

MEDIATION IN PROTECTING CONSTITUTIONAL RIGHTS OF SENIOR CITIZENS

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Abstract:

This paper explores the constitutional framework and legal provisions in India concerning vulnerable groups, with a particular focus on indigenous communities, or Vanvasi. It examines how the Indian Constitution, through Fundamental Rights, Directive Principles of State Policy, and special legislations like the Forest Rights Act, PESA Act, and the SC/ST (Prevention of Atrocities) Act, aims to safeguard the rights and dignity of these communities. Despite these robust legal protections, indigenous groups continue to face systemic challenges such as displacement, deforestation, socio-economic marginalization, and exclusion from policy implementation. The paper critically assesses judicial interventions, historical stigma, and evolving government policies in addressing these issues. It calls for both effective execution of existing laws and a transformative shift in societal attitudes to genuinely include indigenous people as equal and respected members of Indian society. The work underscores the constitutional promise of justice—social, economic, and political—for all citizens, especially the most vulnerable.

Key words: Constitution of India, Vulnerable groups, Indigenous people, Scheduled Tribes (STs), land rights

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Introduction:

Every constitution has a philosophy of its own. The constitutional framework is necessary to be studied because the statutes draw their existence from the root of constitution. The assessment of any constitution of any country is on the basis of its durability. The Indian Constitution drafted in the year 1950 still having its utility, is itself the proof of it being one of the best prepared of its kind. Despite of the various minority groups deriving its rights from it, the Indian Constitution also faces a few challenges. This paper discusses about the existing constitutional provisions with respect to the vulnerable groups with special reference to the indigenous people and the challenges faced by them despite the existence of various provisions of law. The indigenous groups face various challenges specifically with respect to the displacement and abrogation of their land rights.

Understanding the Vulnerable Groups

A welfare state guarantees provisions for bare minimum necessities such as basic education, minimum standards of healthcare, economic stability and civilized society. It seeks to address existing inequalities, both social and economic, and to maintain a balance of power by ensuring advancement for the most disadvantaged members of society. The concept of vulnerability is generally used to analyse various spheres such as the cultural, political

and socio-economic. The fundamental conundrum of vulnerability is its dual nature as both universal and particular. Both these aspects arise in the first place from our embodiment - as embodied beings we are vulnerable, but we experience this vulnerability uniquely through our individual bodies.¹

The word vulnerability originates from the latin word *vulnus* meaning 'wound'.² The concept of *vulnerable groups* is broad and largely dependent on the specific context of time and place in which it is defined. In the realm of human rights, these groups are often subject to discrimination or require special attention to prevent potential violations of their rights. Due to their unique and diverse circumstances, treating them identically to others may, in fact, worsen their situation—highlighting that equal treatment in such cases is not always equitable or appropriate. Through a pragmatic lens, vulnerability is a universal condition—anyone and everyone can be considered vulnerable when viewed through a specific prism of circumstances. Whether shaped by social, economic, political, or personal factors, each individual's susceptibility to harm or disadvantage becomes apparent when analysed within a particular context. This perspective acknowledges that vulnerability is not fixed or exclusive to certain groups but can shift and manifest differently depending on the situation and the lens through which it is examined.

Indigenous tribes: meaning and its vulnerability

There are some groups who have been residing in India for thousands of years and yet are the most neglected ones. The 67.7 million people belonging to 'Scheduled Tribe' in India are generally considered to be 'Adivasi', meaning 'Indigenous People', though the term 'Scheduled Tribe' (ST) is not coterminous with the term 'Adivasi'. Out of the 5653 distinct communities in India, 635 are considered to be 'tribes'. In comparison, one finds that estimated number of STs varies from 250 to 593.³ The tribal population of the country, as per the 2011 census, is 10.43 crore, constituting 8.6% of the total population. 89.97% of them live in rural areas and 10.03% in urban areas.⁴

'Tribal' is a very broad term in the English language and includes all the different indigenous groups of India. The terms 'indigenous' and 'aboriginal' are not used often as the government claims most groups are indigenous in India. The term 'Denotified Tribes' refers only to nomadic tribes that were classified as 'criminal tribes' during the British Raj i.e. colonial administration. They were later 'denotified' but retain the stigma. The word 'Adivasi' might sound like a terminology of Sanskrit origin. However, its origin lies outside India in the 'Doctrine of Discovery'.⁵ It is a literal translation of the word aboriginal or primitive, which was reproduced in British and Missionary accounts of Indian society. British promoted the idea that Adivasis were not truly local but were 'Aboriginals'. Adivasi word is a draconian word without an intelligible differentia. Thus, I recuse myself from

¹ Jan Helge Solbakk, *Vulnerability: A Futile or Useful Principle in Healthcare Ethics?*, in The SAGE Handbook of Health Care Ethics 228, 229 (Ruth Chadwick, Henk ten Have & Eric M. Meslin eds., 2011).

² Bryan S. Turner, *Vulnerability and Human Rights* 28 (2006).

³ More than a question of terminology: 'Adivasi', 'Indigenous Peoples of India', 'Vanvasi', 'Vanyajati', and the administration of constitutional privileges for 'Scheduled Tribes' (ST) available at: <https://indiantribalheritage.org/?p=15257#gsc.tab=0> (seen last on 15/04/2025)

⁴ Ministry of Tribal Affairs. (2013). Annual Report 2012-13, Government of India.

⁵ Rohith Krishna, *The Doctrine of Discovery and India's Adivasi*, (2023)

using the term Adivasi. And use ‘Vanwasi’ that is perhaps more accurate nomenclature to indigenous groups in India. Vanwasi (forest dwellers) highlights their deep connection to nature.

These groups depend on forests for livelihood, culture and identity. They are subject to oppression and cruelty even after independence and still picked up by the investigating officers to cover up illegal investigations. One of the prime factors for claiming aboriginal or indigenous status for the tribes is to enable them to gain territorial, land rights and control over natural resources. There are, however, vicious forces in the country who are overtly active in not conceding these rights.⁶

These indigenous groups of people or ‘vanwasi’ are primarily seen as a stage and type of society. They represent a society that lacks positive traits of the modern society and thus constitutes a simple, illiterate and backward society. With change in these features on account of education, modern occupation, new technology, etc, tribal society is no longer considered to be tribal. If transformation is in the direction of caste society, then it is described as having become caste society. Thus, despite their availability of resource being the forest, they suffer from various vulnerabilities.

Vulnerability of these indigenous groups speaks to the universal capacity for suffering, in two ways. Firstly, one is vulnerable because they depend upon the co-operation of others (including, the State). Second, one is vulnerable because he is penetrable; he is permanently open and exposed to hurts and harms of various kinds.⁷ Thus, as vulnerable subjects we are constantly susceptible to harm. These groups are vulnerable due to the factors such as displacement and relocation, deforestation, lack of awareness, education, medical facilities, economies, etc.⁸ They are purposely kept aloof from the actual implementation of the schemes of the government.

The Indian legislatures have very thoughtfully enacted various statutes. The Forest Rights Act, 2006 recognizes and secures the rights of forest-dwelling Scheduled Tribes and other traditional forest dwellers over forest land and resources, ensuring their livelihood, habitation, and cultural practices are protected. The Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) empowers Gram Sabhas (village councils) in Scheduled Areas to govern themselves, particularly in matters related to land, resources, and local governance, respecting traditional practices and community autonomy. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC & ST) aims to prevent atrocities and discrimination against SCs and STs by providing legal protection, establishing special courts, and ensuring justice and rehabilitation for victims. Despite enacting such important enactments, the people belonging to indigenous groups still suffer from various adventures.

The Constitution of India, 1950: the saviour

⁶ “Indigenous People India”. IWGIA <https://www.iwgia.org/en/india.html#:~:text=India%20voted%20in%20favour%20of,the%20UNDRIP%2C%20applicable%20to%20India> (Accessed 15/04/2025).

⁷ Mary Neal, “*Not Gods but Animals*”: Human Dignity and Vulnerable Subjecthood, 33 *Liverpool L. Rev.* 177, 186–187 (2012)

⁸ Axelsson, P. and Sköld, P. (2006). Indigenous Populations and Vulnerability. Characterizing Vulnerability in a Sami Context. *Annales de démographie historique*, no 111(1), 115-132. <https://doi.org/10.3917/adh.111.0115>.

It must, however, be stated that the Indian Constitution does not use the term ‘Adivasi’ and instead refers to the STs as ‘Anusuchit Jana Jati’. Traditionally ‘Jana’ was the more popular term to refer to the tribes in the Hindi. The rights of Indigenous Peoples are guaranteed within the Indian Constitutional framework. Part III of the Indian Constitution enshrines Fundamental Rights, establishing a comprehensive legal framework to uphold equality and prohibit discrimination. Article 14 guarantees ‘equality before the law’ and ‘equal protection of the laws’ to all individuals. Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth, while permitting the State to make special provisions for the advancement of socially and educationally backward classes, as well as Scheduled Castes (SCs) and Scheduled Tribes (STs). Article 16 ensures equality of opportunity in public employment and allows for affirmative action, including reservations in appointments or posts, for any backward class of citizens that, in the State's opinion, is underrepresented in public services. Furthermore, Article 17 abolishes ‘untouchability’ and forbids its practice in any form, reinforcing the commitment to social justice and equality.

Part IV of the Constitution lays down the Directive Principles of State Policy that are ‘fundamental to the governance of the country,’ and include ‘Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections,’⁹ which must be enforced as laws by the State. The Constitution provides special protection and assistance to vulnerable groups in India including Indigenous Peoples (Adivasi) in order to help alleviate extreme levels of poverty, illiteracy, disease, and early mortality.¹⁰ Article 46 provides for promoting the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation. The Fifth and Sixth Schedules of the Constitution offer special laws on Indigenous Peoples’ land rights and self-governance and are applicable to designated parts of the country with high tribal population including central India and the North-East states.¹¹ The definition for scheduled caste and scheduled tribe has been given in articles 341 and 342 of the constitution respectively. The definitions have also been discussed in articles 366 of the constitution of India.

Article 244 (1) of the Constitution of India which appears in Part X provides that the administration of the Scheduled Areas and Scheduled Tribes in States (other than Assam, Meghalaya and Tripura) shall be according to the provisions of the Fifth Schedule and Clause (2) states that Sixth Schedule applies to the tribal areas in Assam, Meghalaya, Tripura and Mizoram. Evidently, the object of the Fifth Schedule and the Regulations made thereunder is to preserve tribal autonomy, their cultures and economic empowerment to ensure social, economic and political justice for the preservation of peace and good Governance in the Scheduled Area.

Part B of the Fifth Schedule [Article 244(1)] speaks of the administration and control of Schedules Areas and Scheduled Tribes. Para 4 thereof speaks of Tribes Advisory Council. Tribes Advisory Council used to exercise the powers for those Scheduled Areas where Panchayat Raj system had not been extended. By way of the

⁹ Human Rights Council, “NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15(a) OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1* India,” The United Nations General Assembly, 2008. Accessed on 20, August 2016

¹⁰ ACHR, “Who are the Indigenous Peoples in India?” 2010

¹¹ 2016 Yearbook Article: India, International Work Group for Indigenous Affairs, 2016,

Constitution (73rd Amendment) Act, 1992, Part IX was inserted in the Constitution of India. Article 243-B of Part IX of the Constitution mandated that there shall be panchayats at village, intermediate and district levels in accordance with the provisions of that Part. Article 243-C of Chapter IX refers to the composition of Panchayats. Article 243-M (4)(b) states that Parliament may, by law, extend the provisions of Part IX to the Scheduled Areas and the Tribal areas and to work out the modalities for the same. The Central Government appointed Bhuria Committee to undertake a detailed study and make recommendations as to whether the Panchayat Raj system could be extended to Scheduled Areas. The Committee submitted its report on 17.01.1995 and favoured democratic, decentralization in Scheduled Areas. Based on the recommendations, the Panchayat (Extension to Scheduled Areas) Act, 1996 (for short 'PESA Act') was enacted by the Parliament in the year 1996, extending the provisions of Part IX of the Constitution relating to Panchayats to the Scheduled Areas. Apart from this, there are no specific parameters nor any guidelines to ascertain who belongs to the Scheduled Tribe as per the constitution of India. However, it is officially accepted that the identification of a Scheduled Tribe (ST) is based on the following characteristics: -

1. Original character;
2. Distinctive culture;
3. Geographic isolation;
4. Shyness in contact with the general community;

Although these criteria are not explicitly stated in the Constitution, they are accepted in practice and are based on the 1931 census. The 1955 report of the Commission of the First Backward Class (Kaka Kalelkar Commission), which viewed that the tribes 'having an autonomous and exclusive existence, not entirely incorporated into the subject of the people'. Scheduled Tribes can be religiously affiliated with any major world religion. They lead this lifestyle, which qualifies them as a Scheduled Tribe.¹² The Indian government established a committee in 1959 to look into the welfare of the chosen tribes, but even this group was unable to come up with a proper description. The committee was led by Shri. VN Dhebar. The committee concluded that the Scheduled Tribes could be identified by the fact that they lived alone in the mountains, and that even though they lived on the plains, they lived separate, excluded lives and were not fully integrated with the assimilated rest. On his recommendation, he reiterated his position that the technical definition of a tribe is any group classified as a Scheduled Tribe under Section 342.¹³

The Scheduled Caste and Scheduled Tribes Order (Amendment) Act 1967, Joint Committee of Parliament and 1969 (Chanda Committee) is also working to give final status to the tribes. ST members who migrate from a predetermined community area to another area in the same state retain ST status. However, if the person moves to another state, they cannot apply for ST status in that state. In June 1999, the government changed the way it included or excluded claims from the ST list. Applications for ST listing must first be approved by the relevant

¹² Thorat Sukhadeo, Chittaranjan Senapati, Reservation in Employment, Education and Legislature: Status and Emerging issues. Working Paper Series, New Delhi: Indian Institute of Dalit Studies. 2007:2:5.

¹³ This followed the recommendation of the All India Criminal Tribes Enquiry Committee of 1949

State/UT government and forwarded to the Register General of India (RGI). If the RGI is satisfied with the state government's proposal, it recommends the proposal to the central government, which then submits it to the National ST Council for recommendation. The Cabinet then makes a decision and presents proposals in the form of bills to modify the presidential decree to include or exclude it on a case-by-case basis. Some groups were first identified in 1975-76 and then considered ST's most marginalized groups in 1993-94. These have been included in a new category called Primitive Tribal Groups (PTGs) for the purpose of administering special programs for them.¹⁴ This is the way to identify and claim the status of ST.

Apart from the same, the Hon'ble Apex court in numerous judgments have gone one step ahead to implement the rights of these groups and tried to bring them back to the mainstream. In the landmark case of *Samata vs. State of Andhra Pradesh*¹⁵ judgment of 1997, (popularly known as the Samata judgment) the Supreme Court of India delivered an authoritative verdict in favour of the right to livelihood of the tribals inhabiting the scheduled areas of the country. In this case, the judiciary reached its pinnacle in upholding the rights of the tribal community. The Samata judgment is an outcome of sustained people's struggle to safeguard their land, resources and livelihood in tribal belts of Andhra Pradesh. It had ramifications across the country. The petitioning organisation, "Samata" had been working for the rights of the people for several years and had filed the case to overcome the hurdles created by the state to acknowledge and deliver on issues of fundamental human rights.

In another judgment of *Orissa Mining Corporation v. Ministry of Environment & Forest & Others*¹⁶, the Hon'ble Court held that The Court considered the entitlement of tribal people to land which is owned by the company. However, the Court went on to clarify that the State holds the natural resources as a trustee of the people; as such, local populations must give consent to any efforts to extract these resources. Following a series of 12 village consultations regarding the Vedanta project, the Dongria unanimously rejected the proposal. The Court noted that agriculture was the only source of livelihood for the tribes concerned, apart from the collection and sale of minor forest produce to supplement their income. The tribes had great emotional attachments to their lands. The United Nations Declaration on Rights of Indigenous Peoples notes that tribal forest dwellers have a right to maintain their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands.

Current challenges:

India's Vanvasi or Scheduled Tribes, represent some of the earliest natives of this land. They have a distinct position in the constitution, enjoying specific protections under various provisions. Yet, in reality, they often face deep-rooted isolation and marginalisation. They carry a social stigma which was left behind by the Colonisers.

¹⁴ Dr. Vinod Kumar Bagoria, The rights of indigenous peoples: constitutional and legal provisions for their protection and development, IJL, vol. 9, issue 3, 2023 page no. 46 - 51

¹⁵ (1997) 8 SCC 191

¹⁶ (2013) 6 SCC 476

The Census of India¹⁷ reports that ethnographic accounts of “Scheduled Tribe” is often disputed due to its conceptual and practical difficulties in recognizing various communities as Scheduled Tribe. Mining has remained as one of the most serious challenges for the rights of indigenous peoples across India. Particularly, across central Indian tribal belt, number of mining operations have displaced tribals or are being opposed by the tribals for such threats, however with only rare success.

One of the most significant threats for the Vanvasi's is forced displacement. With the rapid growth of large scale infrastructure projects including mining activities, creation of dams and highways, rapid urbanisation, tribal populations are habitually uprooted from their ancestral homes. Ironically, even conservation efforts like the declaration of wildlife sanctuaries and national parks have led to their displacement. These actions strike at the core of laws designed to safeguard tribal autonomy, thereby infringing the promise of Social Justice. Despite stringent constitutional provisions and state laws for protection of land belong to tribal peoples, land alienation has continued unabated. While the latest data on alienation of tribal land is not available, in April 2012, the Government informed the Parliament those 437,173 cases of tribal land alienation had been registered, covering 661,806 acres of land in the country, out of which 217,396 cases were disposed of in favor of the tribals, and 190,573 cases¹⁸ were decided against the tribal landowners in the courts. The lack of seriousness of the Government towards the alienation of tribal land is reflected in the delay in implementing the recommendations of the report submitted in May 2014 by a High Level Committee it formed to look into the issue.

Additionally, climate change poses a complex challenge. The environment degrades rendering an ecological imbalance upon which indigenous communities rely like the forests, rivers and predictable seasonal cycles. Their distinct knowledge of nature and sustainable living, instead of being respected, is slowly being called outdated in the face of modernisation.

The Land Acquisition Act, 2013 replaced Land Acquisition Act, 1894, which favored the government over landowners. Land acquisition Act, 2013 (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement) provides better safeguards. It requires consent of 80% landowners (private projects) & 70% (public-private projects). It guarantees higher compensation – 4x market value (rural), 2x (urban). It mandates Rehabilitation & Resettlement for displaced families. It also protects Adivasi & SC/ST land under special provisions.

The caste certificates have also become a huge challenge for the real indigenous people. There are various false claims filed and various non deserving people get the benefits of the caste certificates leaving the deserving ones behind. This may be due to lack of funds for bribery and also lack of awareness. However, this also poses to be a huge challenge.

But perhaps the more troubling issue is how society perceives tribal communities. The colonial era left behind a social stigma influencing the public morality, which adhered to Eurocentric superiority and thereby implying the

¹⁷ ACHR, “Who are the Indigenous Peoples in India?” 2010; The Constitution (Scheduled Tribes) Order, 1950

¹⁸ “Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending 31 October 2015]” of the Ministry of Tribal Affairs,

native residents as inferior and backward. This mindset, unfortunately, followed into the post-independence Indian society. Terms like “backward” or “uncivilised” continue to influence the morals of the society, reducing age old cultures to mere stereotypes and superstitions. Such labelling ignores the deep wisdom, diverse languages and rich cultural practices that tribal communities preserve with pride.

The task, therefore, is two fold, first, execution of all the policies and legislations that exist only on the paper to ensure the Vanvasi their dignity. Second, and immensely important, is a societal reformation of morality, wherein acknowledgement of indigenous communities should be undertaken not as ‘Marginalised Others’, but as equal members of the society without any discrimination.

Conclusion:

In recognition of the historical and ongoing struggles of indigenous communities in India, the country has developed an extensive array of constitutional provisions, legislative frameworks, and policy measures aimed at safeguarding their rights. These domestic protections reflect over a century and a half of resistance and advocacy by these communities. Addressing the vulnerabilities of indigenous groups requires a concerted effort from governments, international organizations, and civil society to promote their rights, respect their cultures, and support their sustainable development.

Despite the same, the Indian Constitution strives to achieve the Justice: social, economic and political as mentioned in the preamble. Thus, lets take affirmative actions in order to help these vulnerable indigenous groups to curb heal their wounds as we believe in Vasudaiv kutimbakam i.e. the whole world is one family.

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