

---

# TRIBAL AUTONOMY IN INDIA: THE CONSTITUTIONAL & LEGAL BACKGROUND, THE FIFTH & SIXTH SCHEDULES AND PESA, 1996

---

Josephine Hnaihly, LLM, ICFAI University, Dehradun

Dr. Vivek Kumar, Assistant Professor, Department of Law, ICFAI University, Dehradun

## ABSTRACT

This paper explores how tribal autonomy is patterned by India's laws, focusing on the Fifth and Sixth Schedules of the Constitution and the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA). India's tribal population is large about 104 million people, nearly 9 percent of the country and they tend to live in resource-rich areas. Still, they often feel invisible. Despite their long history of exploitation and the need to protect their cultures, as the Constitution acknowledges, and their unique cultures must be protected, and special protective actions have been built. But when you ask tribal peoples themselves, too, the gap between promise and delivery is very wide.

Using a legal doctrine frames, and policy actual digging, this paper attempts to argue that the Fifth and Sixth Schedules as well as PESA were created in the spirit of radicalism to create space for tribal self-determination. Yet the flaws of the system, interference in the state and unexpected court decisions still take away from tribes true autonomy. Finally, the paper offers suggestions to strengthen legal mechanisms to help push India in the direction of constitutionalism, as well as international norms.

The tribal people in India are equally a very serious note there are more than 700 tribes, all having a language, a tradition and a history. You can find them in mountains, forests, beaches, and large plains. Nonetheless, despite their strength and numbers, tribal communities have gained centuries of experience in being excluded from political, economic, and cultural spheres. This is not a new thing which can be traced back to colonial times.

**Keywords:** Tribal Autonomy; 5th Schedule; 6th Schedule; PESA 1996; scheduled tribe; Gram Sabha; Self-Governments.

## 1. Introduction

People reference tribal autonomy as though it is self-rule. That is only a slight indication. To the tribal folks, autonomy would mean retaining their land, having their culture alive and in fact having their voices heard. The whole scenario is messier than it seems. Tribes must navigate through the laws, changing politics and endless so-called development projects. The autonomy of tribes in India is not like that of tribes elsewhere in the world. It is enshrined in a special provision of the Constitution and the rules may be simple today but knotty tomorrow.

This paper aims to clarify all that. The Fifth and Sixth Schedules, not to mention PESA, the 1996 act which is based on the Bhuria Committee<sup>1</sup> and which is pushing the grassroots democracy in the Fifth Schedule areas.

## 2. Historical Background- Tribes in the Colonial and Post-Colonial State.

Return to colonial India, and it is rather somber. The British claim to defend tribal persons, but actually they desired the forests and minerals for their own. A number of laws were enacted during the 1800s with an aim to drive the tribes away from the land and destroy old traditions and whole societies.

The Scheduled Districts Act of 1874<sup>2</sup> brought into being a strangely separate procedure regarding tribal areas. Subsequent of that was the Government of India Act, 1919<sup>3</sup> with Backward Tracts and 1935<sup>4</sup> Act with Excluded and Partially Excluded areas – in short, partitioning tribal territory off the regular laws. It established everything that followed after independence.

Forest regulations were strict colonial. The Government of India is a reckless actor. The Indian Forest Act, 1878 (1927 amendment)<sup>5</sup> had set the government in the solid balance and prohibited such actions like the shifting of agriculture, foraging, and so on. Out of the blue, tribal communities were found to be aliens at home.

---

<sup>1</sup>GOV'T OF INDIA, REPORT OF THE BHURIA COMMITTEE ON EXTENSION OF PROVISIONS OF PANCHAYATS TO SCHEDULED AREAS (1994).

<sup>2</sup> Scheduled Districts Act, 1874.

<sup>3</sup> Government of India Act, 1919.

<sup>4</sup> Government of India Act, 1935.

<sup>5</sup> Indian Forest Act, 1927.

After India achieved freedom, there was a lot of debate regarding how tribes will be governed. A.V. Oommen was the chairman of a tour to tribal regions by the Sardar Vallabhbhai Patel Sub-Committee. Thakkar witnessed legal threats faced by the exploitation of the weaker sections and his poverty. This led to the introduction of the Fifth and Sixth Schedules, influenced by a concept of Jawaharlal Nehru, called the tribal panchsheel that development was not to squash tribal ways.

But other critics like Verrier Elwin, B.D. Sharma and Virginius Xaxa<sup>6</sup> argue that India only inherited colonial thinking. To the government, tribal land was used best when it became mines and factories and dams not much ever a place where people lived. The large-scale projects displaced millions of people on the villages in the 50s and 60s. Development displacement, as estimated by Walter Fernandes, accounts for over 40 percent<sup>7</sup> of the displaced people among tribals even when their population was less than 9 percent of the total.

### 3. The articles 244, 338A, and the Provisions of the Constitution.

Tribal rights have not been hidden under some corner of the Indian Constitution. They are scattered throughout. These two Schedules, the Fifth and the Sixth schedules were presupposed by the Articles 244 and 244A<sup>8</sup>. Under the article 19(5)<sup>9</sup> government can restrict the free movement and domicile in the names of the scheduled tribes. Under article 29<sup>10</sup> minorities have the right to their own culture. The article 46<sup>11</sup> says that the state is meant to uplift Scheduled Castes and Tribes and safeguard them from injustice.

The National Commission for Scheduled Tribes (NCST) was constituted under Article 338A<sup>12</sup> of the Constitution in 2003 which enquires complaints, advises the states, and reports to Parliament. It is however pointed out that NCST is neither staffed and powered to bring in real change.

---

<sup>6</sup> VERRIER ELWIN, A PHILOSOPHY FOR NEFA (1959); B.D. SHARMA, UNBROKEN HISTORY OF BROKEN PROMISES: INDIAN STATE AND THE ADIVASIS (2010).; VIRGINIUS XAXA, STATE, SOCIETY AND TRIBES: ISSUES IN POST-COLONIAL INDIA (2008).

<sup>7</sup> Walter Fernandes, Development-Induced Displacement and Tribal Women, in TRIBAL WOMEN IN INDIA (2004).

<sup>8</sup> INDIA CONST. arts. 244, 244A.

<sup>9</sup> INDIA CONST. arts. 19(5).

<sup>10</sup> INDIA CONST. arts. 29.

<sup>11</sup> INDIA CONST. arts. 46.

<sup>12</sup> INDIA CONST. arts. 338A.

The Fifth Schedule (Article 244(1)) deals with eight states and they are Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana. Whereas the article 244(2) (Sixth Schedule) deals with tribal areas in Assam, Meghalaya, Tripura, Mizoram where the District and Regional councils come first place.

Money is remitted to Scheduled areas in the form of grants under article 275(1)<sup>13</sup> on the welfare of the tribals and their administration. Although the money has to be central and thus the state has to wait and control over the amount of the grant they would get is hardly there.

At the end, tribal autonomy issue boils down to one point, that what would Indian republic mean, constitutionally? Real equality is additional protection. The question posed in this paper is whether the Fifth and Sixth Schedules are keeping that promise or are it is mere lip service.

#### **4. The Fifth Schedule: The Government of Scheduled Areas.**

##### **4.1 Scheduled Areas: Definitions and Standards.**

The Fifth Schedule<sup>14</sup> does not indicate what constitutes Scheduled Areas. Rather, it has left it to the President to pronounce any place as Scheduled Area (see Paragraph 6). With time, individuals have come up with the fundamentals primarily of the Dhebar Commission Report (1960-61)<sup>15</sup> and subsequent judicial support: majority population of the tribe, a small territory, a large size, economic backwardness, and special protection requirement.

The Schedule contains three large items, which are Tribal Advisory Councils (TACs), special powers of Governors, and regulations of the manner in which Union or state legislation will be applicable in the Scheduled Areas. It is all like an exception since tribal communities require otherwise.

This is a large hammer to governors, they can simply declare that any act of Parliament or a state act will not apply in Scheduled Areas or will apply with modifications (see Paragraph 5(2))<sup>16</sup>. It is very straightforward, the executive has powers to override the legislation to address

---

<sup>13</sup> INDIA CONST. art. 275(1).

<sup>14</sup> INDIA CONST. sched. V.

<sup>15</sup> GOV'T OF INDIA, REPORT OF THE SCHEDULED AREAS AND SCHEDULED TRIBES COMMISSION (DHEBAR COMMISSION REPORT) (1961).

<sup>16</sup> INDIA CONST. sched. V, para. 5(2).

tribal demands. The thing is that, Governors hardly ever exercise this power to assist tribes and that is a problem.

#### **4.2 Tribes Advisory Councils**

According to the Fifth Schedule, any state with Scheduled Areas should have Tribes Advisory Councils (TACs) and others with large tribal communities can establish them as well. There are twenty members in each council of which three-fourths must be ST lawmakers. They serve to give advice to the Governor concerning tribal issues.

But enough is enough. TACs are advisory. Governors need not obey their advice. States determine the agenda and offer staff, thus TACs tend to become nominal organizations, rather than actual policy makers. It was reported that TACs hardly see each other, have no technical skills, and they do not actually shape state policy.

#### **4.3 Special Powers of Governor and Executive Power.**

Governors have a lot of executive power in Scheduled Areas under the Fifth Schedule. In addition to determining the law to be applied, they may also make regulations towards what is known as peace and good government (see Paragraph 5(1))<sup>17</sup>. These rules can prevent the transfer of tribal land, regulate the distribution of tribal lands, and even money lending all of which is signed off by the President. That was meant to ensure that tribes never lost their ground and went into debt.

In practice, however, the legislation intended to prevent land loss, particularly in Madhya Pradesh and Jharkhand, is usually evaded by bogus transactions, tribal brokers acting on behalf of outsiders, and lax enforcement of the law.

The Supreme Court's *Samatha v. The case of state of Andhra Pradesh (1997)*<sup>18</sup> had turned a corner. According to the court, tribal land could not pass to the non-tribal (even corporations), or states could not transfer Scheduled Area land to individual mining. In the short term, this safeguarded the right of tribes but was later weakened by state governments through amendments of mining regulations and award of lease to government companies.

---

<sup>17</sup> INDIA CONST. sched. V, para. 5(1).

<sup>18</sup> *Samatha v. State of Andhra Pradesh*, (1997) 8 SCC 191.

#### **4.4 Restrictions of the Fifth Schedule.**

The Fifth Schedule is flawed to some extent. First, it is not self-governance, but executive and administrative control. The Governor and the state remain in power and not tribal communities. TACs recommend, the Governor makes decisions, hence it is all top-down- barely autonomy.

Another issue: Scheduled Area is not specified in the Schedule, and thus it depends on the discretion of the President. This leaves a few tribal groups behind in case the central government never makes the right notification- even when they qualify all the requirements. As noted by the Bhuria Committee (1994), huge tribal populations in West Bengal, Kerala and some Uttar Pradesh are left unguarded.

The tribes can also not appeal government actions under the same framework, unless they proceed to ordinary courts, which are costly, distant, and in most cases, are not aware of tribal practices. There is no specific dispute mechanism a colossal gap.

And there is strain concerning mineral resources. The central government has a hold over mines and minerals through entry 54 of the Union List, and Indian Scheduled Areas are laden with minerals. The national interests in the mining industry almost always prevail over the tribal land and tribal autonomy hence the system only results in serving the mining companies other than the people it is meant to serve.

### **5. The Sixth Schedule: Autonomous Districts and Regional Councils.**

#### **5.1 Organization of Autonomous District Councils.**

A different model is found in the Sixth Schedule<sup>19</sup> of tribal areas in Assam, Meghalaya, Tripura and Mizoram. In this case Governors are not in charge, but the real legislative, executive and judicial authorities are in the hands of Autonomous District Councils (ADC) and Regional Councils (RC). This arrangement is much more like self-government some describe it as the most ambitious experiment in native self-government in India.

It encompasses 3 Assam districts (Karbi Anglong, Dima Hasao, Bodoland Territorial Area), the entire state of Meghalaya, the tribal areas of Tripura and the state of Mizoram. Mainly, tribal

---

<sup>19</sup> INDIA CONST. sched. VI.

district people elect ADCs, although the Governor has the right to nominate four non-tribal people to represent the bigger picture.

The Schedule says (in paragraph 1)<sup>20</sup> that ADCs are authorized to make laws on land management, waterways, forestry, shifting cultivation, village/town government, money lending, and social customary practices- all of which lie at the heart of tribal life.

## **5.2 Legislative and Judicial Powers.**

The ADCs can make laws although the acts should be approved by the Governor. However, the big distinction is, ADCs do not merely give advice like TACs, they only offer proposals, introduce and enact laws, leaving the Governor as an observer and not a dictator. It is the opposite of the model of the Fifth Schedule.

ADCs have their own courts, District Council Courts and Regional Council Courts, which deal with tribal disputes between the members of the Scheduled Tribe about customs, personal law, and certain criminal issues. The District Council Courts are the next in spite to hear the appeals of the Regional Council Courts and the state High Court is the final decision maker to ensure that tribal justice remains aligned with the broader legal framework.

A more recent and more efficient mechanism is the Bodoland Territorial Council (BTC)<sup>21</sup> that was established following the settlement of 2003. BTC manages fortysix topics and is considered to be more successful primarily because tribal leaders were included in the process of developing the council upon historic peace talks.

## **5.3 Critique of the Sixth Schedule.**

The Sixth Schedule is much favored by the majority of scholars as compared to the Fifth. Why? Since ADC model indeed makes tribal communities powerful, i.e. They do not just make laws and decisions, but they are themselves not just safeguarded. According to people such as B.G. Verghese and Sanjib Baruah<sup>22</sup>, ADCs in Meghalaya (Khasi Hills and Garo Hills) serve as democratic bodies and also preserve the tradition of tribal law and land.

---

<sup>20</sup> INDIA CONST. sched. VI, para. 1.

<sup>21</sup> Bodoland Territorial Council Accord, 2003.

<sup>22</sup> B.G. VERGHESE, INDIA'S NORTHEAST RESURGENT: ETHNICITY, INSURGENCY, GOVERNANCE,

But it's not perfect. The Governor still has the power veto ADC laws- so when there is conflict between state governments and ADCs, there is stalemate. State grants are needed since ADCs cannot raise a lot of revenue and are therefore limited in their autonomy. And the Sixth Schedule does not apply to all the states, and hence the majority of the tribes of India are left behind.

The voices are increasingly insisting that the model of Sixth Schedule be applied to the Fifth Schedule regions. In that manner tribal communities would receive elected councils that have actual legislative power rather than advisory TACs. Considering the fact that it would require a constitutional amendment, it would be a significant step towards real tribal self-governance.

## **6. PESA, 1996: Tribal Self-Governance and Devolution.**

### **6.1 Background and Rationale**

The 73rd Constitutional Amendment<sup>23</sup> in 1990s led to the introduction of Panchayati Raj institutions in India to achieve an even greater local democracy. However, tribal areas did not fit the rules and Article 243M<sup>24</sup> laid it out. Scheduled Areas were carved out and Parliament had the responsibility of fine tuning the system. The tribal voices heard in the Bhuria Committee had one thing in common and that was tribes wanted their own self-government based on tradition- not a duplication of the mainstream panchayat rules.

Therefore, the Panchayats (Extension to Scheduled Areas) Act, 1996<sup>25</sup> (PESA) was passed in Parliament. PESA permits tradition to take over, as opposed to imposing the customary panchayat model on tribal communities. The power is really vested in village assemblies, gram sabhas, which are served by elected panchayats.

### **6.2 Key Provisions**

Section 4 is the heart of PESA. It informs state governments in Fifth Schedule regions to draft laws that correspond to that of PESA and ensure that some things cannot be negotiated. Gram sabhas have an opportunity to preserve traditions, regulate resources, resolve disputes, pass

---

DEVELOPMENT (1996); SANJIB BARUAH, INDIA AGAINST ITSELF: ASSAM AND THE POLITICS OF NATIONALITY (1999).

<sup>23</sup> Constitution (Seventy-Third Amendment) Act, 1992.

<sup>24</sup> INDIA CONST. art. 243M.

<sup>25</sup> Panchayats (Extension to Scheduled Areas) Act, No. 40 of 1996, INDIA CODE.

plans, and consultations prior to acquiring land. They are also in charge of small water bodies, issuing of the minor mineral licenses, the possession of minor forest-produce, intoxicants, control of moneylenders, and the supervision of markets. That is a true state to community change.

But Section 4(i) recommends just consultation is required prior to land acquisition-there is no tribal veto. The opponents claim that this is not enough and tribes continue losing the land. *Nandini Sundar v. The Supreme Court*<sup>26</sup>. According to *State of Chhattisgarh, 2011*) consultation must be real rather than a formality and however, the rules have not allowed the tribes the actual power to prevent deals.

### **6.3 Implementation Lapses and State Non-Adherence.**

Even though PESA promised, improvements have not been keeping pace. States under ten Fifth Schedule were to amend their laws, and most of them did, although change is usually watered down. States devolve power to elected panchayats instead of gram sabhas again more controllable by the local elites. This is not the point, as gram sabhas are available to all people, even the most marginalized.

States are reluctant in allowing gram sabhas to control forests and markets. In 2021, NITI Aayog<sup>27</sup> discovered that a large number of states do not follow PESA or even write regulations that are completely contrary to that. The state of Jharkhand, however, puts gram sabhas on action inside a district only after its approval, instead of the opposite.

Why is PESA failing? States desire to be in power. There is abundance of resources in tribal areas and the states do not have much incentive to give them up. Tribal political voices remain feeble and PESA has no teeth, no fines, no checks. The Ministry of Panchayati Raj boasts of supervising PESA, yet there is actually no compulsion to the states to comply with it.

## **7. Court Interpretation of the Provision of Tribal Autonomy.**

The Supreme Court has been intervening in tribal rights time and again. It is sometimes on the side of tribal property and self-governance; sometimes on the side of state building.

---

<sup>26</sup> *Nandini Sundar v. State of Chhattisgarh*, (2011) 7 SCC 547.

<sup>27</sup> NITI Aayog, *SDG India Index 2020–21* (2021).

The case of *Samatha* (1997)<sup>28</sup> was a big thing non-tribal land could not be given to non-tribals or even individual companies, even in the mining industry. It was based on constitutional values, however, not all people shared this opinion, Justice Hansaria feared that such a decision would cripple economic growth.

*Vedanta/Niyamgiri* (2013)<sup>29</sup> took a strong position in favor of tribal self-determination. The Gram sabhas voted on whether mining will endanger their culture and the Dongria Kondh voted no. This was a unique victory on tribal control.

More in regards to the state violence against tribals, Nandini Sundar (2011)<sup>30</sup> criticized the government whose failure to convene gram sabhas was an issue as did the failure of PESA to do anything about it.

Other instances were not as progressive. The Court in *Umed Ram Sharma* (1986)<sup>31</sup> permitted the development of roads in tribal regions without consultation claiming that the project was in the interest of the people. States subsequently discovered loopholes to *Samatha* by establishing so-called deemed government companies to continue mining.

Bottom line- tribal rights have some solid principles established by courts, but there is no one to enforce these and also there is no one to check the states when they violate the rules.

## **8. Crossover with the Forest Rights Act, 2006.**

The most significant law on tribal rights in India as of 2006 is the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006<sup>32</sup> popularly known as the Forest Rights Act (FRA). The FRA came in to reverse the historical injustice which had been fallen upon the forest-dwelling communities by the previous colonial and post-independent forest regulations. It is the first time that it formally acknowledges tribal individual and community rights to forests, which over the years tribals have relied on.

The FRA in fact relates well with the Fifth Schedule and PESA. Among the key characteristics

---

<sup>28</sup> *Samatha*, supra note 17.

<sup>29</sup> *Orissa Mining Corp. v. Ministry of Environment & Forests*, (2013) 6 SCC 476.

<sup>30</sup> Nandini Sundar, supra note 25.

<sup>31</sup> *State of Himachal Pradesh v. Umed Ram Sharma*, (1986) 2 SCC 68.

<sup>32</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, No. 2 of 2007, INDIA CODE.

of it is the powerful role assigned to gram sabhas - local village assemblies not only to determine the rights of people, but also to take care of the community forest resources. Section 5<sup>33</sup> makes it the gram sabhas that have the duty to conserve wildlife, forests and biodiversity and ensure that local forests remain devoid of adverse encroachment and other activities. Take this and add to it the analogous gram sabha capabilities contained within PESA, and you have an effective, community-style, strategy of managing the forest regions of India.

But the FRA, alas has a history, it is the history of grandiose law on paper and the coarse reality on the ground. Bureaucratic resistance, lack of awareness among the tribes, and direct resistance by the state forest departments (which have frequently waged campaigns against the acknowledgment of individual rights claims) have all served as very damaging detractions to the Act. This all came to a crisis when the Wildlife First case in 2019<sup>34</sup> the Supreme Court ordered more than a million forest dwellers to be evicted after their claims were rejected. The order was met with a whirlwind of criticism and was subsequently reformed but it revealed the extent to which these so-called recognized rights are actually so at the whim of the government not actively promoting them.

PESA also has teeth added to it by the FRA in big projects, such as development or forest area industry. It is provided by Section 6<sup>35</sup> of the FRA that any project cannot proceed in any forest area until the rights of forest-dwellers are acknowledged completely. This combined with the fact that PESA states that the gram sabha needs to be consulted results in a two step consenting process in relation to any project within Scheduled Areas. However, in practice, the two requirements are often disregarded by state governments and developers. Either they conduct token meetings with people, or they do not hold any gram sabhas, or they provide environment and forest clearances by the time any one realizes the rights of the tribals.

## 9. Aspects of International Law: UNDRIP and the Indian participation.

In 2007<sup>36</sup>, the United Nations accepted the Declaration on the rights of indigenous peoples (UNDRIP). It is the most comprehensive declaration of indigenous rights in the world, which

---

<sup>33</sup> Id. § 5.

<sup>34</sup> Wildlife First v. Ministry of Forest & Environment, W.P. (C) No. 109/2008.

<sup>35</sup> Id. § 5.

<sup>36</sup> United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

includes the right to self-determination, the right to land and natural resources, the preservation of cultural heritage, and most importantly the concept of free, prior and informed consent (FPIC)<sup>37</sup> to any action by a government that will affect an indigenous community. India was an abstinent on UNDRIP, so technically at least, it has assented to these principles.

But the situation of India is mired. The government vehemently claims that they do not really have indigenous people as per international law. Their point: tribal communities in India are not tiny groups that were left behind by the European settlers as they had been in the Americas or Australia. Rather, according to the government, Indian tribes are no more than another component of a very diverse state, and there is no reason why the rules should actually apply. Scholars and campaigners have been countercycling, noting that it is priority in history, separate culture, and marginalization in politics that make a people indigenous, which applies to the Scheduled Tribes of India.

The FPIC standard offered by UNDRIP is a ground-breaking standard when compared with the Indian law at present. FPIC implies that communities must give their free and prior consent to any sort of change that may occur to them. They need to be told the way they can comprehend, they must be able to say no, and the decision they make should be final. By contrast, PESA simply states that gram sabhas must be consulted by officials - which is a much weaker requirement. The FRA and the environmental impact assessment process are in some ways echoing that of FPIC but they do not actually establish the right of consent as a part of the legal procedure.

It has occasionally been referred to in the Supreme Court such as the Vedanta/Niyamgiri case where the court supported the notion of community consultation. However, generally, the government has not been attempting to incorporate UNDRIP or FPIC standards in Indian law, and nobody has been keen to alter that. It is a contradiction that this gap between international promises and the domestic reality needs to be corrected in the future through reforms.

## **10. Conclusion and Recommendations.**

Tribal autonomy in India has been outlined in the major sections of the legal framework in India: the Fifth and Sixth Schedules and PESA, as discussed in this paper. The ambition is not doubted in these laws, as the Constitution and the finest decision-making of Indian Supreme

---

<sup>37</sup> Id.

Courts demonstrate that they are indeed determined to secure the protection of tribal community and to leave the governance of this unexplored land to them. The Fifth Schedule provides a system of protection, the Sixth establishes independent councils, and PESA places democratic self-rule at the very village level. When implemented as envisioned, these acts are bound to uplift both the freedom and welfare of the Indians tribes in an enormous manner.

But there is an enormous disjuncture in the gap between the law and what occurs in reality. Time and again, the state desire to exploit tribal resources, lack of adequate enforcement, absence of proper tribal representation, and lack of goodwill by the officials to relinquish power, trample down tribal rights. The result? Laws appear to be protective but the real cases of violation are prevalent in most of the Fifth Schedule states.

Considering this, the following are some of the suggestions:

The first step will be to beef up the constitutional framework, through amendment of the Fifth Schedule. Introduce district level councils elected, having actual powers of legislation and judicial character such as in the Sixth Schedule. The old advisory tribal advisory council that is just advisory and lacks decision making powers should be introduced to a body that has some level of decision-making power.

Second, PESA needs real teeth. Include the enforcement mechanism, perhaps a Central Monitoring Authority to have the power to review the laws of the state on PESA and prescribe to action - including the intervention of the President on a case of repeated breach.

Third, the FPIC standard ought to substitute the term consultation in the PESA as well as FRA, particularly on all matters pertaining to land, mining or forest clearances in the Scheduled Areas. This would augur well with the UNDRIP commitments of India.

Fourth, re-examine where in fact Scheduled status is provided. Include in the definition tribal-majority areas that lack at present, and ensure that when the President makes such decisions he or she acts on the advice of the National Commission of Scheduled Tribes.

Fifth, tribes should be given legal right to share the benefits of resources in their respective territories. Revenue-sharing systems should exist in that they are entitled to a true portion of the mining and other projects in Scheduled Areas.

Sixth, allocate a lot of funds in legal aid and capacity-building programmes. The tribes require effective instruments and resources to realistically implement their entitlements in the Fifth and Sixth Schedules, PESA, and the FRA.

Ultimately, the issue of tribal autonomy gets to the core of the question of what type of constitutional republic India would be. Is equality before the law going to be used to cover up deep and continuing inequality in the country? Or will it, at last, fulfill the promise of its preamble of justice, social, economic, political, of justice, to the most marginalized of them? Despite its imperfections, the legal framework provides India with the means through which it can do the right thing. It is now a matter of whether there is a political will to employ them or not.

## **BIBLIOGRAPHY**

### **I. Primary Sources**

#### **A. Constitutions, Statutes & International Instruments**

- INDIA CONST. sched. V.
- INDIA CONST. sched. VI.
- Panchayats (Extension to Scheduled Areas) Act, No. 40 of 1996, INDIA CODE (1996).
- Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, No. 2 of 2007, INDIA CODE (2007).
- Forest (Conservation) Act, No. 69 of 1980, INDIA CODE (1980).
- Mines and Minerals (Development and Regulation) Act, No. 67 of 1957, amended by Act No. 10 of 2015, INDIA CODE.
- Constitution (Eighty-Ninth Amendment) Act, 2003.
- United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

#### **B. Cases**

- *Samatha v. State of Andhra Pradesh*, (1997) 8 SCC 191.
- *Orissa Mining Corp. v. Ministry of Environment & Forests*, (2013) 6 SCC 476.
- *Nandini Sundar v. State of Chhattisgarh*, (2011) 7 SCC 547.
- *Wildlife First v. Ministry of Forest & Environment*, W.P. (C) No. 109/2008.
- *State of Himachal Pradesh v. Umed Ram Sharma*, (1986) 2 SCC. 68.

## **II. Secondary Sources**

### **A. Books**

- SANJIB BARUAH, *INDIA AGAINST ITSELF: ASSAM AND THE POLITICS OF NATIONALITY* (Univ. of Pennsylvania Press 1999).
- VERRIER ELWIN, *A PHILOSOPHY FOR NEFA* (North-East Frontier Agency 1959).
- B.D. SHARMA, *UNBROKEN HISTORY OF BROKEN PROMISES: INDIAN STATE AND THE ADIVASIS* (Freedom Press 2010).
- K.S. SINGH, *THE SCHEDULED TRIBES* (Oxford Univ. Press & Anthropological Survey of India 1994).
- ARCHANA UPADHYAY, *INDIA'S FRAGILE BORDERLANDS: THE DYNAMICS OF TERRORISM IN NORTHEAST INDIA* (I.B. Tauris 2009).
- B.G. VERGHESE, *INDIA'S NORTHEAST RESURGENT: ETHNICITY, INSURGENCY, GOVERNANCE, DEVELOPMENT* (Konark 1996).
- VIRGINIUS XAXA, *STATE, SOCIETY AND TRIBES: ISSUES IN POST-COLONIAL INDIA* (Pearson 2008).

### **B. Journal Articles & Book Chapters**

- André Béteille, *The Concept of Tribe with Special Reference to India*, 27 EUR. J. SOC. 297 (1986).
- C.R. Bijoy, *India: Adivasis and the Law*, in *PARADIGM SHIFT?* (Kathrin Wessendorf ed., IWGIA 2008).
- Walter Fernandes, *Development-Induced Displacement and Tribal Women*, in *TRIBAL WOMEN IN INDIA* (Rekha Alex ed., Serials Publications 2004).
- Subir Sinha, *Lineages of the Developmentalist State: Naturalism and Nation in Tribal Development Discourses, 1947–1987*, 50 COMP. STUD. SOC'Y & HIST. 991 (2008).

- Virginius Xaxa, *Tribes as Indigenous People of India*, 34 ECON. & POL. WKLY. 3589 (1999).

### **C. Government Reports**

- GOV'T OF INDIA, REPORT OF THE BHURIA COMMITTEE ON EXTENSION OF PROVISIONS OF PANCHAYATS TO SCHEDULED AREAS (1994).
- GOV'T OF INDIA, REPORT OF THE SCHEDULED AREAS AND SCHEDULED TRIBES COMMISSION (DHEBAR COMMISSION REPORT) (1961).
- MINISTRY OF PANCHAYATI RAJ, STUDY ON PESA IMPLEMENTATION (2021).
- NITI AAYOG, SDG INDIA INDEX 2020–21: TRIBAL DEVELOPMENT INDICATORS (2021).