
IMPACT OF CLIMATE CHANGE ON HUMAN RIGHTS OF INDIGENOUS PEOPLE IN INDIA

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ABSTRACT

Climate change threatens the existing way of human life, it substantially affects basic rights of the individuals such as, violation of right to life including right to water, food, healthy environment etc. Nations have an affirmative obligation to take effective measures to prevent and redress the impacts of climate change, and to mitigate such negative impacts on the human rights and to ensure that all human beings have the necessary capacity to adapt to the climate crisis. While the nations have the obligation to protect the human rights of the people, they have to strive for developing effective measures to combat the adverse effects of climate change. Climate change directly impacts the human rights of the indigenous people, because of their total dependence upon the environment and its resources. Although some initiatives are made at the national and international level to combat climate change and also to protect the human rights of the people separately, the international initiatives on climate change about human rights of people, especially the indigenous people. Though Indian legislative framework recognised the rights of indigenous people, there are no express provisions relating to remedial measures provided to the indigenous people for deprivation of their human rights due to climate change crisis. In this background, this paper analyses the issue of climate change and its impact on indigenous people from a human rights perspective and examines the links between the environmental challenges and the issue of justice to indigenous people of India.

Keywords: Climate Change, Human Rights, Indigenous People, and Constitution of India.

I. INTRODUCTION

India is a home to the largest population of indigenous people of the world. They are socially, politically and economically marginalized communities of the world. In India, there are more than six hundred ethnic groups or indigenous communities and are officially recognized as Scheduled Tribes.¹ These tribal or indigenous people play a vital role in environmental protection, including the conservation of biodiversity and maintaining forests in better manner than in any other areas. They inherit, possess, develop and practice traditional knowledge systems that guides them in sustainable resource management and conservation of the resources, which directly contributes in retaining a healthier planet.

However, in order to achieve economic prosperity, almost all the countries encourage industrialisation and use of natural resources available. Such use of natural resources and industrialisation leads to deforestation, land degradation, pollution and many more consequences, which ultimately result in climatic change. Indigenous people are the first to experience the impacts of climate change, and face severe threats to their livelihoods, cultures, identities and ways of life, due to their complete dependence on the biological resources.²

Although roots of human rights lie in the tradition and documents of many cultures, World War II acted as a catalyst to propel human rights onto the global stage. Recognition of human rights of indigenous people emerged through decades of activism and the growing global awareness of their unique needs and rights.³ International legal developments, which paved the way for protecting their basic rights, are not particularly addressing the rights of these communities in case of violation of these basic rights due to induced climatic changes. Moreover the general provisions, scope of which can be widened to address these issues, due to poor implementation, ended up in simple denial of rights of indigenous people. In this context, this paper analyses the impact of climate change on indigenous people and reasons for such impact on them. It also analyses existing national and international legal framework of indigenous people's human rights to examine the effectiveness of these measures to combat the

¹ Sunita Acharya, "Rights of The Indigenous In India: Issues & Challenges" *International Journal of Creative Research Thoughts* 11(2023)

² International Labour Office, Geneva, "Indigenous Peoples and Climate Change -From Victims to Change Agents Through Decent Work" (2017) < <https://www.ilo.org/publications/indigenous-peoples-and-climate-change-victims-change-agents-through-decent>> accessed 24/04/2025.

³ R.M. Kamble, "Evolution And Historical Development Of Human Rights - A Journey From Ancient To Modern" *KLE Law Journal* 139 (2019) .

climate change challenges posed to indigenous people of India.

II. CLIMATE CHANGE AND INDIGENOUS PEOPLE

There is no universal definition or meaning assigned to the term ‘indigenous’ people. The first attempt to identify indigenous people was made in *Indigenous and Tribal Peoples Convention, 1989* (ILO, 169) by providing a set of features to identify these communities. The Convention addresses them as “indigenous” and “tribal” people and offers a practical and inclusive approach to identify them. It considers self-identification as a fundamental criterion along with other characteristics, such as, their ancestral link with particular territories and the surrounding natural resources, distinct social, economic or political systems, distinct language, culture and beliefs and their political and social marginalization.⁴

In India the term ‘indigenous’ is not in use, but equivalent to indigenous people, the Constitution and other legislative texts use the term ‘Scheduled Tribes’ (ST) and they are commonly addressed as ‘Adivasi’s. Article 366(25) of the Constitution, defines Scheduled Tribes as those tribes or tribal communities as are deemed in Article 342 as Scheduled Tribes which in turn defines the community as identified by the President as such. Hence, the definition of Scheduled Tribes given under the Constitution is very vague. To identify indigenous people or their communities commonly used criteria are: i) they are being primitive, ii) have a distinct culture, iii) are geographically isolated, iv) avoid contact with the public or society at large, and v) backwardness.⁵

Indigenous people, as rightly identified are living in isolation, generally in deep forests by adapting to the environmental conditions. They develop a symbiotic relationship with the nature, by considering themselves as the beneficiaries of land. As a result, they contribute to the growth and sustenance of biodiversity of the region they live.⁶ Hence, change in the climatic conditions is not simply a matter of physical change to the environment to these communities but, a threat to their livelihoods, an obstruction to practice their traditional knowledge and

⁴ “Indigenous Peoples Rights”, < <https://www.amnesty.org/en/what-we-do/indigenous-peoples/#:~:text=Indigenous%20Peoples%20face%20eviction%20from,the%20support%20of%20the%20state>> accessed 24/04/2025.

⁵ Government of India, “The Report of the Advisory Committee on the Revision of the Lists of Scheduled Castes and Scheduled Tribes” (Department of Social Security, 1965).

⁶ Shipra Deo, “This is Not Your Home: An Assessment Of Land Rights of Tribal Women in Jharkhand” (2021) *Landesa and Samuel Hahnemann Associates & Research Centre* <<https://cdn.landesia.org/wp-content/uploads/This-is-not-your-home-10-August-2021-Jharkhand.pdf>> accessed 24/04/2025.

cultures.

In India, due to the imbalance between the environment and the development strategies, climate change is frequently occurring and causing threats to the basic human rights of these communities, violation of their right to livelihood and food security.⁷ The intensity of risk that climate change poses for indigenous people is more severe than it poses to others. The reasons for such impact are many. First, these communities are totally dependent natural resources and in cases of natural disasters, their assets and means of livelihoods gets destroyed, and directly impact the working capacities of these people.⁸ As the law of the land does not recognise them as the owners of the land, these people will not be considered for monetary benefits for lacking their traditional occupations and livelihood.⁹

Second, they depend on renewable natural resources, and variation in the climatic conditions directly impact these resources and causes an obstacle to earn their livelihood. Limited access to other forms of resources, and credit facilities, accelerate their vulnerability. These situations, along with inadequate access to social protection, lead to severe livelihoods insecurity and impoverishment of indigenous people.

Third, they live in geographical regions and ecosystems that are most exposed to the impacts of climate change. Constant climate changes to the geographical areas where these people reside, depletes their subsistence production. For example, agriculture, on which many indigenous peoples depend for food security and for their subsistence needs, is one of the sectors most sensitive to climate change. Loss of ecosystems and changing weather patterns cause severe implications on their cultures and ways of life.¹⁰

Fourth, high levels of exposure and vulnerability to climate change force indigenous peoples to migrate, which in most cases exacerbate social and economic vulnerabilities. While migration may be an adaptation strategy to the climate change, it makes indigenous people

⁷ Apoorva A., "Indigenous Communities: Human Rights and Right to Development Exploring the Indian Context" 3(3) *EJSSS* 293 (2023).

⁸ Meghaa and Abhishek Tayal, *Impact of Climate Change on Poverty* (2023) 2 (2) *IJPSL* < https://ijpsl.in/wp-content/uploads/2022/01/Impact-of-Climate-Change-on-Poverty_Meghaa-Abhishek-Tayal.pdf> accessed on 24/04/2025.

⁹ R.K. Dhir, *Indigenous Peoples in the World of Work in Asia and the Pacific: A Status Report* (Geneva, ILO, 2015).

¹⁰ UN: *Impact of climate change mitigation measures on indigenous peoples and on their territories and lands. Submitted by Victoria Tauli-Corpuz and Aqqaluk Lyngge, Forum members.* (Economic and Social Council, Permanent Forum on Indigenous Issues, 2008).

more vulnerable to discrimination, loss of identity, exploitation, and other socio-economic and environmental risks. Once migrated to new geographical areas, they may not be able to use their traditional knowledge, and non-recognition of their cultures and ways of life, etc., are the additional risks associated with migration and displacement.¹¹

Fifth, gender inequality, a key factor in the deprivation suffered by indigenous women, is magnified by climate change. Indigenous women play a vital role in earning livelihoods and ensuring food security. With increasing insecurity due to climate change, these women opt to work as agricultural labourers or as domestic helpers in urban areas. Indigenous women often face discrimination from both within and outside their communities and are subjected to social and economic exclusion, exploitation, marginalization and gender-based violence, etc.

Sixth, indigenous communities are excluded from legislative and policy decision-making processes of the country, these people will not get the right to participate and share their views on the issues of their concern. Another major issue in India is special implementation of legislative measures adopted for the protection of tribal groups in India.¹² Even from the perspective of climate change, to mitigate and adapt the risks of climate change, participation of and consultation with indigenous people are very much essential. However, such consultations are very scarce and weak, which will create serious negative impacts on their access to remedies, undermines their ability to mitigate and adapt to climate change, and consequently poses a threat to the advances made in securing their rights.¹³

III AN OVERVIEW OF THE INTERNATIONAL APPROACH TO CLIMATE CHANGE AND HUMAN RIGHTS OF INDIGENOUS PEOPLE

While indigenous people are deprived of recognition for centuries, in the recent decades, the international communities realised the need to safeguard the rights, culture, identity and wellbeing of indigenous people. Parallely, need for addressing climate change issues, including preventive measures was also considered and several international instruments were adopted. Although these instruments were created with different objectives and to meet different purposes, they are interrelated and thereby ensure human rights to the indigenous

¹¹ *Supra* Note 6.

¹² *Ibid.*

¹³ *Supra* note 2. 7-18.

people.

A. Protection of Human Rights Approach

Human rights approach to indigenous communities at the international level meant to recognize and protect their inherent rights, promoting their well-being and self-determination. These international developments focus on ensuring fair treatment of indigenous people and have equal access to resources and opportunities, while respecting their unique cultures, traditions, and ways of life.

This approach was made in *The International Bill of Human Rights*¹⁴ adopted to secure basic human rights like, right to life, liberty, security of person, equality before the law, etc., is aiming to protect the basic human rights of the people. Later, *International Labour Organisation Conventions, 107 and 169* are also made aiming to protect the rights of indigenous and tribal populations by ensuring their equal access to rights and opportunities, while also recognizing their distinct cultural and social characteristics. *ILO169 Convention* particularly guarantees the right to equal employment opportunities,¹⁵ right to health care¹⁶ and education, which includes being educated in their languages.¹⁷

Subsequently, the *UN Declaration on the Rights of Indigenous Peoples (UNDRIP)* which was adopted by the UN General Assembly in 2007 to set out minimum standards for the survival, dignity and well-being of the indigenous peoples of the world, recognises the right to self-determination, which affirms the right of indigenous people to decide what is best for their communities and to carry out those decisions in ways that are meaningful to them,¹⁸ along with other rights, such as, the right to be recognized as distinct people;¹⁹ the right to free, prior and informed consent, and the right to be free from discrimination.²⁰ The Declaration also includes protection of their cultural rights, such as preserving Indigenous languages and religions, rights

¹⁴ International Bill of Human Rights consists of the *Universal Declaration of Human Rights (UDHR)*, the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic Social and Cultural Rights (ICESCR)*.

¹⁵ Articles 20-23 of *Indigenous and Tribal Peoples Convention, 1989*.

¹⁶ *Ibid*, Article 25.

¹⁷ *Ibid.*, Article. 27.

¹⁸ Article 3, of United Nations Declaration on the Rights of Indigenous Peoples, 2007.

¹⁹ *Ibid.*, Article 5.

²⁰ Prakash Priyadarshi, "International Legal Framework Of Indigenous Peoples' Rights To Natural Resources: Critical Appraisal" 10(1) *International Journal of Multidisciplinary Educational Research* 107-08 (2022).

to lands, territories, resources and the environment.²¹

Although these instruments failed to address the problems faced by indigenous communities due to climate change and protecting their basic rights directly, the general provisions of these instruments can be applied to uplift the socio-economic conditions and prevention of human rights violations of these communities. The Report by the Office of the United Nations High Commissioner for Human Rights on the relationship between ‘climate change’ and ‘human rights’ highlights this aspect and to address the vulnerability of these communities due to the impact of climate change. The Report demands the implementation of existing human rights instruments by way of identifying the impact of climate change on them and ensuring the protection of their rights.²²

Similarly, a Report prepared by the Special Rapporteurs of the Permanent Forum on Indigenous Issues on the Rights of Indigenous Communities in the context of Climate Change Mitigation Measures, identifies the rights of indigenous communities which will be adversely impacted. They include the right to self-determination, right to land, right to free prior and informed consent, right to health, water, food and adequate standards of living and the right to culture and traditional knowledge.²³

B. Prevention of Climate Change Approach

Climate change, one of the root causes for vulnerability of the indigenous people needs to be prevented through a multi-pronged approach, including international initiatives, national policies, and actions at individual level. Internationally, combating with major causes of climate change initiatives were taken by adopting *UN Framework Convention on Climate Change (UNFCCC)* in 1992. It was the first global treaty to explicitly address climate change. Primary goal of the Convention is to stabilize greenhouse gas concentrations in the atmosphere at a level that prevents dangerous human interference with the climate system. The Convention to serve as a foundation for international climate action, established an annual forum, known as the Conference of the Parties (COP), for international discussions aimed at stabilizing the

²¹ Article 10 of *Indigenous and Tribal Peoples Convention, 1989*.

²² Human Rights Council, “Rep. of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights” U.N. Doc. A/HRC/10/61(Jan 15, 2009)

²³ UN Economic and Social Council, “Impact of Climate Change Mitigation Measures on Indigenous Peoples and Their Land and Territories” UN Doc.E/C.19/2008/(Mar.19.2008)

concentration of greenhouse gases in the atmosphere. These meetings led to the creation of the Kyoto Protocol and the most significant global climate agreement, i.e., the Paris Agreement.

The *Paris Agreement, 2015* requires all countries to set emissions-reduction pledges. Governments set targets, known as nationally determined contributions, with the goals of preventing the global average temperature from rising above preindustrial levels. This Agreement calls for a participative and inclusive approach by taking into consideration the concerns of vulnerable groups including indigenous communities by acknowledging the rights of indigenous communities. This Agreement recognises forests as carbon sinks as well as a carbon source as it absorbs carbon. Hence, the Agreement made a forest centric effort to prevent climate change, through afforestation and reforestation to avoid deforestation.²⁴ The process of afforestation includes industrial plantations, which was criticised from the perspective of indigenous peoples rights, as the most significant social risk in the Report on Land Use, Land Use Change and Forests by the Intergovernmental Panel on Climate Change as they have the potential to exacerbate existing disparities in land distribution, deprive communities of customary and land rights and their livelihood needs.

Emergence of United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (UN REDD+) program remedied these issues by integrating forest into international climate policy and transformed afforestation - reforestation strategy into prevention of deforestation and degradation of forests policy. Major goals of this program is to foster conservation and sustainable management of forests and to enhance a forest carbon stocks. The procedural guidelines for the implementation of this programme requires free, prior and informed consent of the indigenous communities. Hence, this program acts as a preventive measure that combines consideration of livelihood and reduction of poverty by compensating indigenous communities for conserving forest areas.

Along with the preventive measures to climate change, preventing the disastrous effects of climatic change is another challenge to be addressed at the international level. The traditional knowledge of indigenous people and forest dwelling communities to conserve biodiversity is directly linked with prevention of climate change and also adapt to climatic changes. The Earth Summit or *the United Nations Conference on Environment and Development (UNCED)*, held

²⁴ Robert T Watson et al., *IPCC 2000: Summary for Policy Makers Land Use, Land Use Change and Forests* (Cambridge University Press, UK, 2000).

in Rio de Janeiro in 1992, which was aimed to address global environmental challenges and forge a path toward sustainable development, recognises the contribution of indigenous people in preserving the biological diversity.²⁵ The Declaration urges the member countries to respect and encourage their identities, cultures, and interests of indigenous communities of respective nations and also to recognise their right to govern and safeguard ancestral territory and natural resources.²⁶

Further, the *Convention on Biological Diversity (CBD)* adopted in the Earth Summit in 1992, also acknowledges dependence of indigenous communities on biological resources and their role in preserving biodiversity. Article 8(j) particularly recommends for respecting, preserving and maintaining the traditional ecological knowledge of indigenous and local communities and use of such knowledge for sustainable use of resources and biodiversity conservation.

IV. INDIAN LEGAL FRAMEWORK FOR CLIMATE CHANGE AND RIGHTS OF INDIGENOUS PEOPLE

In India, there are no specific legislation to address the climatic change or to mitigate the consequences of such changes. However, Indian Constitution has played a crucial role in advancing the intersection of climate justice and human rights of people, especially through Article 21. Indian judiciary also played proactive role in widening the scope of this Article which basically provides the right to life and liberty, to ensure environmental justice by recognising right to a clean and healthy environment as fundamental right. However, neither the Article nor the judiciary specifically looked into the climate change aspects and its direct impact on the right to life of the indigenous communities.

The Directive Principles of State Policy under Articles 48A and 51A(g) underline the state's duty and citizens' responsibility toward environmental protection, as a matter of legal obligation and also a shared societal responsibility. Integrating environmental justice into its legal fabric, judiciary has taken positive steps to mitigate impacts of climate change on the

²⁵ Principle 22 of the *Rio Declaration* specifically recognises the role of indigenous people as the real protectors of the environment, and mentions that indigenous people and communities, as well as other local communities, play an important role in environmental management hence to achieve sustainable development, their active participation is required.

²⁶ Agenda 21 of *Rio Declaration, 1992*.

people of India.

i. Anti-Pollution and Environment Protection Laws to prevent Climate Change

Pollution is one of the major causes for climate change. to combat pollution, one of the earliest legal initiatives introduced in India was the *Water (Prevention and Control of Pollution) Act, 1974*, with twin objectives of preventing and controlling water pollution and to maintain and restore wholesomeness of water. With similar objectives to prevent air pollution and to preserve the quality of air, the *Air (Prevention and Control of Pollution) Act, 1981*, enacted by Parliament. Under these Acts, the government established Central Pollution Control Board (CPCB), the State Pollution Control Board (SPCB) and Joint Pollution Control Board (JPCB)²⁷ for the prevention and control of pollution; and established central and State testing laboratories to enable the board to assess the extent of pollution, lay down standards and establish guilt or default.²⁸ In furtherance of these legislative measures, the *Environmental (Protection) Act, 1986*, which is considered to be an umbrella legislation to prevent hazardous activities and pollution, which may jeopardise the environment and to protect and improvement of the human environment.²⁹ Although, these legislations do not expressly connect to climate change, these laws address the issue of pollution, one of the major causes for climate change and prevention of pollution and environmental protection reduces the consequences of climate change.

ii. The Biological Diversity Act, 2002

The Biological Diversity Act enacted to implement the biodiversity related obligations stipulated under the Convention on Biological Diversity (CBD) 1992, translates the three main objectives of the Convention, namely, conservation, sustainable use, and equitable benefit-sharing into national law. Although the speaks about the traditional knowledge of the indigenous people and their right to claim fair share in the benefits arising from the use of traditional knowledge, focus is made to regulate access to India's genetic resources and associated knowledge to prevent biopiracy. To adopt the participatory approach in biodiversity related matters and to involve the indigenous people in decision making, the Act created three

²⁷ Joint Pollution Control Board (JPCB) can be established by agreement between two or more contiguous states, or by the central government (in respect of one or more Union Territories) and one or more State governments contiguous to such Union Territory or Union Territories.

²⁸ Susan G. Hadden, "Statutes and Standards for Pollution Control in India." 22(16) *Economic and Political Weekly* 709–720 (1987) available at, www.jstor.org/stable/4376933, last cited on 11.10.2025.

²⁹ Prasad P. M., "Environment Protection: Role of Regulatory System in India" 41(13) *Economic and Political Weekly* 1278–1288 (2006), available at, www.jstor.org/stable/441803, last cited on 11.10.2025.

tier structure. Unfortunately, only the lowest tier, i.e., Biodiversity Management Committees(BMC) have mandatory representations from this vulnerable section. Although advice of BMC in decision making by NBA and SBB are mandatory as per the Act, many of the Panchayats, Municipalities, or Municipal Corporations have not established Such Biodiversity Management Committees till date, which makes the right of the indigenous people to claim their right to livelihood far from reality.

iii. Pro- Tribal legislations and Protection of Rights of Indigenous People

The Indian Forest Act 1927, introduced by the British Government took away the inherent rights of the indigenous communities of India and made them trespassers on their own land. Even after independence, their inherent rights were restricted only to ‘*nistari* rights’ or the right to free grazing and fuel wood. while rights over timber and non-timber produce remained with the state government. *The Forest Conservation Act, 1980* transferred the rights of state governments to convert forest land for non-forest use to Central Government.

a. *The Panchayat (Extension to Scheduled Areas) Act, 1996*

Human rights movements by the activists to recognise the rights of the indigenous communities or tribals over local resources in 1990 led to secure Constitutional recognition to tribal rights over resources through the 73rd Amendment to the Constitution and the constitution of the Bhuria Committee. Based on the recommendations of the Committee, Parliament enacted a separate legislation in 1996, namely, *the Panchayats Extension to Schedule Areas (PESA)*, as an Annexure to the 73rd Amendment specifying special provisions for Panchayats in Schedule V areas. The Act recognized the traditional self-governance systems and the right of tribal communities to protect traditional beliefs, customs, identity and community resources and decentralized existing approaches to forest governance by establishing Gram Sabha as a regulatory authority of their respective villages’ social and economic life. Gram Sabhas are recognised with wide powers, i.e., from approving development projects and managing local markets to deciding on mineral extraction.

However, even after three decades, out of the ten States under the purview of PESA, four states have not formulated the required state-specific rules to empower the Gram Sabhas. Meanwhile, in order to continue State control over forest resources, some States diluted the provisions of PESA. For instance, The Government of Orissa, limited power of Gram Sabha

to manage community resources and resolve disputes according to the customs and traditions of the people by adding a clause, "... consistent with the relevant laws in force." This clearly implies that rights of the indigenous communities (tribals) over forests and minor forest produce is subjected to existing laws. Although PESA does not exclude reserve forests from the meaning of community resources, it is officially presumed that reserve forests are out of the PESA domain in these States. For instance, the NTFP Policy of 2000 of Orissa restricts the control over minor forest produce collected from the reserve forests by Gram Panchayats.³⁰

b. Forest Rights Act, 2006

Meanwhile, in 1996, the Supreme Court in *T.N. Godavarman Thirumulpad v. Union of India*,³¹ enlarged the definition of forest to cover not only statutorily recognized forests (reserved, protected) but also any areas recorded as forest in government records, regardless of ownership, and areas that conform to the dictionary meaning of a forest. The Court directed to create Expert Committees, Central Empowered to Committee and Compensatory Afforestation Fund Management and Planning Authority (CAMPA) to manage funds received for using forest land for non-forest purposes, etc., which resulted in significant reduction of unchecked deforestation and enhanced the conservation of India's biodiversity. However, the expanded meaning assigned to the definition of 'forest' in the judgment considered vast areas of community-owned forests, private forests, and traditional tribal lands under the strict purview of the Forest (Conservation) Act, 1980, which led to eviction of tribals and forest-dwellers by labelling them as 'encroachers of forest land'. Another consequence of the judgment is the power assigned to CEC to take decisions on permitting forest land use, which included land rights of these communities, made it harder to protect their traditional land-use rights, especially, the rights over sacred groves or community-owned forests in Rajasthan and the North-East), were controlled by the forest officials and undermined traditional community management rights.

As a counter measure to *T.N. Godavarman Thirumulpad* Judgment, the *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006* commonly known as the Forest Rights Act (FRA), was enacted with three-fold objectives, viz., to address

³⁰ Sanjoy Patnaik, "PESA, the Forest Rights Act, and Tribal Rights in India" *Proceedings: International Conference on Poverty Reduction and Forests, Bangkok* (September 2007).

³¹ AIR 1997 SC 1228.

the historical injustice caused to the indigenous communities of India, to ensure land tenure, livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers; and also to strengthen the conservation regime of the forests by including the responsibilities and authority on Forest Rights holders for sustainable use, conservation of biodiversity and maintenance of ecological balance.³² The Act is aiming to protect and regenerate forests *vis-a-vis*, protect the marginalized forest-dwellers by providing them with development opportunities. The Act recognises Gram Sabha as the final authority to settle the land rights of the forest dwellers and the consent of the Gram Sabha is mandatory in matters relating to forest land diversion for non-forest use.

With all these positive attributes towards tribal rights, the Act had to ensure basic right to livelihood to the indigenous communities. However, implementation of the Act has some practical challenges. While *the Wildlife (protection) Act*, provides for displacement of people from the protected areas and preventing them from using the forest produces, PESA and Forest Rights Act seek to recognise the community rights. Similarly, extent of jurisdiction of *Gramasabhas* in safeguarding the rights of the tribals collide with the powers of the Biodiversity Management Committee (BMCs) constituted under the *Biological Diversity Act*, as there is no clarity as to whose power is superior and which orders have overriding effects. Moreover, the decision-making power of the *Gramasabha*, can be surpassed by the Forest Advisory Committee (FAC) set up by MoEF, while diverting the forest lands for development purposes. Ultimately, after all these years of legislative developments rights of indigenous people are not practically ensured. While it is highly difficult to enjoy basic human rights without ownership rights or right to practice their traditional occupations, change in climatic conditions may cause more disastrous effect on these indigenous communities, due to their total dependence on the climatic conditions of the land.

Hence, the Judiciary had to interfere to ensure basic human rights to the indigenous people in cases of climate change. In a recent judgment of *M.K. Ranjitsinh & Ors. v. Union of India*,³³ the Supreme Court established a new constitutional right to be protected from the adverse effects of climate change. In furtherance of previously recognized right to a clean and healthy environment, the Court declared a new fundamental right to be free from the adverse effects of

³² [https://tribal.nic.in/fra.aspx#:~:text=The%20Forest%20Rights%20Act%20\(FRA\)%2C,habitation%20 and%20 other%20socio%2Dcultural%20needs](https://tribal.nic.in/fra.aspx#:~:text=The%20Forest%20Rights%20Act%20(FRA)%2C,habitation%20 and%20 other%20socio%2Dcultural%20needs), last cited on 1/02/2026.

³³ *M.K. Ranjitsinh and Others v. Union of India* [2024] 3 S.C.R. 1320.

climate change.³⁴ The judgement also adopts a recognition-based approach towards climate change, recognizing the amplified susceptibility of indigenous, tribal, and forest communities, as well as people living in specific geographic areas like the Lakshadweep islands and forested areas.

V. CONCLUSION

India is recognised as one of the mega biodiversity rich countries of the world due to the contributions of the significant conservation activities of tribal population. However, more than 40% of the indigenous communities are labelled as ‘encroachers’ and displaced from the forests and more than 50% of this tribal population lives below the poverty line in India. To ensure basic human rights and socio-economic justice to these communities, legislative initiatives are made from time to time. Despite these advancements, India faces significant challenges in fully recognizing climate justice to the indigenous people as a constitutional right. One of the major barriers is the lack of enforcement mechanisms and the absence of strong punitive measures for violations. Enhancing public awareness about climate rights and enabling public interest litigation (PIL) will empower these communities to challenge their right violations. However, even after the intervention of Courts to give directions, the lack of proper implementation often renders these judgments ineffective. Hence, there is an urgent need to adopt a strict participatory approach to include the indigenous people in decision making processes, particularly in environment related issues. Further, Central Government has to monitor the proper implementation of the legislative measures given under PESA and Forest Rights Act. A specific legislation to ensure right to livelihood and food security to the indigenous communities in case of extreme climate change conditions, which results in loss of their traditional occupation is also need of the hour.

³⁴ Aditi Srivastava, “From Bustards To Benchmarks: Constitutional Right Against Climate Change Impact” *Manupatra Articles* (2025), available at, <https://articles.manupatra.com/article-details/FROM-BUSTARDS-TO-BENCHMARKS-CONSTITUTIONAL-RIGHT-AGAINST-CLIMATE-CHANGE-IMPACT>> last cited on 1/2/2026.