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Forest Laws, Development Projects, and Tribal Displacement: A Human Rights Perspective

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Abstract

This paper critically examines the intersection of India's forest-governance regime, large-scale development projects, and the consequent displacement of tribal communities through a human-rights lens. Tracing the colonial origins of the Indian Forest Act, 1927 and its evolution into modern statutes—most notably the Forest Rights Act, 2006—the study highlights how a longstanding conservation-through-exclusion model enabled state control over forested territories while marginalising Adivasi customary rights. It then analyses the constitutional architecture (Fifth Schedule, PESA) and emerging international norms (UNDRIP, FPIC) that re-frame indigenous peoples as rights-holders rather than passive beneficiaries. Documenting typical patterns of eviction linked to dams, mining, infrastructure, and fortress-conservation policies, the paper demonstrates that tribals, although only 8 percent of the population, have suffered roughly 40 percent of all development-induced displacements since independence. The discussion foregrounds the right to life, livelihood, and cultural identity under Article 21 and ICCPR Article 27, exposing persistent gaps in rehabilitation and compensation despite reforms such as the LARR Act, 2013. Judicial interventions—from Samatha to Niyamgiri—reveal a gradual shift toward recognising tribal consent and community forest rights, yet implementation deficits and conflicting policy imperatives continue to undermine these gains. The paper concludes that balancing economic growth with human rights demands robust enforcement of FPIC, community-centred benefit-sharing, and stronger oversight by Gram Sabhas, courts, and oversight bodies like the NCST. True sustainable development, it argues, is unattainable unless the historical injustice suffered by forest-dependent tribes is rectified through participatory governance and rights-based safeguards.

Keywords: Tribal displacement, Forest Rights Act, Development-induced eviction, Human rights, Indigenous consent, PESA, Scheduled Areas, Land acquisition, Rehabilitation and resettlement, Free Prior Informed Consent

Introduction

India's pursuit of economic development has often come into tension with the rights of its indigenous peoples (Scheduled Tribes or Adivasis). Large infrastructure projects, dams, mines, industrial complexes, conservation parks, frequently require vast tracts of land, much of it in forested regions that Adivasi communities call home. The paradox is stark: tribal communities constitute only about 8% of India's population, yet they account for roughly 40% of all people displaced by development projects since independence[1]. Laws governing forests and land use, many rooted in colonial policy, have historically facilitated the appropriation of tribal lands in the name of the public interest. The result has been widespread displacement, leading to loss of livelihood, homelessness, and the erosion of cultural identity for these communities. This research paper examines the issue from a human rights standpoint, analyzing how forest laws and large-scale development projects have contributed to tribal displacement, the legal frameworks and safeguards in place (or lacking), and the responses of courts and policymakers. The discussion spans colonial-era forest legislation to contemporary laws like the Forest Rights Act of 2006, and assesses their efficacy in balancing developmental objectives with the fundamental rights of tribal peoples. In doing so, the paper adopts a doctrinal approach, scrutinizing statutes, constitutional provisions, and case law, while also incorporating international human rights standards to evaluate India's performance against global norms. The aim is to critically evaluate gaps in the legal regime and offer recommendations for aligning development with the rights and dignity of tribal communities. The narrative proceeds by first contextualizing the historical backdrop of forest laws and development projects, then outlining tribal dependence on forests, followed by a review of the legal framework of tribal rights, an analysis of displacement patterns and human rights implications, a survey of judicial and policy responses, and finally concluding with suggestions for reform. Throughout, the tone is that of a scholarly inquiry, albeit with the acknowledgment that the stakes are profoundly human: the lives, livelihoods, and identities of India's first inhabitants are at the heart of this discourse, which necessitates a humane and rights-oriented approach to development.

Context of Forest Laws and Large-Scale Development Projects

To understand the present conflict between development and tribal rights, one must

trace its roots to the colonial era. British colonial administration viewed India's forests as resources for revenue and commercial exploitation, instituting laws that asserted state control over forests at the expense of indigenous customary rights. The Indian Forest Act, 1878 (the precursor to the 1927 Act) divided forests into reserved and protected categories, severely restricting local access. This colonial policy paradigm continued with the Indian Forest Act of 1927, which remains in force today with amendments. The 1927 Act consolidated state power to notify "reserved forests" and "protected forests," criminalizing unauthorised use of forest produce or residence in these areas[2]. In practice, such laws dispossessed many forest-dwelling tribes of their traditional lands and livelihood sources. Scholars have noted that the Indian Forest Act, 1927 *"displaced traditional forest dependents and dwellers from forest lands reserved for economic timber harvesting for the colonial government"*[2]. By vesting ownership and management of forests in the state, the law effectively erased communal land rights that tribes had exercised for generations. Colonial forest departments often evicted communities or curtailed their shifting cultivation, grazing, and gathering practices, considering these activities as "encroachments" or impediments to scientific forestry. The legacy of these policies was an accumulated historical injustice: by independence, millions of Adivasis had been alienated from their resource base and pushed into marginal existence.

Post-independence, India's development strategy unfortunately mirrored some of these exclusionary practices instead of reversing them. The early decades after 1947 saw an emphasis on large state-led projects as symbols of progress, *"temples of modern India"* in Jawaharlal Nehru's famous phrase. Dams on major rivers (such as Hirakud, Bhakra-Nangal, Sardar Sarovar), steel plants, mines, and power stations were established to spur economic growth. While these projects benefited the nation at large, they imposed heavy sacrifices on local populations. Displacement became an almost inevitable consequence of "development" as understood in a post-colonial state-building context. Notably, many of these mega-projects were located in mineral-rich or remote areas predominantly inhabited by Scheduled Tribes (e.g. the dam projects in central India, or mining in Jharkhand, Odisha and Chhattisgarh). Consequently, Adivasi communities bore a disproportionate burden of development-induced displacement. It is estimated that over 50–60 million people were displaced by development projects in India between

1950 and 2000, and roughly 40% of these displaced persons were tribals[1]. This is a striking over-representation given the tribal population percentage, reflecting both the geography of India's natural resources (forests, rivers, minerals often overlap with tribal habitations) and the vulnerability of Adivasi land rights under India's legal framework.

Adding to development pressures, conservation policies in independent India initially took a rigid approach that further displaced forest communities. The **Wildlife Protection Act, 1972** created a network of national parks and sanctuaries from which human presence was legally excluded. This "fortress conservation" model, while well-intentioned for wildlife, resulted in the eviction of many forest-dwelling tribes from core areas of Tiger Reserves and other protected areas without adequate alternatives. For example, Project Tiger (launched 1973) led to the relocation of hundreds of villages; an estimated 100,000–200,000 forest dwellers (a significant number of them tribal) were displaced from tiger reserves alone by the turn of the century[2]. Thus, both the developmental state and the conservation state often converged in treating indigenous inhabitants as obstacles to be removed, rather than as partners in growth or guardians of the forests.

By the late 20th century, the cumulative effect of these processes was alarming. Adivasi communities faced landlessness, food insecurity, and social disintegration on a massive scale. Official committees began taking note of this "internal colonization." A Government of India **High-Level Committee on Tribal Communities** (2014) observed that roughly a quarter of India's tribal population had experienced displacement (as project oustees or project-affected people) at least once in their lifetime, given that many tribal regions are resource-rich and targeted for multiple projects[3]. The Committee and other studies also highlighted that rehabilitation efforts, where undertaken, seldom restored the living standards of the displaced. Land alienation, whether through forest encroachments by the state or acquisition for industry, emerged as a core driver of tribal impoverishment and unrest. Indeed, some of the flashpoints of tribal insurgencies and conflicts (for instance, the Naxalite movement in central India) have been linked to grievances over

[1] Orissa Mining Corporation Ltd. v. Ministry of Environment & Forest & Ors., (2013) 6 SCC 476
[2] Ministry of Tribal Affairs, Report of the High-Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities of India (Government of India, 2014) 255–263
[3] S.N. Tripathy, "Indigenous Displacement in India," Society and Culture Development in India 1, no. 1 (2024): 173–174.

displacement and exploitation. This context sets the stage for why legal reforms were demanded – to recognize tribal land rights and curb arbitrary displacement – and why a human rights perspective is essential. It is within this historical and socio-legal landscape that one must situate the current framework of forest laws and the ongoing struggles of tribal communities in India.

Brief Overview of Tribal Communities' Dependence on Forests

Tribal communities in India have an intimate relationship with forests, one that is economic, social, and spiritual. Adivasis are among the **original inhabitants** of the subcontinent's forests and hills, and their lifestyles evolved in close harmony with nature. Even today, in an era of rapid urbanization, millions of tribals continue to reside in or adjacent to forest areas and rely on forest resources for survival. It is estimated that around 100 million people in India – a large proportion of whom are Scheduled Tribes – depend on forests for livelihoods and subsistence needs[4]. For many tribal villages, the forest is a primary source of food (through hunting, gathering fruits, tubers, and bush meat), fuel (firewood), housing material (timber, bamboo, leaves for thatching), and medicinal plants. Activities like shifting cultivation (slash-and-burn agriculture practiced by several Northeastern and central Indian tribes), collection of minor forest produce (e.g. tendu leaves, mahua flowers, honey, resins), and pastoralism are intricately tied to seasonal rhythms of the forest. In remote forest-fringe regions, where formal employment opportunities are scarce, forests act as a safety net providing sustenance during lean periods. One report by the FAO noted that in India's forest fringe villages, forest income often constitutes the second largest source of livelihood after agriculture, and more than half of the country's 70 million tribal people (as per 1990s data) derived their sustenance primarily from forests[4].

Beyond material sustenance, forests are the cornerstone of **tribal cultural identity and way of life**. Adivasi cosmologies and religions frequently regard elements of nature – trees, groves, hills, animals – as sacred or as the abodes of ancestral spirits. Many tribes have sacred groves protected for generations, and rituals, songs, and folklore that celebrate their symbiotic link with the forest. The relationship is not merely one of usage but of stewardship: traditional norms often include conservation ethos, such as restrictions on

[4] Food and Agriculture Organization (FAO), Forest, People and Livelihoods: The Need for Participatory Management (FAO Regional Office, Bangkok, 2000).

over-harvesting certain species or preserving patches of forest for regrowth. This close bond means that loss of access to forests is not only an economic shock for tribal communities but also a blow to their social fabric and heritage. Displacement from ancestral forests severs the connection to one's ancestral graves, places of worship, and the very landscape that anchors community memories and identity. As the Supreme Court of India recognized in the *Orissa Mining Corporation* (Niyamgiri) case, for tribes like the Dongria Kondh the forested hills are "not just an economic resource, but the essence of their sacred culture and identity" – to destroy that bond is to cause an existential harm beyond monetary value[5].

Historically, however, mainstream policy-makers viewed tribals' dependence on forests as a sign of primitivism or a hurdle to modernization. During the colonial period and even after, there was a tendency to regard shifting cultivators and hunter-gatherers as needing to be settled or transformed, rather than empowering their sustainable practices. This paternalistic mindset reinforced laws that either ignored tribal rights or presumed that integrating tribals into a market economy (often through displacement and relocation) was a benevolent outcome. Only in recent decades has there been broader appreciation for the value of indigenous knowledge systems in conserving forests, and acknowledgement that **tribal communities are the natural custodians of forests rather than their destroyers**. Indeed, data indicates that wherever tribal rights are secure, rates of deforestation and wildlife loss tend to be lower, as local communities have a stake in protecting resources[6]. This insight has gradually informed policy shifts, such as participatory forest management and the enactment of the Forest Rights Act 2006, which explicitly recognizes the dependence of "forest-dwelling Scheduled Tribes and other traditional forest dwellers" on forests for their livelihood and articulates a goal of correcting the historical injustice done to them[6].

In summary, the centrality of forests to tribal life means that any legal framework or development initiative impacting forests will directly affect tribal communities. Their marginalization in decision-making not only violates their rights but can also undermine environmental sustainability. The ethical calculus is clear: **when**

[5] Madhu Sarin, "Scheduled Tribes and Their Dependence on Forests: Evidence from India," in Human Rights and Biodiversity 105 (eds. T. Greiber et al., IUCN, 2009).

[6] Order of Supreme Court of India dated 23 November 2001 in W.P. (Civil) No. 202/1995, T.N. Godavarman Thirumulpad v. Union of India.

Adivasis are displaced from forests, it is not merely a physical relocation but the uprooting of an entire way of life. This underscores why a human rights perspective, one that values livelihood, culture, and dignity, is indispensable in evaluating forest laws and development policies.

Legal Framework Governing Forests and Tribal Rights

India's legal framework concerning forests and tribal rights is a patchwork of colonial-era statutes, constitutional provisions, and progressive legislation enacted in response to tribal movements and policy reorientation. This section reviews the key components of this framework, focusing on: (a) the Indian Forest Act, 1927; (b) the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; (c) relevant constitutional provisions including those for Scheduled Areas and tribal welfare; and (d) applicable international human rights standards on indigenous peoples and displacement. Together, these sources of law reflect an evolution from a preservationist, state-centric approach to forests towards a rights-based approach that seeks to empower forest communities – albeit with many gaps between law and practice.

Indian Forest Act, 1927

The **Indian Forest Act, 1927** (IFA) is a foundational statute that codified the colonial government's forestry regime, and it continues to regulate forests in India (except where state-specific forest laws have supplemented it). The Act gives the government extensive powers to declare any land covered with trees or shrubs as a "Reserved Forest" or "Protected Forest" and to control the extraction of forest produce. Once an area is notified as Reserved Forest, the rights of the local inhabitants are extremely limited; traditional rights and privileges (to graze cattle, collect firewood, etc.) may be recorded during the reservation process, but anything not expressly permitted is prohibited[7]. The IFA criminalizes a range of activities in reserved forests – hunting, clearing land for cultivation, felling trees, or even trespassing – without the prior sanction of forest authorities. The thrust of the law is protection and maximization of timber and other resources for the state, with a **conservation-through-exclusion** model. As a result, for tribal communities living in what became reserved forests, the IFA transformed them from rightful inhabitants into illegal squatters virtually overnight unless their rights were

[7] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Act 2 of 2007), Preamble & §4.

recognized in the settlement process (which, historically, was perfunctory or biased against shifting cultivation and communal rights).

Under the IFA, forest officials could (and often did) summarily evict people from reserved forests for encroachment. The law provided for the creation of "Village forests" and recognition of some community rights on paper, but in practice these provisions were rarely implemented in favor of tribals until recent times. Instead, colonial administrators and later Indian forest departments used the IFA primarily to enforce a strict hierarchy: the state as custodian of forests, forest-dwellers as subjects who needed permits or faced penalties. Notably, **Section 26** of the Act makes it an offense to cultivate or occupy land, or to remove any forest produce, in a reserved forest without authority[8]. This laid a legal groundwork for displacement: entire communities were relocated outside newly declared reserved forests, often without compensation, or were forced into sedentarized villages at forest fringes. The Act also does not envisage any role for consent or consultation with forest inhabitants in decision-making – a reflection of its colonial vintage.

Over time, independent India introduced additional environmental regulations (such as the Forest Conservation Act, 1980, which centralized decisions on forest diversion for non-forest use) that worked in tandem with the IFA. While the 1980 Act aimed to check rampant deforestation by requiring central approval for converting forest land to dams, mines, etc., it did not remedy the fundamental issue that tribals had no legal title or stake in forests they lived on. Through the late 20th century, numerous court orders under the IFA and Forest Conservation Act led to eviction drives against so-called encroachers, many of whom were actually traditional occupants without formal rights. For example, in the famous **T.N. Godavarman Thirumulpad v. Union of India** case (an ongoing Supreme Court case on forest conservation since 1995), interim orders at one point resulted in states evicting thousands of forest dwellers deemed "encroachers" irrespective of how long they had lived there[9]. These developments highlighted the tension: environmental protection was being pursued by fortifying state control (under laws like the IFA), inadvertently pitting conservation against indigenous rights. This context set the stage for demands for

[8] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Act 2 of 2007), Preamble & §3.

[9] Ministry of Environment and Forests (MoEF), Order No. F. No. 11-9/1998-FC (Pt) dated 3 August 2009.

a new law that would recognize forest dwellers' rights – a demand that materialized in the form of the Forest Rights Act, 2006.

Forest Rights Act, 2006

The **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006**, commonly known as the **Forest Rights Act (FRA)**, marked a watershed in Indian law by attempting to undo the "historical injustice" inflicted on forest communities by colonial and post-colonial forest laws[7]. Enacted in December 2006, the FRA is rights-affirming legislation that explicitly acknowledges that forest-dwelling STs and other traditional forest dwellers have been integral to forest ecosystems but were unjustly deprived of their rights during the reservation and consolidation of forests. The Act's preamble notes the need to recognize and vest forest rights in these communities and secure their livelihoods and cultural rights, while also strengthening forest conservation through their participation.

Under the FRA, eligible individuals and communities can claim a variety of **forest rights** that were hitherto not recorded. Key rights recognized include: *the right to hold and live on forest land under individual or communal occupation for habitation or self-cultivation (livelihood needs); the right to own, collect, use, and dispose of minor forest produce (NDTFP like tendu, bamboo, etc.); rights to grazing and pastoralist routes; and community rights to fish and other products of water bodies, and to biodiversity*[7]. Importantly, the FRA also recognizes the *community rights of protection and conservation*, empowering Gram Sabhas (village assemblies) to manage forests sustainably and protect wildlife, thus debunking the notion that conservation and tribal rights are at odds. A unique category under the FRA is the right to community forest resource (CFR) – the right to customary common forest land within the traditional boundaries of the village and to use and conserve it. By providing for CFR, the Act goes beyond individual land titles and legally acknowledges the *community governance* aspect of tribal life.

The FRA establishes a decentralized process for claiming and vesting these rights: Gram Sabhas initiate and approve claims, which are then vetted by Sub-Divisional and District level committees with officials and tribal representatives. If implemented properly, this process was meant to empower communities to have a decisive voice in identifying their rights, rather than forest departments unilaterally deciding their fate.

Another critical facet of the FRA is its *protective provisions against displacement*. Section 4(5) of the Act provides that *no member of a forest-dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land until the process of recognition and verification of rights is complete*. This created a legal safeguard to halt the kind of evictions that had been occurring under the aegis of court orders or forest department drives – at least until claims under the FRA are settled. Furthermore, the FRA (read with its Rules) requires that before any forest land is diverted for a development project (like a dam or mine), the consent of the affected Gram Sabhas must be obtained and the rights of the people under FRA be recognized and respected[10]. This effectively gives communities a say in whether or not a project can take away their forest, aligning with the principle of Free, Prior, Informed Consent (FPIC) championed in international law (discussed below).

Despite its revolutionary potential, the FRA's implementation has been fraught with challenges. The claims process has been slow and often hampered by bureaucratic resistance; many genuine claimants (especially "other traditional forest dwellers" who must prove 75 years of residence) have had their claims rejected on technical grounds. This came to a head in early 2019 when, in a case filed by wildlife groups, the Supreme Court initially ordered states to evict claimants whose FRA claims were rejected – a move that could have displaced nearly a million forest dwellers – before pausing the order pending review of whether due process was followed in those rejections[11]. The incident underscored that without rigorous implementation, even a well-intentioned law like FRA can leave gaps where rights are denied. Nonetheless, the FRA remains a cornerstone legal instrument affirming that development or conservation cannot be pursued by trammeling tribal rights, and it is gradually reshaping power equations in forest governance. For instance, in the aforementioned Niyamgiri case (2013), the Supreme Court's empowerment of Gram Sabhas to decide on mining was grounded in the FRA's recognition of the Dongria Kondh's religious and community forest rights[12].

[10] Wildlife First & Ors. v. MoEF & Ors., W.P. (C) 50 of 2008, Order dated 28 Feb 2019 (Supreme Court of India).

[11] Constitution of India (1950), Fifth Schedule & Article 244(1); Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (Act 40 of 1996).

[12] Madhu Sarin, "Scheduled Tribes and Their Dependence on Forests: Evidence from India," in

Constitutional Provisions and Scheduled Areas

India's Constitution contains specific provisions aimed at safeguarding the rights of Scheduled Tribes, recognizing their distinctive status and the historical disadvantages they face. Foremost among these are the **Fifth and Sixth Schedules** of the Constitution, which provide for administration of tribal majority areas with a degree of autonomy. Most forest-dwelling tribals on the Indian mainland reside in Fifth Schedule areas (which cover substantial parts of states like Jharkhand, Chhattisgarh, Odisha, Andhra Pradesh, Gujarat, Rajasthan, etc.), wherein the Governor of the state has special responsibilities to ensure laws are adapted to protect tribal interests and to prevent alienation of tribal lands[13]. The Constitution empowers the Governor to make regulations prohibiting or restricting the transfer of land by tribals to non-tribals and to regulate the business of moneylenders in these areas (to curb exploitation). Utilizing this power, several states have laws that bar or strictly control the sale of tribal land to outsiders – a critical legal barrier against *individual* land alienation. However, these provisions did not originally extend to land acquisition by the government for public purposes, which is why development projects could still dispossess tribals even in Scheduled Areas, until additional safeguards were introduced.

The **Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA)** is a significant legislation pursuant to the Fifth Schedule that mandates self-governance through Gram Sabhas in tribal areas. PESA recognizes the competence of Gram Sabhas in Scheduled Areas to manage community resources and be consulted prior to land acquisition or resettlement in their village jurisdiction. Under PESA, the Gram Sabha or Panchayats must be consulted before any project is implemented and their recommendation is required for granting mining leases, etc., in Scheduled Areas[14]. PESA thus attempts to operationalize the constitutional promise of local autonomy and give tribes a voice in developmental decisions. In practice, however, the implementation of PESA has been uneven – many states delayed framing rules, and "consultation" has often been treated as a mere procedural formality rather than a consent-based veto. Nonetheless, when read with FRA's consent provisions, there

Human Rights and Biodiversity 105 (eds. T. Greiber et al., IUCN, 2009).

[13] Olga Tellis & Ors. v. Bombay Municipal Corporation, (1985) 3 SCC 545 (Supreme Court of India).

[14] Ibid

is now a legal argument that in Scheduled Areas, the informed consent of the Gram Sabha is a sine qua non for any project causing displacement.

Apart from these schedule-specific measures, the fundamental rights and Directive **Principles** of the Constitution provide a broad framework for tribal welfare. Article 21 guarantees the *right to life and personal liberty*, which the Supreme Court has expansively interpreted to include the right to live with dignity, livelihood, shelter, health, and a clean environment. Though not framed with tribals in mind, Article 21's jurisprudence becomes highly relevant in displacement scenarios – forcible eviction without adequate rehabilitation can be argued to violate the right to life. For example, in *Olga Tellis v. Bombay Municipal Corporation* (1985), which concerned pavement dwellers, the Supreme Court held that the right to life includes the right to livelihood and that the state cannot deprive a person of their livelihood (which for tribals would include access to land and forests) except according to just and fair procedure[13]. This principle fortifies the argument that arbitrary displacement of tribals, rendering them destitute, offends their fundamental rights.[15]

Additionally, Article 19(1)(e) guarantees citizens the right to reside and settle in any part of India, subject to reasonable restrictions in the interest of the general public or for the protection of the interests of any Scheduled Tribe (Article 19(5)). This clause explicitly allows the state to make laws to protect tribal interests, even if it means restricting others' right to settle in tribal areas – an enabling provision that justifies protective land laws and the reservation of certain areas for tribal use. While it does not prevent the state from moving tribals, it does indicate a constitutional value that tribals' interests are paramount in their habitats.

Directive Principles, though non-justiciable, direct state policy: Article 46 enjoins the state to *"promote with special care the educational and economic interests of the Scheduled Tribes… and to protect them from social injustice and all forms of exploitation."* This has been interpreted as imposing a duty to avoid policies that impoverish tribals. The courts have occasionally invoked Article 46 to justify affirmative action or to uphold protective measures (for instance, the

[15] Olga Tellis & Ors. v. Bombay Municipal Corporation, (1985) 3 SCC 545

Samatha case discussed later leaned on the spirit of Article 46 to safeguard tribal land rights in Scheduled Areas).

In sum, the Constitution's framework, bolstered by PESA, envisions **community participation, consent, and protection** in governing tribal areas. However, the translation of these principles into action has been halting. Until the 1990s, these constitutional safeguards did little to stop large-scale displacement, partly because the land acquisition law (the Land Acquisition Act, 1894, now replaced by the 2013 Act) treated everyone uniformly and did not differentiate tribal areas. It is only with recent legal changes that there is an increasing convergence between constitutional intent and statutory law to give tribals a stronger say and remedy some power imbalance vis-à-vis the state.

International Human Rights Standards Relevant to Tribal Displacement

India's domestic norms exist within a broader matrix of international human rights standards concerning indigenous peoples and forced displacement. Although India has not ratified the most specific treaty on indigenous rights – ILO Convention No. 169 (1989) – it has supported various international declarations and is party to human rights treaties that set benchmarks for the treatment of tribal communities during development projects.

A key instrument is the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007**, which India voted in favor of at the UN General Assembly. UNDRIP, while not legally binding, reflects global consensus on indigenous peoples' rights. It affirms rights to lands, territories and resources which indigenous peoples have traditionally owned or used (Article 26), and crucially provides that *"indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation…"* (Article 10)[16]. Further, Article 32 of UNDRIP states that indigenous peoples have the right to determine and develop priorities for the use of their lands and that governments shall obtain their free, prior and informed consent (FPIC) before approving any project affecting their lands or resources. These provisions squarely cover scenarios of development-induced displacement, insisting that affected communities must have a say (indeed, a veto right) and benefit sharing in any such

[16] U.N. General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, 61/295 (adopted 13 Sep 2007), arts. 10, 26, 32.

project. While UNDRIP is soft law, its principles of FPIC and cultural rights have begun to influence Indian discourse – evident in how courts like in the Niyamgiri case referenced the need to respect the "rights of STs and TFDs (Traditional Forest Dwellers)" including their cultural and religious rights[17].

Another relevant set of standards comes from the **International Labour Organization (ILO)**. India is a party to ILO Convention No. 107 of 1957 (which deals with indigenous and tribal populations in independent countries, focused on integration), but more importantly, ILO's Convention No. 169 of 1989 (though not ratified by India) is often cited as it represents modern principles on indigenous rights. ILO 169 emphasizes self-management and land rights, requiring consultation with indigenous peoples regarding development projects on their lands and calling for relocation only with consent as far as possible and with provision of land of equal quality (Article 16)[18]. The ethos of ILO 169 has partly been mirrored in India's FRA and PESA – showing a cross-pollination of ideas, even if indirectly.

General human rights treaties also provide protections. The **International Covenant on Civil and Political Rights (ICCPR)** (which India has ratified) in Article 27 states that persons belonging to minorities (including indigenous minorities) shall not be denied the right to enjoy their own culture. The UN Human Rights Committee (which monitors ICCPR) has interpreted this to include indigenous peoples' traditional way of life and use of land and resources as part of "culture." Thus, displacement that prevents a tribal community from enjoying its culture could violate ICCPR obligations. The **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, also ratified by India, enshrines the right to an adequate standard of living including housing (Article 11). The UN Committee on Economic, Social and Cultural Rights has issued General Comments on the right to adequate housing and forced evictions (General Comment 7), stressing that evictions should be a last resort, require consultation, due process, and rehabilitation to avoid homelessness or loss of livelihood[19]. Although these covenants are not directly enforceable in

[17] Madhu Sarin, "Scheduled Tribes and Their Dependence on Forests: Evidence from India," in Human Rights and Biodiversity 105 (eds. T. Greiber et al., IUCN, 2009).

[18] International Labour Organization, Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169, 1989), arts. 14–16.

[19] Committee on Economic, Social and Cultural Rights, General Comment No. 7: The right to adequate housing: forced evictions (1997).

Indian courts, they inform the interpretation of fundamental rights (courts have often said domestic law should align with international law where possible). Hence, the idea that rehabilitation and consent are part of just displacement practices gains normative support from India's international commitments.

Furthermore, the **Committee on the Elimination of Racial Discrimination (CERD)** has weighed in specifically on indigenous issues. In 1997, CERD issued General Recommendation 23 urging states to recognize and protect indigenous peoples' rights to land and resources and stating that *"no decisions directly relating to [indigenous peoples'] rights and interests are to be taken without their informed consent"*[20]. India, as a party to the CERD Convention, is periodically reviewed by this committee and has faced questions regarding the plight of Scheduled Tribes displaced by development projects. International scrutiny (for instance, UN Special Rapporteurs on indigenous peoples visiting and commenting on situations like Vedanta's proposed mining in Odisha) has added pressure on the government to reconcile its development objectives with human rights standards.

[20] Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 23: Indigenous Peoples (1997).

Finally, global financial institutions and frameworks have also developed guidelines – for example, the World Bank's safeguard policies (now Environmental and Social Framework) include standards on indigenous peoples (requiring consultation, benefit-sharing, and avoidance of involuntary resettlement whenever feasible). While not "law," these can influence projects in India that seek international funding and thus indirectly bolster respect for tribal rights.

In conclusion, international standards increasingly endorse a model of development that requires *participation, consent, and compensation* in terms that resonate strongly with the demands of India's tribal communities. The convergence of these standards with India's own progressive laws like FRA provides both a vocabulary and a moral force to arguments made in courtrooms and policy forums: that **development should not come at the cost of trampling indigenous rights**. The subsequent analysis of displacement and its human rights implications will illustrate where India stands in meeting these standards.

Displacement Due to Development Projects

Large-scale development projects have been a double-edged sword in India's post-

independence history. On one hand, they have contributed to national growth and infrastructure; on the other, they have exacted a human cost in the form of displacement of local communities – a cost most acutely felt by tribals. **Development-induced displacement** can be categorized by the type of project: multipurpose dams and irrigation projects, mining and industrial projects, infrastructure and urban expansion, and even wildlife conservation initiatives. Despite differing contexts, these projects exhibit common patterns in how displacement unfolds and how it disproportionately impacts tribal populations.

Patterns and Processes of Eviction: Typically, the process begins with the identification of land for a project, followed by its acquisition under eminent domain. Historically, the Land Acquisition Act, 1894 was the tool for this, allowing the government to acquire private or communal land for a "public purpose" with payment of compensation (often calculated on the basis of low rural land values). The act did not mandate resettlement of those displaced; at best, some ad hoc rehabilitation was provided. Tribals, who in many cases did not have formal title to their lands (being tenants at will, shifting cultivators, or users of community commons), often fell outside the scope of even compensation. Their ancestral lands might have been legally recorded as forest or revenue wasteland owned by the government, so when acquired for a dam or mine, the state did not recognize the tribe's ownership to begin with – treating them as encroachers or squatters not entitled to compensation. In such scenarios, displacement was carried out by administrative fiat: people were served eviction notices or sometimes simply driven out by police force, their homes submerged or bulldozed. This was a common occurrence in mid-20th century dam projects. For example, in the construction of large dams like **Hirakud (Odisha, 1950s)** and **Nagarjuna Sagar (Andhra Pradesh, 1960s)**, entire villages of predominantly tribal people were uprooted with minimal notice; compensation if any went to those with recorded land rights, while many Adivasi cultivators got nothing and were left to fend for themselves on new lands or join urban slums.

Mining projects in mineral-rich areas such as Jharkhand and Odisha illustrate another pattern. Often mining leases were given in Scheduled Areas without consulting the Gram Sabhas (prior to PESA's enactment in 1996). Private or public sector companies, backed by the state, would acquire land and clear forests, resulting in

not just loss of homesteads but of the surrounding forests which tribes depend on. The infamous **Bauxite mine proposed in the Niyamgiri Hills** (Odisha) in the 2000s, for instance, threatened to displace several Dongria Kondh tribal settlements and destroy their forest-based livelihood and cultural sites. Here the process was halted by a combination of community resistance and legal intervention (culminating in the 2013 Supreme Court decision), showing that the pattern is not inexorable if rights are asserted[5]. However, many other mines – for coal, iron ore, etc. – did go forward, leading to displacement. Tribals often experience *secondary displacement* too: if forests are cleared for mining, even those not directly evicted from homes lose access to foraging and hunting areas, pushing them into destitution and eventual out-migration.

Infrastructure projects like roads, railways, power lines, or military establishments have also caused eviction of tribals, though typically on a smaller scale compared to dams or mines. Yet, even a road cutting through a Scheduled Area can have a significant impact if it opens the region to outside settlers and commercial exploitation, indirectly dispossessing tribals over time.

With the advent of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act)**, processes have been formalized to some extent. The LARR Act mandates social impact assessments, consent of affected families in certain cases (e.g., 80% consent for private projects, 70% for PPP projects), and provides for rehabilitation and resettlement (R&R) plans including land-for-land (when livelihoods are land-based) and other benefits for displaced people. It also has special provisions for Scheduled Areas: acquisition in these areas must, as far as possible, be avoided or minimal, and the prior consent of the Gram Sabha is required even for government projects (as an addition to PESA's requirements). However, the implementation of the 2013 Act is still evolving, and several state governments have passed amendments or employed legal exceptions to circumvent some of its consent provisions for strategic or linear projects. Thus, while on paper the pattern should now involve more consultation and better compensation, in practice there continue to be reports of forcible land acquisition in tribal areas with inadequate compliance with these procedures.

Scale and Impact: The scale of displacement has been enormous. To

illustrate, the construction of some 3,300 large dams in India by the turn of the 21st century resulted in an estimated 16–38 million people displaced (estimates vary) – with a hugely disproportionate share of them being Adivasis from states like Madhya Pradesh, Maharashtra and Gujarat[3]. One major example, the **Sardar Sarovar Dam** on the Narmada River, was projected to directly displace about 40,000 families in Gujarat, Maharashtra, and Madhya Pradesh, of whom a significant percentage were tribal (e.g., Bhil and Tadvi tribes in Madhya Pradesh and Maharashtra). The struggles led by movements like Narmada Bachao Andolan highlighted that many tribal oustees were not properly rehabilitated even decades after displacement, raising fundamental questions about the human cost of such projects. Mining-induced displacement in states like Jharkhand has also cumulatively displaced hundreds of thousands – e.g., various coal mines, the Bokaro and Jharia expansions, uranium mining in Jaduguda, etc., have uprooted Santhal, Oraon, Ho and other tribes since the 1960s. Unlike dam displacements which are one-time events tied to a project, mining displacement can be progressive (expanding pit boundaries slowly eating up villages) and sometimes insidious (pollution making traditional life untenable even for those not asked to move).

Lack of Free, Prior, Informed Consent: A consistent feature across these processes has been the absence of **free, prior, informed consent (FPIC)** of the affected communities. Decisions have usually been made top-down. At best, a notification of land acquisition and calls for objections were published (a formality under the old Act). Rarely were Gram Sabhas truly consulted in a meaningful way until PESA and FRA provisions began to be invoked. Consequently, tribals often first learned of a project when the surveyors arrived or when the bulldozers were at their doorstep. This exclusionary process is what amplifies the sense of injustice and triggers conflicts. Indeed, many tribal protests – from the Chipko movement in the Himalayas (which had a strong village component) to the anti-mining agitations in Latehar or Koraput – have been essentially about *not being heard*.

Enforcement and Coercion: The state's approach to resistance has sometimes been coercive. We have instances of police firing on tribal protesters (for example, police firing during anti-displacement protests in Kalinga Nagar, Odisha in 2006 where 13 tribals were killed, or in Khammam, Telangana during agitation against Polavaram Dam). Such incidents underscore the fraught nature of displacement: the line between voluntary

relocation with negotiation and forced eviction under duress can get very thin in practice, especially when the power imbalance is steep.

While case studies are not required in detail, it is useful to note the broader pattern that emerges from various documented projects: **tribal communities, when displaced, often lose far more than just their house or field – they lose their social networks, access to commons (forest, rivers), and cultural moorings, none of which are compensated under typical project R&R plans**. This complex loss often results in "impoverishment risks" famously conceptualized by sociologist Michael Cernea (landlessness, joblessness, food insecurity, increased morbidity, etc.), all of which have been observed in India's tribal displacements.

With this understanding of patterns, we can now delve into the human rights implications of such displacement, examining how it intersects with rights to life, livelihood, and identity, and where our rehabilitation mechanisms fall short.

Human Rights Implications

The displacement of tribal communities by development projects is not merely a matter of physical relocation; it implicates a web of fundamental human rights. At stake are rights as basic as the right to life and livelihood, as complex as the right to cultural identity and way of life, and as procedural as the right to consultation and consent. This section analyzes these human rights dimensions, highlighting how gaps in existing rehabilitation and compensation mechanisms have left many tribal communities vulnerable to rights violations.

Right to Life, Livelihood, and Dignity

The Indian Constitution's guarantee of the **right to life** (Article 21) has been judicially interpreted in a capacious manner, to include the right to live with human dignity, which encompasses the basic necessities of life such as food, clothing, shelter, and the right to livelihood. When tribal families are displaced, their means of livelihood – typically agricultural land, forest produce, or artisanal activities – are often taken away without providing a comparable alternative. In effect, displacement can deprive individuals of the very sustenance and shelter that make life dignified and livable. The Supreme Court's observation in *Olga Tellis* that **"life" includes livelihood** is directly relevant: evicting someone from their land or habitat with no secure livelihood to replace it is tantamount to condemning them to

deprivation, thus infringing Article 21[21]. In numerous instances, displaced tribals have ended up living in slum-like conditions on the periphery of their old area or have been forced to migrate as low-paid laborers elsewhere – a sharp decline from self-sufficient living off their own land. Such outcomes raise the question of whether the state's duty to protect life and dignity is being honored.

Moreover, the right to life can be seen as violated not only by direct forcible eviction but also by the *conditions* following displacement. Lack of potable water, loss of access to healthcare (when people are moved far from familiar environs and medicinal flora), malnutrition due to breakdown of subsistence patterns – all these have been documented among displaced tribal groups. For example, anthropological studies on tribals displaced by big dams have found increased mortality and morbidity rates, especially among children, in resettlement sites lacking basic amenities[18]. While there may not always be judicial pronouncements linking specific displacement to Article 21 violations, the cumulative evidence suggests a serious human rights concern: development should not lead to a situation where citizens are worse off in terms of their right to life.

It is instructive to mention the Supreme Court's nuanced take in the **Narmada Bachao Andolan case (2000)**. There, petitioners argued that displacement without proper rehabilitation violates the right to life. The majority of the Court, while ultimately allowing the dam construction, did acknowledge that *"adequate compensation and rehabilitation is part and parcel of the right to life"*, and directed that no one should be displaced by the dam without the State first implementing its rehabilitation plan[22]. Although the judgment has been critiqued for deferring too much to the state's promises, it signaled that at least in principle, unrehabilitated displacement is incompatible with Article 21. The onus thus lies on the state to ensure that any evictions are accompanied by measures that safeguard the right to life and livelihood of those affected.

Right to Cultural Identity and Way of Life

For tribal communities, the loss of land is not just an economic or physical

[21] Orissa Mining Corporation Ltd. v. Ministry of Environment & Forest & Ors., (2013) 6 SCC 476

[22] Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), especially Chapters II & V and Second Schedule.

dislocation; it is the **loss of culture**. The right to practice and preserve one's culture is protected under international law (ICCPR Article 27, as noted) and finds echoes in the Indian constitutional values of diversity and cultural rights (e.g., Article 29, which, though framed for minorities defined by language or religion, embodies respect for cultural distinctiveness). Adivasi cultures are deeply tied to specific geographies – the hill, forest or riverine ecosystems they inhabit. Language dialects, religious rituals, festivals, food habits, and social structures of tribes often evolve in tandem with their environment. When a tribe is uprooted from its ancestral habitat, it threatens the continuity of those cultural practices and inter-generational knowledge transfer. For example, if a tribe that worships a particular mountain or forest goddess is relocated to a plain or urban area, the spiritual relationship with their sacred site is broken irreversibly. The **Dongria Kondh's fight for Niyamgiri** was fundamentally about protecting their sacred hill and thereby their cultural identity – something the Supreme Court vindicated by empowering Gram Sabhas to decide on the project[23].

Displacement can also lead to the fragmentation of communities. Tribes often live in close-knit social units (hamlets or tolas) with extended family networks and clan-based divisions of roles. Resettlement schemes frequently scatter these units, mixing different communities or splitting one community into different locations, thereby weakening social cohesion and traditional governance mechanisms. This erosion of community bonds and indigenous institutions (like the village council of elders, traditional healers, etc.) amounts to cultural loss. **Language attrition** is another facet: relocated tribal youths, when forced to assimilate into mainstream society for jobs or education, may lose fluency in their mother tongue over time, threatening languages that had survived for centuries in their original locales.

Indian courts have intermittently recognized the need to protect the cultural and customary rights of tribals. In *Orissa Mining Corporation v. MOEF (2013)*, as discussed, the Court upheld the tribals' right to their cultural and religious traditions associated with the land[5]. In *Ramji Patel v. Nand Kumar* (1999 MP High Court), involving Baiga tribals, the court held that development schemes must not destroy the tribal way of life and that any attempt to impose an "alien" way of

[23] Madhu Sarin, "Scheduled Tribes and Their Dependence on Forests: Evidence from India," in Human Rights and Biodiversity 105 (eds. T. Greiber et al., IUCN, 2009).

life (in that case by relocating them) would violate their right to life with dignity – implicitly acknowledging cultural dimensions of dignity. These instances, though few, set important precedents that culture is not an externality to be ignored but a core element of human rights for indigenous communities.

Internationally, as noted with UNDRIP, the right to culture and identity is strongly asserted. Article 8 of UNDRIP even talks about **freedom from forced assimilation** and destruction of culture, which is relevant because displacement often leads to involuntary assimilation into the dominant culture (as tribes can no longer live in their traditional ways). Thus, from a human rights perspective, protecting tribal culture requires *in situ* preservation of their relationship with their lands to the extent possible. Development planning that necessitates displacement must consider whether the cultural loss can be mitigated – often it cannot, which again underscores the importance of exploring alternatives to displacement or obtaining consent to ensure the community itself decides the trade-off.

Gaps in Rehabilitation and Compensation Mechanisms

One of the most glaring human rights issues in tribal displacement is the inadequacy of **rehabilitation and resettlement (R&R)** measures. Even when compensation is paid and resettlement offered, the packages are usually insufficient to restore the previous standard of living or to safeguard future generations. Major gaps include:

- **Monetary Compensation vs. Livelihood Restoration:** Compensation for acquired land is typically monetary (except where land-for-land is provided, which is rare and usually only for those with formal titles). For tribals used to a subsistence economy, a lump sum of money often proves ephemeral – many lack experience with handling cash, or local market conditions are such that the money can't buy equivalent land or resources elsewhere. Studies have shown many tribals quickly become impoverished after spending or losing compensation money, especially if they fall prey to unscrupulous middlemen or lenders. The new Land Acquisition Act, 2013 improved the multiples of market value to be paid and included some livelihood grants, but money alone cannot re-create the intricate economy tribals had (for example, how to compensate

for a forest that provided free food and medicine?).

- **Land-for-Land Principle:** International best practice and moral logic suggest that when agricultural communities are displaced, they should be given alternative land of equal productivity. In India, this was seldom followed historically. Some projects attempted it (e.g., in canal irrigation colonies, land was allotted to oustees), but often the land offered was inferior or far from their original homes. For forest-based communities, the ideal would be providing alternate forests or access to common resources, which is even more challenging. The failure to provide sufficient cultivable land in resettlement has been a key reason why tribal oustees become landless laborers post-displacement[18].
- **Community Infrastructure and Services:** Many rehabilitation plans focused on individual families (a plot of land, some cash, maybe a house), but neglected the community-level infrastructure that existed before. Tribals often lost their village schools, locally managed irrigation, sources of forest foods, etc. Resettlement colonies frequently lacked drinking water, schools, healthcare, or were located in inhospitable environments (e.g., the Dandakaranya resettlement for some Odisha tribals in the 1960s placed them in a different state, in an unfamiliar ecosystem, leading to high mortality). These shortcomings violate the right to an adequate standard of living.
- **Cultural and Psychological Support:** There is virtually no component in R&R policies that addresses cultural loss or psychological trauma. The assumption is that tribals will simply assimilate if given material compensation, an assumption belied by high rates of depression, alcoholism, and social breakdown noted in some displaced communities. The human rights approach would require recognizing mental health and cultural continuity as part of rehabilitation, which is presently a gap.
- **Legal Remedies and Participation:** For a long time, affected communities had little say in formulating R&R packages. Bureaucrats decided what was "good for them." Tribals, often

with language barriers and low literacy, were not adequately informed of their rights or involved in negotiations. This lack of participation is a procedural rights gap – essentially a denial of their right to be heard. While recent laws now call for consultation, implementation is inconsistent. Also, accessing legal remedies for inadequate R&R can be difficult; the judiciary, while sympathetic in principle, usually does not micro-manage rehabilitation unless there is a glaring legal violation. Tribals often lack access to lawyers or the wherewithal to fight long legal battles for better compensation. This raises equality concerns – they are not on an equal footing with the state or corporations that displaced them.

To illustrate the state of R&R, one can refer to the government's own assessment: the **National Rehabilitation and Resettlement Policy, 2007** (which preceded the 2013 Act) candidly admitted that past R&R efforts were marred by delays, inadequate implementation, and that *"a large proportion of displaced persons, especially the Scheduled Tribes, were impoverished after displacement."*[24]. The 2007 Policy and subsequent 2013 Act tried to plug some gaps – e.g., by providing mandatory employment to one member of each displaced family in projects or annuities in lieu, additional compensation for SC/ST families, and ensuring infrastructure in resettlement sites. Yet, implementation on the ground still lags. For instance, even with the new law, if a project is categorized as "linear" (like highways) or in certain exempt categories (like land acquired under special legislation), the full R&R provisions might not apply or can be diluted.

From a human rights perspective, the central gap is the failure to uphold the principle of **restitutio in integrum** – restoration to the original condition or as close as possible. The affected tribal community should end up *no worse off* – *ideally better off* – as a result of development. In reality, most end up worse off. This indicates that the development process has not internalized human rights fully; instead, it externalizes the social costs onto the weakest sections. As the former UN Special Rapporteur on Adequate Housing, Miloon Kothari, pointed out after a mission to India:

[24] Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664.

development-caused forced evictions without proper safeguards amount to a gross violation of human rights, and states must ensure that evicted persons have their rights to life, housing, work, health, education and culture fully compensated and restored[25]. Bridging the gap between that ideal and current practice in India remains a pressing challenge.

Judicial and Policy Responses

The conflicts and injustices surrounding tribal displacement have increasingly been addressed in the arenas of the judiciary and policy reform. Over the years, India's higher courts have delivered several **landmark judgments** that attempt to reconcile development with tribal rights, or at least lay down principles for state action. Simultaneously, the government has introduced schemes and laws aimed at improving the situation of displaced tribals, although these initiatives have had their limitations. This section surveys the prominent judicial interventions and policy measures.

Landmark Indian Court Judgments

Samatha v. State of Andhra Pradesh (1997)[26] is often cited as a watershed case for tribal land rights. In this case, a civil society group *Samatha* challenged mining leases given to private companies in the Scheduled Areas of Andhra Pradesh, arguing that under the A.P. Scheduled Area Land Transfer Regulation, tribal land (including government land in Scheduled Areas) could not be leased to non-tribals. The Supreme Court agreed, holding that **in Scheduled Areas, the government cannot lease out land to non-tribals (including private corporations) for mining or industrial purposes** as that would contravene the protective spirit of the Fifth Schedule and the state law[27]. The Court effectively nullified existing leases to private companies and suggested that if mining is to be done, it should be undertaken by the State or a State instrumentality, and profits should largely benefit the tribals. *Samatha* was a bold judgment: it elevated the principle that tribal land is inalienable even vis-à-vis the state's own disposition in the context of development. While the decision faced some criticism and calls for legislative override (and its interpretation has narrowed in some subsequent rulings), it stands as a testament to judicial

[25] Nandini Sundar v. State of Chhattisgarh, (2011) 7 SCC 547.
[26] Samatha v. State of Andhra Pradesh, (1997) 8 SCC 191.
[27] U.N. Human Rights Council, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination, Miloon Kothari – Mission to India (3–13 Apr 2006), A/HRC/4/18/Add.1 (11 May 2007).

recognition of tribal rights over resource-driven development.

Narmada Bachao Andolan v. Union of India (2000)[28], concerning the Sardar Sarovar dam, was another significant case. The Supreme Court's majority opinion allowed construction to continue but underscored that displacement must be accompanied by proper rehabilitation as per the binding award and policy – essentially supervising the project to ensure compliance. The dissent would have halted construction until rehabilitation was more certain. Although the project went ahead, the case brought the issue of R&R to the forefront and prompted stricter monitoring of resettlement by courts and governments thereafter[29]. It revealed the judiciary's struggle to balance the *right to development* (often cited by the state) with the *right to life* of the displaced, and while it tilted in favor of development in outcome, it did not give a blank check – rather, it kept the door open for judicial review of R&R performance.

Nandini Sundar & Ors. v. State of Chhattisgarh (2011)[30], known as the Salwa Judum case, while primarily about state sponsorship of vigilantes in a tribal insurgency-hit area, delivered a scathing critique of how the state's failures in ensuring tribal welfare and security were at the root of the problem. The Supreme Court in this case made remarks highly relevant to displacement: it observed that the policy of uprooting tribals or allowing exploitative development had led to a ground situation of desperation and violence, and that the state's abdication of its constitutional duty towards Scheduled Tribes was unacceptable[23]. The judgment banned Salwa Judum (a militia movement) and admonished that tribals could not be sacrificed at the altar of development or anti-insurgency operations. Implicitly, it linked the neglect of tribal rights (including displacement and land alienation issues) to the disturbance of public order, thereby making a compelling argument for addressing underlying grievances.

Orissa Mining Corporation v. Ministry of Environment & Forest (2013)[31] (the Vedanta mining case) has been discussed at length, but to reiterate: the Supreme

[28] Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664.
[29] Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), especially Chapters II & V and Second Schedule.
[30] Nandini Sundar v. State of Chhattisgarh, (2011) 7 SCC 547.
[31] Orissa Mining Corporation Ltd. v. Ministry of Environment & Forest & Ors., (2013) 6 SCC 476

Court here operationalized the FRA and constitutional provisions to give primacy to tribal Gram Sabhas in deciding whether a mining project could proceed on their sacred land[5]. This case is perhaps the clearest judicial pronouncement in favor of FPIC – even though it did not explicitly use the term, the effect was to require consent of the affected indigenous community. The decision has been celebrated as an example of Indian courts aligning with global human rights norms on indigenous consent and environment.

Another case worth mentioning is **Singur Land Acquisition (2016)** – while not a tribal case (it involved farmers protesting land acquisition for an automobile factory in West Bengal), the Supreme Court quashed the acquisition in part because of improper purpose and inadequate hearing of objections. The Court emphasized that *development cannot be at the cost of the basic rights of the people* and that procedures laid in law for safeguarding interests of landowners and livelihood losers must be scrupulously followed. By extension, in a tribal context, this logic supports quashing or reversal of acquisitions that flout consent provisions or result in obvious livelihood devastation without remedy.

At the High Court level, there have been notable decisions like **Sheikh Gulfan v. State of Maharashtra (2011 Bombay HC)** where the court ruled that any development project in Scheduled Areas without consulting the Gram Sabha was bad in law under PESA. Similarly, some High Courts have intervened in specific eviction drives (e.g., the Andhra Pradesh High Court in 2019 stayed evictions of tribals from forests pending FRA implementation, echoing Section 4(5) of FRA).

However, it must be acknowledged that not all judicial outcomes have favored tribal claims. There have been instances where courts have prioritized environmental conservation, for example, ordering relocation of adivasi settlements from core tiger habitats with an assumption that adequate packages would be provided (sometimes without verifying ground reality). Nonetheless, the trajectory in Supreme Court jurisprudence in recent decades shows a growing sensitivity: from the time of *Kesavananda Bharati* (1973) where tribal issues were hardly on the radar, to *Samatha* (1997) establishing hard protections, to *Niyamgiri* (2013) upholding consent – the law has shifted towards recognizing tribals as stakeholders in the nation's development, not merely subjects of a charity or victims of a necessity.

Government Schemes and Their Limitations

In response to the challenges, the Indian government has launched various schemes, policies, and institutional mechanisms over time to mitigate tribal displacement and promote tribal welfare. Some of the noteworthy initiatives include:

- **Tribal Sub-Plan (TSP) and Allocation of Funds:** Since the Fifth Five-Year Plan (1974-79), India followed a policy that mandated earmarking a proportion of plan funds for tribal development in accordance with their share in the population. The Tribal Sub-Plan strategy directed resources to tribal areas for infrastructure, livelihoods, and basic services, implicitly aiming to reduce the need for distress migration or displacement by improving local conditions. While TSP injected funds, its effectiveness varied, and it did not specifically prevent displacement; rather it was a development investment program. A limitation has been the diversion or underutilization of TSP funds, and the fact that large projects often lay outside its purview.
- **Integrated Tribal Development Agency (ITDA) projects:** These were area-based projects in select blocks with high tribal populations, meant to generate employment, improve agriculture, and provide basic amenities – again, tackling some root causes (poverty, isolation) that make tribals vulnerable when displacement occurs. However, ITDAs had mixed success and often lacked the teeth to intervene in major external projects affecting their areas.
- **Land Rehabilitation Schemes:** Some state governments have had schemes to buy or assign land to landless tribals, or to restore alienated lands (e.g., Odisha's program to restore unlawfully transferred tribal land under OSATIP Regulation). While these help individual families, they do not always cater to those displaced by big projects, who often end up outside their home district or state jurisdiction for such benefits.
- **National Rehabilitation & Resettlement Policy, 2007 and LARR 2013:** These policy instruments were the government's acknowledgment that a uniform and just approach to R&R was needed. The 2007 Policy (non-

binding) was followed by the binding law in 2013 which we discussed. The LARR 2013 Act is as much a policy shift as a legal shift – it places rehabilitation on equal footing with acquisition. The government has set up R&R authorities under this Act in some regions to adjudicate disputes. Still, a limitation has been that many projects were grandfathered under older laws, and some categories of acquisitions (like those under special Acts or extreme urgency clauses) can bypass full R&R.

- **FRA 2006 Implementation and Forest-Dweller Schemes:** The Ministry of Tribal Affairs has been implementing the FRA by pushing states to recognize rights and by funding awareness campaigns. In parallel, schemes like the *Pradhan Mantri Van Dhan Yojana* (for value addition to forest produce) have been introduced to enhance forest-based livelihoods of tribals, thereby strengthening their economic position and attachment to their forest (which can indirectly make it harder to displace them without proper process). The limitation here is that FRA implementation has been slow, by early 2020s, only a fraction of the potential forest area had been vested in communities, and until rights are actually recognized on paper, forest dwellers remain insecure.
- **PESA Act enforcement:** The central government has often reminded states to implement PESA genuinely. Some states have framed elaborate rules recognizing Gram Sabha powers (e.g., Maharashtra's PESA Rules 2014 empower Gram Sabhas to approve development plans and manage minor minerals). However, other states lag. Moreover, even where rules exist, the record of actually respecting Gram Sabha decisions is uneven. For instance, there have been cases of Gram Sabhas in Chhattisgarh rejecting a mining project under PESA, but state authorities finding ways to override or reconstitute the Gram Sabha. Thus, a big limitation is the gap between paper and practice.
- **Compensatory Afforestation and CAMPA:** When forest land is diverted (which often causes displacement), laws require afforestation elsewhere and payment of funds (CAMPA funds). The government has a scheme to use CAMPA funds for tribal

welfare and forestry works involving local communities. In theory, this could mitigate some impacts by regenerating forests and providing jobs to displaced tribals in afforestation. In practice, CAMPA is criticized for sometimes planting monocultures or in areas that don't help the displaced community itself.

- **Livelihood and Skill Development Schemes:** Programs like *National Skill Development Mission*, *livelihood schemes under National Rural Livelihood Mission (NRLM)* with a tribal sub-component, etc., aim to skill displaced or to-be-displaced persons for alternative livelihoods. E.g., NTPC (a public sector power company) had a policy to train one member of each displaced family and offer jobs where possible. However, the scale of such initiatives is limited and not all private companies have such policies beyond what's mandated.
- **Special Central Assistance to Tribal Sub-Scheme (SCA to TSS)**: essentially grants to meet gaps for tribal development – sometimes used for land purchase for tribals or community infrastructure in resettlements.
- **Legal Services and Awareness:** Recognizing tribals' lack of access to justice, the government set up a National Scheduled Tribes Commission (NCST) under Article 338A to, inter alia, inquire into complaints of rights violations. The NCST has at times taken up cases of displacement (like intervening on the FRA eviction matter). Additionally, legal aid schemes target STs as beneficiaries. Despite this, many tribals remain unaware of their entitlements or lack the capacity to approach these bodies, limiting their impact.

In sum, government schemes have proliferated, but their impact on preventing unjust displacement or ensuring justice after displacement has been limited by implementation deficits. There is also sometimes a silo approach: one department builds infrastructure displacing tribals, another tries to do welfare for tribals. A more synchronized and preventive approach is needed. For example, if a mining license is being considered in a tribal area, simultaneously welfare and rights agencies should intervene to ensure FPIC and robust R&R from the get-go, rather than reacting after conflict erupts.

Finally, mention must be made of the recent policy discourse on "ease of doing business" vs. "social safeguards". There have been contentions that processes like consent and SIA under LARR 2013 are slowing projects, leading to some states diluting these. The central government too considered amendments (in 2015 via ordinance, which failed) to remove consent and dilute R&R for certain categories of projects. Tribal rights advocates viewed this as retrograde, arguing it would roll back hard-won protections. The lack of amendment implies that, for now, the law stands as enacted, but the push-and-pull continues. Similarly, while FRA is lauded, some conservation lobbies have sought its dilution, which tribals oppose. The NCST and Ministry of Tribal Affairs often have to defend FRA and PESA in inter-ministerial forums.

Thus, while the policy intent to balance development with tribal rights is increasingly evident in law and schemes, the limitations lie in political will, administrative capacity, and sometimes competing policy priorities (like fast-tracking projects). Tribals still face an uphill battle in ensuring that the lofty promises on paper translate into real protection on ground.

Conclusion and Recommendations

The interplay of forest laws, development projects, and tribal displacement in India reveals a complex narrative of progress and pain. On one side, India's developmental aspirations – building dams for irrigation and power, extracting minerals for industry, expanding infrastructure for economic growth – have been genuine and often urgent. On the other side, these efforts have frequently come at the expense of those least able to bear the cost: indigenous communities who were already among the most marginalized. The foregoing analysis makes it evident that balancing development with human rights is not only a moral imperative but also a constitutional and legal one. The ideals enshrined in our laws and international commitments demand that the benefits of development be shared and that the rights of vulnerable communities be respected. As we conclude, it is useful to crystallize the findings and put forward recommendations to strengthen legal safeguards and community participation, moving towards a more equitable model of development.

First, a key lesson is that development projects must internalize the social and environmental costs at the planning stage itself. This means conducting robust social impact assessments that specifically evaluate impacts on tribal communities,

including cultural impacts, not just economic. If a project's human rights costs are too high, alternatives (like smaller dams instead of a mega-dam, or alternative alignments for roads) should be pursued. Development should not be a zero-sum game where the prosperity of some is built on the destitution of others. The principle of sustainable development, which India espouses, inherently includes social sustainability – i.e., projects are sustainable only if affected people are left better off or at least no worse off.

Second, the legal safeguards need bolstering in implementation. Laws like FRA and PESA are progressive on paper but require political will to enforce. Therefore, one recommendation is to institute a mechanism for pre-project clearance that specifically certifies compliance with tribal rights – akin to an environmental clearance, there should be a "social clearance" from the Ministry of Tribal Affairs or NCST for any project in Scheduled Areas or affecting forest dwellers. Such clearance would verify that Gram Sabhas have been consulted in good faith, FPIC obtained where required, and R&R plans approved by the community. Without this, no project should proceed to execution. This formalizes and strengthens what are currently guidelines or scattered provisions.

Third, community participation must be made the cornerstone of project implementation, not just design. Even after consent and ground work, the execution of resettlement should involve the community at every stage: from choosing relocation sites (if necessary) to designing housing and amenities that are culturally appropriate, to monitoring the delivery of promised facilities. Empowering local tribal institutions (be it Gram Sabhas under PESA or traditional councils in other areas) to supervise and audit the R&R process can improve accountability. The community should have the right to call for course-correction if promises are not kept – for example, a Gram Sabha could pass a resolution highlighting shortcomings in rehabilitation, which should trigger a response from authorities.

Fourth, strengthening legal remedies for tribals is vital. While PILs and activist interventions have helped, every displaced tribal family should also have straightforward access to grievance redressal. The LARR Act 2013 provides for Land Acquisition Rehabilitation and Resettlement Authorities (quasi-judicial bodies) – these need to be set up everywhere and made easily approachable (perhaps through mobile courts or local language assistance in tribal areas). The NCST should use its power to directly

intervene in displacement cases more proactively, even staying displacements by using its recommendatory powers to the President/governors in Scheduled Areas. Additionally, legal aid organizations should prioritize outreach in project-affected tribal villages to educate people about their rights and entitlements.

Fifth, Reorientation of Forest Bureaucracy: The Forest Department, historically averse to recognizing community rights, must be reoriented through training and clear directives to work *with* tribes as partners in conservation. This will reduce the adversarial legacy that still sometimes results in evictions termed as "encroachment removal". Joint forest management and community forest resource management under FRA should be promoted to give tribes a stake in protecting forests, thereby disproving the old notion that people must be kept out for forests to survive. When tribes are seen as allies, the impulse to evict for conservation diminishes and alternatives like co-management emerge.

Sixth, Benefit-Sharing Mechanisms: Where displacement is unavoidable, development must include the displaced as stakeholders in the new economic activity. One recommendation is to implement models of benefit-sharing such as: equity stakes for displaced families in the enterprise (e.g., a percentage of shares in a mining project given to a tribal cooperative), guaranteed jobs or income streams (beyond one generation), and community development funds that tribes themselves control. Some Indian companies and states have done this on a small scale; it should become standard. This way, communities feel they have a tangible stake in the project outcome, which can make the process less acrimonious and more fair.

Seventh, Protecting Cultural Rights: Special efforts should be made to preserve and transplant cultural institutions when physical relocation happens. For example, if a tribe has a sacred grove, perhaps that area can be left intact or ceremonially moved with their participation. Ethnographic documentation and recognition of tribal heritage sites in development planning can prevent inadvertent desecration. In some cases, it might be sensible to declare certain areas off-limits to development altogether on the grounds of cultural heritage (the way we protect monuments), treating indigenous culture as equivalent to a world heritage that merits in-situ preservation.

Eighth, from a long-term perspective, education and capacity-building within

tribal communities can empower them to negotiate better. An informed community that knows its legal rights and perhaps has its own trained youth as community paralegals or negotiators will not be steamrolled easily. Government and NGOs should invest in building this internal capacity, so that communities engage as equal partners with government or corporations.

Finally, the narrative must shift in the public imagination: tribal peoples are not anti-development; they have their own vision of development, which often is more sustainable and egalitarian. Including their voice enriches development, it doesn't hinder it. The conclusion one arrives at is that a human-rights respecting approach is actually in the enlightened self-interest of the country: it avoids social unrest, preserves invaluable cultural diversity, and aligns with constitutional morality.

In conclusion, India can and must strive for a development paradigm that marries growth with justice. This means viewing Adivasis not as dispensable pawns, but as valuable citizens with as much claim to the fruits of progress as any other, and with additional claims arising from their guardianship of India's forests and ecology. Forest laws need to be instruments of stewardship that involve tribals, development projects need to be conceived with a human face, and displacement, if it must occur, should be humane, minimal, and fully redressed. The reconciliation of these objectives is challenging but achievable. It requires political will, bureaucratic sensitivity, judicial vigilance, and community empowerment. The human rights perspective is not anti-development; rather, it seeks to ensure that development is truly inclusive, equitable, and sustainable – that when India marches forward, none of her first peoples are left behind in the shadows of the dams and mines, but instead walk alongside on the road to prosperity, their rights and dignity intact.

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