



INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW

Volume 3 | Issue 4

Art. 5

2024

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Recommended Citation

Mahee Mishra, *Advocating for the Rights of Indigenous Peoples in India*, 3 IJHRLR 78-84 (2024).

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Advocating for the Rights of Indigenous Peoples in India

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ABSTRACT

The article highlights legislative and social measures to protect Indigenous peoples' rights in India, such as the Forest Rights Act (FRA) and the Panchayats (Extension to Scheduled Areas) Act (PESA). The FRA respects forest-dwelling communities' customary rights by granting them the legal right to maintain and manage forests for their livelihood and cultural preservation. However, obtaining these rights is difficult due to bureaucratic delays, land alienation, and illiteracy. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is an international instrument establishing a comprehensive framework for preserving indigenous rights worldwide. Non-governmental organizations (NGOs) are important in advancing Indigenous rights by offering legal assistance, awareness campaigns, and economic development initiatives. Indigenous resistance and movements influence the future. Indigenous people in India have fought a valiant and tenacious battle against policies of relocation and marginalization. To guarantee that Indigenous peoples' rights are adequately preserved and maintained, there should be a continuous review of policies and practices.

KEYWORDS

Indigenous Rights, Indigenous Cultural Protection, Economic Welfare, Social Injustice, Forest Rights, and Legal Provisions

“Human rights are not a privilege conferred by government. They are every human being’s entitlement by virtue of his humanity.”

– Mother Teresa

Imagine our ancestors living in the land for centuries, disfranchised, and marginalized, and the threat of displacement stared one, probably at the possibility of losing one’s cultural identity is the case with most of the indigenous peoples of India, often referred to as Adivasis. These indigenous peoples make up approximately 8.6% of the country’s population and

despite their holding a significant place in the population, these communities have been systematically wronged for a long time. The article throws light on the multifaceted legal and social efforts to secure Indigenous peoples' rights in India and un.masks success stories and challenges in continuation.

UNDERSTANDING THE LEGAL RIGHTS OF INDIGENOUS PEOPLES IN INDIA

In terms of indigenous communities, the legal framework of India has pretty strong provisions, aimed at promoting their welfare, protecting their rights, and ensuring participation in governance. The constitution of India provides many safeguards for Scheduled Tribes, including Articles 15, 16, 46, 244, and 275.¹ Some of the main constitutional provisions are enumerated below:

- **Article 46²:** It is the responsibility of the state to safeguard the economic and educational interests of the Scheduled Tribes and to advocate their rights against social injustice and exploitation in all its manifestations.
- **Article 244³:** It addresses how special schedules, namely the Fifth and Sixth Schedules, are used to administer Scheduled Areas and Tribal Areas.
- **Article 275⁴:** It authorizes the government to receive grants-in-aid to improve the welfare of Scheduled Tribes and the management of Scheduled Areas.
- **The Forest Rights Act⁵:** The FRA was enacted in 2006 as a path-breaker legislation recognizing the traditional rights of forest-dwelling communities by giving them the legal right to protect and

¹ India Const. art. 15, 16, 46, 244, 275.

² India Const. art. 46.

³ India Const. art. 244.

⁴ India Const. art. 275.

⁵ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2 of 2007, India Code (2007).

manage forests to ensure their livelihood and cultural preservation. FRA is, in fact, a correction to historic injustices that were perpetrated under colonial forest laws.

- **The Panchayats (Extension to the Scheduled Areas) Act⁶:** PESA, enacted in 1996, extends provisions of Part IX of the Constitution relating to the Panchayats to Scheduled Areas. It provides for Gram Sabhas of in-village management of community resources and involvement in decision-making processes affecting their lives.

HOW CAN THE FOREST RIGHTS ACT BENEFIT INDIGENOUS COMMUNITIES?

The FRA has been of very crucial significance in the process of empowering Indigenous people by providing a legal basis for claims on their ancestral lands and resources. As of 2021, over 20 million claims have been filed under the FRA, covering around 40 million acres of land and 24.62% of India's forest land is under the purview of this act. The noticeable benefits of the act include:

- **Land Rights:** FRA recognizes individual and community rights to land, thus providing forest-dwelling communities with the ability to claim ownership and the use of land.
- **Livelihood Improvement:** By securing land rights, FRA improves livelihood opportunities for indigenous peoples through the sustainable use of forest resources.
- **Cultural Conservation:** Community rights should therefore be recognized to aid in the preservation of cultural and spiritual practices associated with the land and the forests.

WHY ACCESSING THESE RIGHTS IS HARDER THAN IT SHOULD BE?

A study by the Rights and Resources Initiative in 2018 found that only

⁶ The Panchayats (Extension to the Scheduled Areas) Act, 1996, No. 40 of 1996, India Code (1996).

about 3% of the total forest area is eligible for recognition under the FRA. Despite seemingly strong institutional and legal measures, inefficiencies do creep into the system. Access to rights for the Indigenous communities is up against the following possible challenges:

- **Bureaucratic Delays:** FRA and PESA are not correctly implemented because of bureaucratic inertia and delays to ensure timely justice.
- **Land Alienation:** Continuous land acquisition for industrial projects has led to the displacement and alienation of indigenous communities from their ancestral lands.
- **Ignorance:** Most of the Indigenous people are not aware of their rights under the law and hence are unable to claim the protections and benefits flowing therefrom.

THE IMPACT OF GLOBAL LEGAL FRAMEWORKS ON INDIGENOUS PEOPLE

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁷ is an international instrument containing an inclusive framework for indigenous rights protection at the global level. It guides domestic policy action and provides a platform for advocacy toward better alignment of national legislation with international human rights standards. 144 countries have adopted the UNDRIP by the year 2021.

PIVOTAL CONTRIBUTION OF NON-GOVERNMENTAL ORGANIZATIONS

NGOs play a critical role in furthering Indigenous rights. Organizations like *Mrida Education and Welfare Society*⁸, *Nilgiris Wynaad Tribal Welfare Society*⁹, and *Pariwar Education Society*¹⁰ in India are instrumental in this

⁷ United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

⁸ Mrida Education and Welfare Society, *Annual Report* (2021).

⁹ Nilgiris Wynaad Tribal Welfare Society, *Programs and Impact* (2021)

¹⁰ Pariwar Education Society, *Empowerment Programs* (2021)

cause. These NGOs help in the protection of the rights of Indigenous peoples in India through:

- **Legal Aid:** Very essentially, NGOs extend the service of legal aid to indigenous communities in going through complicated legal processes.
- **Awareness campaigns:** NGOs organize awareness programs within indigenous communities to make them realize their rights and, through this process, can assert their rightful claims.
- **Economic Development:** NGOs work on development programs compatible with the necessities of indigenous communities so that they can have sustainable livelihoods.

INDIGENOUS RESISTANCE AND MOVEMENTS SHAPING THE FUTURE

Indigenous people of India have had a resilient and resistant struggle throughout their history against the policies of displacement and marginalization. Some notable movements include:

- ***Narmada Bachao Andolan***¹¹: The *Save Narmada Movement* has been active since 1985. This movement raised its voice against the displacement due to the building of the Sardar Sarovar dam on the Narmada River, thereby reflecting the cause of dislocated communities.
- **Resistance to *Kudremukh National Park***¹²: The indigenous people resisted their displacement upon the declaration of this national park, thereby further deepening their struggle against land rights violations and cultural heritage.

Protection of the Rights of Indigenous Peoples in India requires an

¹¹ *Narmada Bachao Andolan (NBA) (2024) NBA - नर्मदा बचाओ आंदोलन.*

¹² *ANF being used to evict tribals from Kudremukh National Park', Deccan Herald.*

integrated approach to legal protection, social awareness, and active participation of various stakeholders. The Indian Constitution and other acts, such as the FRA and PESA, provide a solid foundation. However, effective implementation and awareness are important. The roles played by NGOs and international frameworks like UNDRIP are important in filling gaps so that Indigenous communities may fully exercise their rights. Going forward, there should be a constant process of policy and practice review to make sure that these issues can adapt to the indigenous issues metastasizing. To this end, we can look forward to a time when Indigenous peoples' rights are fully protected and respected by creating an enabling environment at the junction of legal, social, and political efforts.