (Extension to Scheduled Areas) Act, 1996.”

Sabha be informed of and approve any project like land acquisition or liquor shops in the village. It grants tribal bodies control over minor forest produce, water resources, and minor minerals. Crucially, PESA requires state governments to conform Panchayat legislation to tribal customs: no tribal institution can be abolished or weakened under state law. The Act stresses “*consonance with customary law*” and places a duty on Panchayats to preserve tribal heritage. In effect, PESA enshrines constitutional autonomy at the grassroots: it *overrides* conflicting state Panchayat laws and assures that Gram Sabhas have the final say on land and resource issues.

In practice PESA has raised expectations of self-governance. For example, Section 5 empowers Gram Sabhas to safeguard cultural traditions and manage local resources, while Sections 4(f)–(h) require Gram Sabha approval for mining leases, water projects, and social development plans. State compliance has been uneven: several Fifth Schedule states have formally adopted PESA rules (Odisha, Andhra, etc.), but many have diluted its mandates. Constitutional backing (e.g. Article 243ZC) means states cannot directly override PESA, but enforcement often depends on political will. Nonetheless, PESA is viewed as a powerful statutory expression of tribal autonomy, translating the Fifth Schedule into active local democracy.²⁴

b) Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA)²⁵

The Forest Rights Act recognizes and vests in tribal communities their customary rights over forest land and resources – rights that colonial and early post-colonial laws neglected. FRA extends legal title for land under cultivation (unauthorized under forest laws), rights to grazing, collection of minor forest produce, and community forest rights. It requires Gram Sabhas to constitute Forest Rights Committees to identify and claim such rights, subject to verification by higher authorities. In essence, FRA acknowledges that tribal customary ownership and governance of forests are valid legal claims. The Act also mandates that in any forest conservation decision, the consent of affected Gram Sabhas must be obtained (a major departure from earlier Forest Conservation Acts). While separate from the constitutional schedules, FRA advances tribal autonomy by legally enfranchising their community institutions in forest management.

Together, PESA and the Forest Rights Act attempt to harmonize statutory law with customary practice. PESA brings tribal self-rule into the democratic framework, while FRA formally protects tribal land tenure. Both affirm the principle that development in tribal areas must occur with the people rather than to them. For instance, Government press releases celebrate PESA as restoring tribal control over land and forests. In effect, these laws give content to constitutional promises: PESA enforces the Fifth Schedule’s mandate of local governance, and FRA remedies the historical injustice of forest land alienation by ensuring ownership and governance rights for tribals.²⁶

²⁴ “Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1999).”

²⁵ “Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.”

²⁶ “B.K. Roy Burman, *Tribal Development in India* (Mittal Publications 1993).”

c) Chota Nagpur Tenancy Act, 1908 (CNT Act)²⁷

To prevent tribal land in the Chota Nagpur plateau area (modern-day Jharkhand) from being alienated, the Chota Nagpur Tenancy Act was passed. Preserving traditional landholding systems and preventing the transfer of tribal land to non-tribals are its main goals. The Act prohibits selling, giving, leasing, or mortgaging tribal land without the prior consent of the appropriate authority. It safeguards collective ownership and acknowledges traditional land rights. The Act is a crucial legal safeguard against outsiders and moneylenders taking advantage of Scheduled Tribes.

d) Santhal Pargana Tenancy Act, 1949 (SPT Act)²⁸

The Santhal Pargana Tenancy Act of 1949 (SPT Act) is a special law that protects the land, way of life, and customs of the Santhal tribal community in the Santhal Pargana region of what is now Jharkhand. The main goal of the Act is to stop the loss of tribal land by making it illegal for Santhals to sell, lease, mortgage, or give away land to non-tribals, except in very limited situations and with official permission. The Act acknowledges the communal and traditional connection of tribal communities to land, regarding it not merely as property but as the cornerstone of social identity, culture, and economic stability. The SPT Act puts into action the constitutional goal of tribal autonomy and protection against exploitation by limiting the use of general land and revenue laws and putting customary norms first. This makes it harder for market forces, moneylenders, and outsiders to take tribal communities' ancestral lands.

e) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989²⁹

The SC/ST (Prevention of Atrocities) Act was passed to stop violence, discrimination, and other terrible things from happening to Scheduled Castes and Scheduled Tribes. It makes things like social boycotts, forced displacement, land grabbing, and abuse of dignity illegal. The Act sets up special courts and makes sure that crimes are tried quickly. It makes sure that crimes against SC/ST communities get harsher punishments. The law tries to protect social justice and equality under the law.

f) Manipur (Hill Areas) District Councils Act, 1971³⁰

This law allows for self-government in the hill areas of Manipur, which are mostly home to tribal communities. It creates District Councils that have power over managing land, forests, customs, and local government. The goal is to keep tribal identity, traditional law, and self-rule safe. The Act encourages decentralisation and government that involves everyone. It is based on the Sixth Schedule model but has been changed for Manipur.

²⁷ “The Chota Nagpur Tenancy Act, 1908.”

²⁸ “The Santhal Pargana Tenancy Act, 1949.”

²⁹ “The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.”

³⁰ “The Manipur (Hill Areas) District Councils Act, 1971.”

g) Madhya Pradesh Land Revenue Code, 1959³¹

The Madhya Pradesh Land Revenue Code has special rules to protect tribal land in Scheduled Areas. Without official permission, it stops land owned by Scheduled Tribes from being sold to people who are not members of those tribes. The Code gives officials the power to give back land that was wrongfully taken from tribes. The goal is to stop exploitation and protect tribal land ownership. The law helps protect the social and economic security of tribal communities.

h) Maharashtra Land Revenue Code, 1966³²

The Maharashtra Land Revenue Code has rules that protect Scheduled Tribes, especially in Scheduled Areas. It says that tribal land can't be given to people who aren't tribal unless the government says it's okay first. The Code lets land that was wrongfully taken from tribes be returned. It wants to stop economic exploitation and protect tribal land. The Act is very important for protecting the farming interests of tribes.

i) Bonded Labour System (Abolition) Act, 1976³³

This law gets rid of bonded and forced labour systems, which have hurt tribal communities in the past. It frees bonded workers from their debts and stops their economic exploitation. The Act says that freed workers should be rehabilitated. It wants to give back the rights to live and work with dignity to groups that have been pushed to the edges of society, like Scheduled Tribes. The law works with tribal welfare and social justice programs.

j) Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013³⁴

This Act gives Scheduled Tribes extra protections when land is being bought. It requires the approval of Gram Sabhas in Scheduled Areas. The Act stresses fair compensation, rehabilitation, and resettlement. It wants to keep tribal communities from having to move around as much. The law makes it easier for people in tribal areas to make decisions together.

Customary Law versus Criminal Statute: Coexistence and Conflict

When tribal customary law and the formal criminal justice system are both in place, they can sometimes conflict with each other in terms of what is right and wrong. Tribal customary law is based on long-standing social norms and is focused on the community. In contrast, statutory criminal law is based on the state and is punitive. The Constitution acknowledges customary law as “law” in Article 13(3)(a), but this acknowledgement is contingent upon alignment with fundamental rights and statutory requirements. As a result, when customary practices clash with modern criminal laws designed to safeguard individual rights, particularly those of women and children, courts and the State typically prioritise statutory law.

One major point of disagreement has to do with child marriage. In some tribal communities, it was common for people to get married before they were legally allowed to do so. This was often done for reasons of tradition or social security. However, these

³¹ “The Madhya Pradesh Land Revenue Code, 1959.”

³² “Maharashtra Land Revenue Code, 1966”

³³ “Bonded Labour System (Abolition) Act, 1976”

³⁴ “Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013”

actions go against the Prohibition of Child Marriage Act, 2006 and the Protection of Children from Sexual Offences Act, 2012 (POCSO). POCSO makes all sexual activity involving minors illegal, regardless of consent or marital status. This means that the common practice of marrying young people is no longer legal. Courts have always said that customary norms can't override laws that protect children. This is in line with Article 21 of the Constitution, which protects dignity and bodily integrity.

Witch-hunting is another well-known example of conflict, especially in tribal areas of Odisha and Jharkhand. In some places, accusations of witchcraft are based on traditional beliefs and are punished by the community through social isolation, violence, or other means. Such actions go against laws that were put in place to stop horrible things from happening and protect life and dignity. These laws include state-specific anti-witch-hunting laws and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The State has treated witch-hunting as a serious crime because it knows that customary punishment can't make violence, discrimination, or death okay.

There are also problems when it comes to marriage outside of the tribe, especially in areas where tenancy laws are in effect, like the Santhal Pargana Tenancy Act of 1949. In some tribal societies, it is against the rules or even illegal to marry someone who is not a member of the tribe. This can lead to social exclusion or loss of land and inheritance rights. While proponents argue that these practices safeguard tribal identity and avert land alienation, they may contradict constitutional assurances of equality, personal liberty, and matrimonial freedom of choice. Courts have become more critical of harsh customary responses to marriages between tribes or communities, especially when they lead to coercion or loss of legal rights.

The Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) both show that the formal legal system is the most important one when it comes to enforcing statutory offences and procedural governance. This is especially true in cases of serious crimes like violence, sexual exploitation, or deprivation of liberty. Tribal councils can still settle small disagreements according to their own rules, but serious crimes must go through the formal criminal justice system. This is in line with the Constitution, which says that customary autonomy should be respected in civil and community matters, but limited when it comes to basic rights and criminal laws.

The conflict between customary law and criminal statutes underscores the tension between collective cultural autonomy and individual constitutional rights. Indian constitutional jurisprudence has generally taken a careful stance, allowing customary law to persist only insofar as it does not violate statutory protections or constitutional morality. The changing legal framework aims to balance tribal autonomy with the need for human rights, gender justice, and child protection. It makes sure that tradition is not used as an excuse to keep doing harm or being unfair.³⁵

Autonomy and Fundamental Rights

Tribal autonomy under the Constitution is not unlimited. All laws, including those made by Governors or Councils under the Fifth/Sixth Schedule, must not contravene fundamental rights (Articles 13–35). The Constitution itself explicitly subjects tribal laws to fundamental rights (Article 13(3)(a)). Thus if a protective regulation in a Scheduled Area violated Article 15 or 21, it could in theory be struck down. (For example, tribal customary denial of female inheritance in *Madhu Kishwar* was challenged on equality grounds.)

³⁵ “Amit Prakash, *Jharkhand: Politics of Development and Identity* (Orient Blackswan 2001).”

The courts have grappled with this interplay. In *Ratan Singh*, the Court found that the old Naga Hills Rules were not invalid under Article 21, because the Constitution contemplated greater executive discretion in the hills. And in *Madhu Kishwar*, a majority effectively prioritized tribal custom over egalitarian readings of fundamental rights. In contrast, a minority opinion in that case urged that tribal women's right to livelihood is part of Article 21, but it was outvoted. Thus one sees that fundamental rights do place outer bounds – but in tribal areas the thrust of protection is often given deference to autonomy.³⁶

Professor Upendra Baxi has warned that this balancing can be lopsided: he argues that India's rights framework, rooted in liberal individualism, often fails to capture the collective nature of tribal rights. If courts focus too narrowly on individual rights, they may inadvertently undermine tribal cohesion. As a result, Fifth Schedule protections like land alienation bans can themselves be seen as “special carve-outs” from general rights (Article 19's trade rights, for instance) in order to ensure tribal welfare. Similarly, scholars like M.P. Jain observe that Fifth/Sixth Schedule law is intended to be harmonized with Part III, not placed above it; in theory, a tribal law that e.g. exiles a person for conversion could be challenged as violating freedom of religion. In practice, though, courts have been cautious about intervening too deeply in customary law. Instead, they often emphasize that tribal communities themselves must evolve and reform their customs through democratic processes.³⁷

In summary, the Constitution frames tribal autonomy as a specialized legal regime that *coexists* with fundamental rights. Statutory and regulatory powers under the Schedules operate only insofar as they do not destroy the core values of the Constitution. Tribals have all the rights of citizens (Articles 14–18, etc.), but the State is also granted special powers to override certain rights (like the right to property) in order to protect tribal identity. This dual scheme reflects the careful compromise of the framing era: tribal autonomy is robust in local matters but not a parallel system exempt from constitutional norms.

Implementation and Scholarly Critiques

Despite the elaborate framework, realizing tribal autonomy has been challenging. Implementation gaps are widely noted. Many Fifth Schedule states have been slow to constitute Tribal Advisory Councils or to delegate powers to Gram Sabhas as mandated by PESA. Amendments or rules to enable PESA have often been delayed or diluted, limiting its impact. The Forest Rights Act too has been undermined by bureaucratic inertia: delays in constituting recognition committees and resistance from forest departments have left millions of tribal claims unresolved years after enactment. The result is that on the ground, statutory criminal law (police and courts) still dominates many tribal areas, and large-scale mining and forest clearance continue with inadequate tribal consent.

Leading scholars have critiqued this state of affairs. Upendra Baxi, for instance, has criticized the “colonial continuity” in attitudes toward tribals: despite constitutional assurances, he argues, tribals are still largely treated as objects of welfare policy rather than as empowered citizens. He has also highlighted the irony that an egalitarian rights movement has not always translated into justice for tribals, who may be left out of mainstream human rights discourse. M.P. Jain, in his authoritative constitutional

³⁶ “D.D. Basu, *Introduction to the Constitution of India* (24th ed., LexisNexis 2020).”

³⁷ “Upendra Baxi, “The Protection of Adivasi Land Rights”, in *Human Rights in India* (Oxford University Press 2002).”

commentary, underscores that Fifth and Sixth Schedule autonomy depends crucially on political will. He notes that if state governments and bureaucracies are indifferent, the text of the Schedules can easily become hollow. In a similar vein, Amit Prakash (in empirical studies of Jharkhand and other states) observes that PESA and FRA often end up on paper only: Panchayats lack resources to enforce their authority, and local elites frequently dominate Gram Sabhas. He argues that many tribal communities remain unaware of their legal rights or lack the means to claim them.³⁸

Critiques also point to emerging pressures: global capital and neoliberal development often override tribal protections. Judicial pronouncements like *Samatha* attempted to counter this by imposing obligations on corporations to share profits with tribals. But scholars note that the underlying law (mineral rights vested in the state) still places tribals in a defensive position. Some, like H. Ramanathan and Anand Teltumbde, have called the Fifth Schedule a ‘Faustian bargain’ – tribal autonomy is conceded only to the extent it does not impede state plans. Others suggest that without constitutional recognition of tribal customary law as a separate legal system, autonomy will remain fragile.

In sum, while the Constitution and laws formally enshrine tribal self-rule, in practice “legal dissonance” persists. The letter of tribal autonomy is frequently undermined by official apathy and competing economic interests. As legal scholar Upendra Baxi cautions, a powerful constitution alone is insufficient; it must be backed by vigilant civil society and political commitment. The challenges of education, poverty, and external encroachment mean that the lofty promises of Articles 244 and 371A/G often collide with practical realities.³⁹ Scholars like Amit Prakash urge greater local empowerment, for example, full Gram Sabha control over revenue collection and development planning, as well as stricter enforcement of PESA/FRA provisions. Until such measures are implemented in full, critics argue, tribal autonomy will remain constitutionally guaranteed but constitutionally tenuous.⁴⁰

Conclusion

India’s constitutional scheme for Scheduled Areas is unique and sophisticated. It reflects a conscious effort by the framers to reconcile the tribals’ desire for self-governance with the integrity of the nation. Articles 244, 371, the Fifth and Sixth Schedules, and subsequent laws like PESA and FRA together form a protective canopy under which tribal communities may exercise substantial control over their affairs. At the same time, fundamental rights and national laws impose clear limits. The chapter has mapped this complex terrain: from the textual guarantees and judicial interpretations to the socio-political history that gave rise to them. The result is a nuanced picture of tribal autonomy as a conditional self-rule, rooted in constitutional and statutory law, but continuously negotiated in practice.

³⁸ “H.M. Seervai, *Constitutional Law of India* (4th ed., Universal Law Publishing 2013).”

³⁹ “Verrier Elwin, *A New Deal for Tribal India* (Ministry of Home Affairs 1963).”

⁴⁰ “M.P. Jain, *Indian Constitutional Law* (8th ed., LexisNexis 2018).”

EDITORIAL TEAM

PROF. (DR.) BANSHI DHAR SINGH

Professor,
Ex. Dean & Head,
Faculty of Law,
University of Lucknow

DR. KALPESHKUMAR L GUPTA

Founder ProBono India, Legal Start-ups,
Law Teachers India

DR. SUDHANSHU CHANDRA

Assistant Professor, Manuu Law
School, Maulana Azad National Urdu
University (Central University),
Hyderabad

PROF. (DR.) SANJAY SINGH

Director
of IIMT College of Law

INTERNATIONAL EDITORIAL TEAM

PROF. DR. MARC OLIVER OPRESNIK

President and CEO
Opresnik Management Consulting
and Opresnik Business School

*PROF. DR . COMRADE AMB.
CHUKWUNONSO C
HARLES OFODUM ESQ*

Chancellor, ALSA University.
Legal Director for Nigeria, World
Association for Humanitarian Doctors

ABOUT LEX SCRIPTA JOURNAL

Lex Scripta Magazine is a premier peer-reviewed online and print journal dedicated to advancing scholarly research in law, policy, and social sciences. With the vision of promoting academic excellence and fostering a culture of intellectual exchange, the magazine provides a distinguished platform for academicians, researchers, legal professionals, and students to publish their original work and contribute to contemporary legal discourse.

Each submission undergoes a rigorous double-blind review process conducted by a panel of eminent national and international professors, ensuring the highest standards of quality and academic integrity. Lex Scripta not only encourages original and innovative research but also strives to bridge the gap between theoretical insights and real-world applications in the legal domain.

Contributors and editorial members receive global recognition through certificates and publication opportunities, while readers gain access to insightful, authoritative, and thought-provoking content across diverse areas of law and policy.

Now managed by Integrity Education India, Lex Scripta Magazine is committed to expanding its academic footprint through enhanced digital presence, global collaborations, and university partnerships. Upholding its ISSN identity, Lex Scripta continues to evolve as one of India's most trusted and respected journals in the field of legal research and education.

KEY FEATURES

Scholarly Insights – Access in-depth, peer-reviewed research articles written by distinguished academicians and legal experts.

Global Perspectives – Explore diverse viewpoints on law, policy, and governance from national and international scholars.

Authentic Content – Read verified and academically sound articles that uphold the highest standards of research quality.

Knowledge Enhancement – Stay updated with emerging trends, case studies, and policy developments across multiple legal domains.

Easy Accessibility – Enjoy seamless access to online editions and exclusive hardcover issues for academic and professional use.



CONNECT WITH US **9811 666 216**
7011 605 618

