Elwin's Panchsheel & Indian Tribal rights: Paper Tiger Laws?

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Introduction

Due to India's vast area and diverse cultures, pockets of population termed as 'tribes' have been sheltered from the rest of the population, thus making them socially, culturally and educationally 'backward' as compared to other areas in the eyes of the mainstream public. Various governments have adopted different approaches when it comes to administration of areas where tribals reside. These approaches range from total non-interference to complete integration.[1] Sometime right before our country achieved independence and framed our own Constitution, the debate about administration of tribals led to discussions in the Constituent Assembly about various related issues like reservation, tribal rights and protection of their interests.[2]

Soon after independence, Prime Minister Jawaharlal Nehru propagated the principles of '*Tribal Panchsheel/Panchasila*' in his foreword to Verrier Elwin's treatise, 'A Philosophy for NEFA'. In an attempt to reconcile the various approaches adopted till then, and to balance the assimilation of tribes while providing them protection, Nehru laid down the 5 principles, which were:

1. People should develop along the lines of their own genius and we should avoid imposing anything on them. We should try to encourage in every way their own traditional art and culture.

2. Tribal rights in land and forests should be respected.

3. We should try to train and build up a team of their own people to do the work of administration and development. Some technical personnel from outside will, no doubt, be

[1] Policy of Isolation adopted by the British Raj in the early years of their rule; *See* S. Das Gupta, Adivasis and the Raj. Socio-Economic Transition of the Hos, 1820-1932, Delhi 2011, at 114-118.
Policy of integration adopted by Prime Minister Nehru soon after independence; *See* Sanjukta Kumar Das, Imagining the 'Tribe' in Colonial and Post-Independence India, Politeja No. 2(59), 2019, at 117.

[2] Constituent Assembly Debates, August 25, 1949, available at http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C25081949.pdf (last visited on June 11, 2021)

needed especially in the beginning. But we should avoid introducing too many outsiders into tribal territory.

4. We should not over-administer these areas or overwhelming them with a multiplicity of schemes. We should rather work through, and not in rivalry with their own social and cultural institutions.

5. We should judge results, not by statistics or the amount of money spent, but by the quality of human character that is evolved.[3]

Most of the exposure of tribal communities with the outside world was with the British Rulers and Christian missionaries, both parties which benefited from anti-Indian sentiments.[4] But, whether Elwin's Panchsheel was effective or not is something we shall explore in detail in subsequent sections.

One must keep in mind that integration into the Indian state was only one of the reasons the spotlight was on the tribal communities. Centuries of exploitation, coupled with a feeling of being isolated in their own motherland, nursed emotions of deep mistrust within the community for any 'outsider', making the Indian government's job all the more difficult, yet important. The feeling of the tribal communities was perhaps best put in words by Jaipal Singh in the Constituent Assembly, and it is advised to go through the same to understand the issues faced by the adivasis.[5]

Through the course of this paper, the author shall discuss the history of tribal administration in the British Era, the birth of 'panchsheel' and its effect on various legislations after independence, the impact these legislations had on tribal communities along with their shortcomings, recent developments during the COVID pandemic, and possible reforms to bridge the gaps in the current tribal development and protection framework. It is important to note at this juncture that while the author strives to confine the study to the legal aspects of tribal administration, there shall be times

[3] Elwin, V. (1959). Foreword, *A philosophy for NEFA*. Shillong: S. Roy on behalf of the North-East Frontier Agency.
[4] J. Nehru, Letters to Chief Ministers, vol. 3: 1952-1954, Delhi 1987, at 150.
[5] Constituent Assembly Debates, December 19, 1946, available at http://loksabhaph.nic.in/writereaddata/cadebatefiles/C19121946.html (last visited on June 11, 2021)

where she shall dab in anthropology, political discourse and the historical elements of the discussion to provide greater context and understanding for the reader.

Tribal Administration and Legislation in the British Era

In pre-independent India, the tribal population was majorly concentrated in three parts of the country, the North-East, the North-West Frontier Province, and the Eastern Tribal Belt.[6] While during the early years of the East-India Company's rule in the 19th Century the British did not pay much attention to the tribal communities settled in the three mentioned areas, as the colonisers delved further into the interiors of India, the tribal population became a 'law and order problem' and the British took it upon themselves to solve these 'issues'.[7] This approach was furthered by the British Raj once it took over the company's rule, and came to be characterised by '*isolationism, protectionism and improvement*'.[8]

Political System for Tribals in the Colonial Period

The British raj over the tribals of India was based on the principle of '*direct rule*'.[9] Under this format, instead of indirectly administering the population through local chiefs or tribal heads, the British appointed their own district officers to act as the government. With frequent uprisings and rebellions, the colonizers established an agency system to pacify tribes. These agencies were tasked with settling tribes, opening lines of communication, setting up infrastructure for the merchants, traders and army, and generally urbanising the tribal areas.[10] Some well known agencies were set up to work with the Bhils (1825), another in Chotanagpur, the South-West Frontier Agency (1833), a third in the Meriah Tract (1839-65) to abolish the practice of human sacrifice, and the fourth one in Ganjam (1839).[11] In the span of a few decades, these areas witnessed widespread poverty, uprising, loss of culture, and exploitation, with the brunt of it borne

[6] Amit Prakash, Decolonisation and Tribal Policy in Jharkhand: Continuities with Colonial Discourse, Social Scientist, Jul. - Aug., 1999, Vol. 27, No. 7/8 (Jul. - Aug., 1999), at 117.
[7] *Supra* note 1, Sankujta Kumar Das, at 109.
[8] *Ibid.*
[9] K. S. Singh, Colonial Transformation of Tribal Society in Middle India, Economic and Political Weekly , Jul. 29, 1978, Vol. 13, No. 30 (Jul. 29, 1978), at 1225.
[10] *Ibid.*
[11] *Ibid.*

by the local tribal population. This was probably the start of the end of social isolation the tribal communities enjoyed up till then British arrived to 'civilise' them.

In pursuance of the special model made for tribal areas in which the Governor directly controlled the area through district officers, the British enacted the Scheduled Districts Act, 1874, which ensured that normal laws enacted by the colonial government were not applicable to tribal areas. This principle was also further codified in the Government of India Act, 1935. This system of exclusion was paternalistic in nature and some major characteristics of it were - exclusion of tribal areas from the operation of ordinary laws to preserve their culture, laws, etc., with its logical corollary of limitation of the jurisdiction of ordinary courts and simple procedures to settle disputes; restricted entry of non-tribals into tribal areas; and, strengthening of tribal leadership.[12] The rapid urbanization led by the British resulted in massive immigration to tribal areas, which was how their state isolation was broken.

Even the Indian Statutory Commission (also known as the Simon Commission) worked towards this integration of tribal communities into 'civil society' by recommending that such areas should be excluded from receiving constitutional powers like other provinces.[13] It is clear that the colonial powers considered the adivasi community as inferior and in need of guidance towards development and modernization.

The need to provide for a framework which has considerable safeguards for the tribal population of India was also raised during the Constituent Assembly debates in the 1940s, but unlike the British, this time the people deciding their fate were appreciative of '*the uniqueness of tribal factor within the framework of Indian nationalism*'.[14] This concern culminated in the shape of Schedule V and VI of the Indian Constitution, which we shall discuss in detail below.

Agrarian Laws

Tribal land laws have always been a point of contention between administrations and the tribal communities, as keeping in mind the frequent rebellions, the legislations had to balance between

[12] *Supra* note 7, at 119.
[13] *Ibid*.
[14] *Ibid*, at 1226.

safeguarding tribal rights and using the land for development. The Wilkinson Rules, 1883, was the first time alienation of tribal land was prohibited, a concept which continues till date.[15] Exploitation through money lending at high rates, also known as usury, was curbed in the Santal Parganas Regulation, 1873, which also brought to the forefront the problems faced by tribal communities in securing funds at reasonable rates of interest. The Chotanagpur Tenancy Act, 1908, was an important legislation when it came to protecting the interests of tribal communities as it included multiple safeguards for land rights, including the regulation of land transfers from tribals to non-tribals.[16] The enactment of the Indian Forest Act, 1865 and the 1927 Forest Act, allowed and gave maximum powers to the authorities to exploit the forest resources and profit from it. Individual rights and forest conservation were not priorities during this period.

While all the mentioned protections were bona fide and included for the benefit of the tribal communities, they were unable to prevent the eventual exploitation which came with the Britishers and their market penetration. As the relative isolation of the adivasis ended, along came the middlemen, meant to facilitate trade, but in practice, used their influence to exploit the adivasis in terms of land ownership and usury. Tribals had no choice but to work in the tea gardens, on plantations, as industrial labour, and as sharecroppers and labourers in the adjoining regions.[17]

Manifestation of Panchsheel in Indian policies

Prime Minister Nehru envisaged a common national order in India, and to achieve the same, the integration of tribal communities was important. In this section, we shall focus on the integration of panchsheel principles into the Constitution and the Directive Principles of State Policy. Further, we shall look at various other legislations which affect the rights of tribal communities.

5th and 6th Schedule

The British approach of excluding tribal populated areas from normal administration and application of laws was continued even after independence, in the form of the 5th and 6th Schedule of the Indian Constitution, 1950. The 5th Schedule confers powers of administration in scheduled

[15] *Supra* note 10, at 1227.
[16] *Ibid*.
[17] *Ibid*.

areas on the Governor of the state, and the 6th Schedule incorporates the administration of the north-east regions.

Most of the areas notified as 'partially excluded areas' in the Government of India Act, 1935 were included in the 5th Schedule, and wholly excluded areas constituted the 6th Schedule. The government determined a criteria for notifying a scheduled area, which took into consideration the following factors :-

1. preponderance of tribal population;
2. compactness and reasonable size of the area;
3. under-developed nature of the area; and
4. marked disparity in economic standard of the people.[18]

Once an area is notified under the 5th Schedule, its administration is headed by the Governor who submits annual reports to the President,[19] and the Central Government possesses the power to issue directions to the states in matters related to the administration of such areas.[20] Further, a Tribal Advisory Council is also constituted for areas falling under the 5th Schedule, with 3/4th members of such councils being scheduled tribe members of the Legislative Assembly.[21] The councils are tasked with advising the Governor on matters pertaining to the advancement and development of Scheduled Tribes in the state.[22] This is in direct conformity with Nehru's 3 principle of Panchsheel, which is to let the tribal communities administer themselves with little help from the outside.

The powers of the Governor in 5th Schedule areas are wide-ranging, as he/she holds the power to notify any Act passed by the Parliament or State Legislature to not apply to the scheduled areas,[23] he/she may bring into force new regulations for peace and good governance, regulate the allotment of land to members of the Scheduled Tribes in such areas; and regulate the business as moneylender by persons who lend money to members of the Schedule Tribes.[24] At present, 10

[18] Criteria for Declaring Schedule Areas, available at https://vikaspedia.in/social-welfare/scheduled-tribes-welfare/fifth-schedule-areas (last visited on June 14, 2021).
[19] Paragraph 3, Schedule V, Constitution of India, 1950.
[20] Paragraph 3, Schedule V, Constitution of India, 1950.
[21] Paragraph 4(1), Schedule V, Constitution of India, 1950.
[22] Paragraph 4(2), Schedule V, Constitution of India, 1950.
[23] Paragraph 5(1), Schedule V, Constitution of India, 1950.
[24] Paragraph 5(2), Schedule V, Constitution of India, 1950.

States namely Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana have Fifth Schedule Areas.[25]

The 6th Schedule is provided for under Article 244(2) and Article 275(1) of the Constitution, and was created for the protection of tribal communities and to provide them greater autonomy with regard to their administration. Under the schedule, 2 governing units are created , namely, the autonomous districts and autonomous regions. While the Governor has the power to alter the boundaries of any autonomous district or region, he has limited powers of governance. The 6th Schedule establishes District Councils and Regional Councils,[26] which have the power to make rules in respect of lands other than the Reserved Forest, use of canal or water courses for agriculture, establishment of village or town committees, appointment or succession of chief or headman, inheritance of property, marriage and divorce and social customs with the assent of the Governor.[27] There are nine autonomous districts in the Tribal Areas of four states, namely Assam, Meghalaya, Mizoram and Tripura.

While both, the 5th and 6th Schedule, provide for higher degrees of autonomy in administration of tribal communities, there still exists massive involvement of the Union government and their agents in the form of the Governor. In reality, the Governor's assent is the final seal to any decision, and therefore, the councils established have more of an advisory role, rather than being independent from the government machinery. There have also been cases where the councils were suspended or dissolved, citing extraordinary circumstances.[28]

Directive Principles of State Policy and other Articles

Article 15 of the Constitution recognizes the right against discrimination, which prevents the state from discriminating against any person on the basis of religion, race, caste, sex, place of birth, or any combination of these factors. As part of this right, the Article calls on affirmative action in the form of specific measures for 'socially and educationally backward classes of citizens or

[25] *Supra* note 19.
[26] Paragraph 2, Schedule VI, Constitution of India, 1950.
[27] Paragraph 3, Schedule VI, Constitution of India, 1950
[28] *See*, D. Uphing Maslai v. State of Assam, 2001 (2) GLT 299; Dr. Jayantha Rongpi v. State of Assam, 1994(1) GLJ 229; Prakanta Warisa v.State of Assam, 2001(3) GLT 500.

Scheduled Tribes'.[29] Article 16 (prohibition of discrimination in public employment includes reservations for the "backward class of citizens" and reservations in promotions for Scheduled Tribes) and Article 17 (prohibition of untouchability in any form) are examples of selected aspects where the Constitution requires the state to take a positive and proactive approach.[30]

Similarly, the "Directive Principles of State Policy" (Part IV of the Constitution) include various provisions that both directly and indirectly confer the right to equality as defined by the Constitution. Article 38 imposes a duty on the state to "secure a social order in which justice, social, economic, and political, shall inform all the institutions of national life," with a particular emphasis on minimizing income inequalities and eliminating status inequalities among individuals and groups of people.[31] Article 39 imposes significant duties on the state to steer its policies toward what has come to be known as "distributive justice," in terms of appropriate means of subsistence, ownership and control of material resources, minimizing wealth concentration in the economic system, and so on.[32]

These DPSPs are not only in line with the socialist overtones of Prime Minister Nehru, but also his panchsheel principles in terms of respecting the tribal communities land, culture and practices, while enabling them to develop their society. Further, one may take notice of the various 5-Year Plans which were implemented, with various schemes for the development of tribal communities.[33]

Legislative Framework

The major legislative enactments with relation to India's tribal communities were the Panchayats (Extension to the Scheduled Areas) Act, 1996, and the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

The state is charged with setting up panchayats under Article 40 of the Indian Constitution, which falls under Part IV or the DPSPs chapter. Village panchayats are local units of elected bodies with

[29] Land and Governance under the Fifth Schedule, Ministry of Tribal Affairs, available at https://tribal.nic.in/FRA/data/LandandGovernanceunderFifthSchedule.pdf (last visited on June 14, 2021), at 12; *See*, Article 15, Constitution of India, 1950.
[30] *Ibid*.
[31] Article 38, Constitution of India, 1950.
[32] Article 39, Constitution of India, 1950.
[33] *See*, Dr. Chittaranjan Mishra, Tribal Policy and Nehru, Odisha Review, available at https://magazines.odisha.gov.in/Orissareview/2017/November/engpdf/100-110.pdf.

powers and authority to self-govern themselves. In pursuance of this DPSP, the Parliament enacted Part IX of the Constitution in 1992,[34] but the same did not extend to scheduled areas and tribal areas.[35] It was through the Panchayats (Extension to the Scheduled Areas) Act, 1996 (hereinafter referred to as 'PESA') that local self-government was brought to the scheduled areas. It is pertinent to mention here that PESA in itself is not capable of being implemented. For its full effects to be felt, state legislatures have to implement changes in their corresponding panchayat legislations, and such changes must be in accordance with the PESA framework. Out of the 9 states with scheduled areas, 8 have changed their panchayat laws to incorporate PESA, with the exception of Jharkhand, which enacted its own Panchayat Act in 2001.[36]

Section 4 of PESA is considered to be the soul of the enactment as it lays down the requirement for all state legislations to be in consonance with customary and traditional law,[37] and further, allows the tribal communities to control their own resources.[38] While drafting panchayat laws for tribal communities in furtherance of PESA, state legislatures must use the following three principles as cornerstones for any and all laws :-

1. At the helm of any structure of governance must lie the Gram Sabha, which should have powers to control natural resources and development projects;
2. The Gram Sabha cannot be overlooked by any of the three-tiers in the panchayat system, as such tiers are extensions of the Gram Sabha itself; and
3. The Gram Sabha is an institution for self-governance, and any such power to it must be devolved, not delegated.[39]

[34] Constitution (Seventy Third Amendment) Act, 1992.
[35] Article 243M, Constitution of India, 1950.
[36] *Supra* note 30, at 33.
[37] Section 4(a), Panchayats (Extension to the Scheduled Areas) Act, 1996.
[38] Section 4(d), Panchayats (Extension to the Scheduled Areas) Act, 1996.
[39] K.B. Srivastava Panchayats in Scheduled Areas: An Analysis of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (Central Act no 40) and Extent of its Adaptation by the State having Fifth Schedule Areas, National Institute of Rural Development (1999).

As one may have concluded by now, the Gram Sabhas are meant to be given wide powers under PESA and are entrusted with preserving traditions and local customs, thus any development project must have the prior approval of the Gram Sabha.[40]

In pursuance of a greater understanding of the PESA framework, one may go through the various state legislations enacted in pursuance of the same, and the compliance of such legislations with PESA, both in letter and spirit.

Moving on to the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as 'the FRA, 2006'), the act focuses on the land rights of various forest-dwelling tribes and communities. A brief history of Forest Rights Acts is appropriate at this stage. During the time of the British Raj, we witnessed the enactment of the Indian Forest Act, 1865 and the 1927 Forest Act, which, as might be obvious, aimed to give maximum powers to the authorities to exploit the forest resources and profit from it. Individual rights and forest conservation were not priorities during this period. One might argue that even post-Independence, the need of the country for its growth and development was primary and above the concern of conservation of resources and individual community rights of the inhabitants in the forest areas.[41]

The eventual enactment of the FRA, 2006 was the outcome of rising community-based forest policy to ensure original dwellers' rights over resources.[42] Under the Act, there is a nodal agency in the form of the Ministry of Tribal Affairs, and the state government is tasked with creating three committees, namely, the State Level Monitoring Committee, the District Level Committee, and the Sub-Divisional Level Committee.[43] The Gram Sabha is also involved under the FRA, 2006 for vesting forest rights among the tribal communities. The objectives of the Act are :-

1. To recognize, record and vest forest land rights among forest-dwelling tribes;
2. to create a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land; and

[40] Section 4(e)(i), Panchayats (Extension to the Scheduled Areas) Act, 1996.
[41] Antara Roy & Sroyon Mukherjee, The Forest Rights Act, 2006: Settling Land, Unsettling Conservationists, 1 NUJS L. Rev. 293 (2008), at 297.
[42] *Ibid*., at 298.
[43] Section 6, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

3. To strengthen the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes.[44]

These objectives are meant to be achieved through the creation of committees as mentioned above to facilitate the claiming of land ownership and rights by scheduled tribes, and assisting them throughout the legal process so as to ensure they have access to the appropriate forums to legitimise their claims. Does this framework actually help in assigning rights to forest dwellers? We shall see in the next section.

PESA is a classic embodiment of Nehrus' 1st and 4th panchsheel principle of avoiding outside imposition while allowing self-governance, working along with the tribal communities' own social and cultural institutions, while conserving their customs and traditions. In principle, the PESA is a great piece of legislation for providing safeguards and protection to tribal communities and limiting outside interference in decision making which directly affects them.

Similarly, the FRA, 2006 embodies the 2nd panchsheel principle of respecting the land and forest rights of tribal communities. The legislation works exclusively towards giving land titles and ownership to tribal communities which had or have a claim to such territories, while ensuring they are protected from encroachment or exploitation by outside settlers who recently came to such areas.

The Impact of Panchsheel : Letter Versus Essence?

Land Ownership

As has been mentioned before, the Constitution under Schedule V, namely paragraph 5(2)(a), explicitly prohibits transfer of land ownership from tribals to non-tribals in scheduled areas, and most states have enacted laws in consonance with the same. However, land alienation is still a regularly faced issue for tribal communities, as is evident from the fact that till 2013, there were 3.75 lakh cases registered in relation to tribal land rights, out of which 41% were decided by the

[44] Introduction, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Courts against the tribal petitioners.[45] Further, the actual implementation of court orders in cases where the tribal petitioner was reassigned his land cannot be determined as no such data exists.

Compromising the protections offered under Schedule V further is the State itself, which acquires private land through the concept of eminent domain, without any further rehabilitation for the displaced tribal population. The last 5-year plan (12th) stated in categorical terms that out of the entire displaced population in our country, tribals are the worst-off, with almost 55% of all displaced persons belonging to the tribal communities.[46] Time and again, the issue of displacement is raised across various forums, yet no concrete or effective solutions are implemented by the state. In fact, the Supreme Court itself opined against the principle of autonomy and tribal self-governance, with minimum interference on the government's part. It would be useful to produce the relevant paragraph :

'*It is now accepted that the Panchsheel doctrine which provided that the tribes could flourish only if the State interfered minimally and functioned chiefly as a support system in view of passage of time is no longer valid. Even the notion of autonomy contained in the 1989 convention has been rejected by India.*'[47]

In the said case, the court reasoned that the tribal communities of Kerala are not 'backward' as compared to their counterparts in other areas, and therefore will not find it difficult to integrate with mainstream society. On the face of it, such observations clash directly with the object and purpose of the Vth Schedule, i.e. to preserve and protect the cultural heritage and customs of tribal communities in India.

Forest Resources

As has been mentioned before, up until the FRA, 2006, forest legislation was majorly based on the colonial Indian Forest Act, 1927, and were useful tools to exploit forest resources while ignoring the rights of individual owners or communities. In stark contrast, the FRA, 2006 is focused on

[45] Draft National Land Reforms Policy, 24th July, 2013, Department of Land Resources, Ministry of Rural Development, Government of India.
[46] Social Inclusion, Chapter 24, Volume-III (Social Sectors), Twelfth Five Year Plan (2012–2017) Planning Commission, Government of India, para 24.85 page 237.
[47] State of Kerala vs. Peoples Union for Civil Liberties & Ors, (2009) 8 SCC 49, para 18.

delivering protections to the forest-dwellers and creates mechanisms for facilitating claims to land ownership. This in itself is a huge leap for forest rights related legislation, but there is still more to be done.

Interestingly, the Supreme Court held that before any traditional forest land is diverted for the purpose of commercial projects, the original tribal communities must be consulted as the same would fall under their right to protect and preserve their religion and culture as enshrined in Article 25 of the Constitution.[48] Further, the Gram Sabha's consent is also a necessary prerequisite.

The FRA, 2006 also has some implementation problems that need to be addressed, like the issue of forest rangers overruling or ignoring the decisions of committees formed under the Act,[49] the improper rejection of tribal claims to land on illegal grounds,[50] due process not being followed while deciding on claims,[51] etc. Possible solutions to these issues shall be discussed in the subsequent section.

Unavoidable Urbanisation and Self-Governance

While we have discussed the role played by PESA in establishing self-governance in scheduled areas and extending Part IX of the Constitution, the Act's application is limited to rural areas with a low population. But with rapid city expansion and the conversion of rural areas into urban areas, the question which arises is what happens to tribal communities who reside close to or in urban areas? Unlike the PESA, there is no legislation extending Part IXA of the Constitution (which deals with Municipalities) to scheduled areas. It is important to note that application of part IX has been barred by Article 234-ZC of the Constitution, except in a case where Parliament chooses to extend its application through special law.

This has led to the formation of unconstitutional urban municipal bodies which regularly conduct elections and fail to include adequate safeguards to ensure representation of tribal communities, preservation of their culture and self-governance. While it is true that if a PESA counterpart existed

[48] Orissa Mining Corporation vs. Ministry of Environment and Forests, (2013) 6 SCC 476.
[49] Report, National Committee on Forest Rights Act, Ministry of Environment and Forests and Ministry of Tribal Affairs, https://cdnbbsr.s3waas.gov.in/s3c8758b517083196f05ac29810b924aca/uploads/2019/11/2019112687-1.pdf (last visited on June 15, 2021), at 43.
[50] *Ibid*.
[51] *Ibid*., at 42.

for municipalities, tribal communities themself could take the decisions regarding urbanisation and the rate at which to do so, but in the current framework, they have no say in such processes. This leads to an imposition of outsider governance and goes against the panchsheel principles, part IX of the Constitution and various other policy stands adopted by the State.

The Supreme Court got a chance to look into municipal corporations being established in urban scheduled areas in the case of *Sundergarh Zilla Adivasi Advocates Association vs. State Govt of Odisha* where the application of the Orissa Municipal Corporation Act, 1950 to scheduled areas was questioned.[52] The court upheld the act by relying on the Governor's order to extend its application to scheduled areas, but chose not to address the inconsistencies between the Act and Part IXA of the Constitution. Therefore, the void still exists with no steps being taken by the State to fill it, or the judiciary to point it out.

Conversions and Identity

It must be made clear right from the start of this section that conversions are inherently and on the face of it contradictory to the panchsheel principles and one can not imagine in any scenario Nehru advocating for integration of tribal communities on religious lines. As the 1st principle calls for the preservation and protection of tribal culture, a purposive approach to the same would let us include religious identities also under such labels. The scheduled tribes have traditionally practiced faiths different from the mainstream population and have had distinctive religious practices.[53]

Parliament is yet to enact any special law for the protection of religious identities of tribal communities. There is no mention of it in the Constitution except for Article 25 and 26, which guarantee the freedom of religion and freedom to manage religious institutions respectively.[54] Further, there is no explicit recognition of tribal religions in state policy, and more often than not, they are clubbed together with the Hindu population.[55] Although, implicit recognitions like exemption of scheduled tribes from the Hindu personal laws is present.

[52] Sundergarh Zilla Adivasi Advocates Association vs. State Govt of Odisha, WP (C) No. 215 of 2012,
[53] C.R. Bijoy et al., India and the Rights of Indigenous Peoples Constitutional, Legislative and Administrative Provisions Concerning Indigenous and Tribal Peoples in India and their Relation to International Law on Indigenous Peoples, at 84.
[54] Article 25, Constitution of India, 1950; Article 26, Constitution of India, 1950;
[55] *Supra* note 54.

Conversions of adivasis is not new. One can trace the conversion phenomena of tribal communities since colonial times. One may notice the impact of forced conversion on the population of Mizoram, Meghalaya, Manipur and other north-eastern states with large tribal concentration.[56] Moreover, the issue of christian missionaries leading forced conversions has also seen a stark rise.[57] Within this tug-of-war of religions, the traditional tribal identity has been faces a challenge of being wiped out.

Recent Developments in the pandemic period

With the onset of the COVID pandemic in 2020 and the effect it had on economies and livelihoods across the world, the tribal population was adversely affected too. Most tribal communities earn 20%-40% of their annual income collecting Minor Forest Produce (MFP), and the start of the 1st wave resulted in a lockdown during the collection period of MFPs, thus leading to a huge loss of income due to inability to collect these produce because of social distancing norms, movement restrictions and closure of marketplaces.[58]

Another grave crisis, witnessed by the entire country, was the migrant crisis during lockdown. Around 50,000–60,000 migrant labourers fled from urban cities after losing their jobs, travelling back to their native villages on foot.[59] The withdrawal of jobs, holding of salaries, non-engagement by the MGNREGA scheme, closure of transport and food shortages created a situation where massive hordes of migrants were found walking on the roads for days to reach their destination. Talking only about one district in Madhya Pradesh, namely the Jhabua district, more than 30,000 natives returned from various urban metropolitan cities, while another 30,000 more found themselves stranded and unable to return.[60]

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[56] *Ibid*.; *See* generally, S K. Chaube, The STs and Christianity in India, Economic and Political Weekly, February 27, 1999, at 524-6.
[57] *Ibid*.
[58] Livelihood Vulnerabilities of Tribals during COVID-19, Economic & Political Weekly, available at https://www.epw.in/journal/2021/11/commentary/livelihood-vulnerabilities-tribals-during-covid-19.html#:~:text=The%20outbreak%20of%20the%20COVID,tribal%20people%20(ILO%202020b).&text=Most%20of%20these%20tribes%20are,infrastructure%2C%20and%20quality%20of%20healthcare (last visited on June 16, 2021)
[59] *Ibid*.
[60] *Ibid*.

Mounting on the perceived betrayal by the State itself, the government decided to conveniently use the pandemic period to approve 11 projects through its environmental ministry across the country and further, relaxed forest and environmental clearance norms for mining by notifying new guidelines, all of which was done without consulting the Gram Sabhas, local population or tribal communities.[61] All of this was done despite the existence of the FRA, 2006 and all the safeguards within it. Some might find using a pandemic for capitalistic profit at the expense of forest conservation to be despicable, but for the affected tribal population, this is a centuries old power equation.

Taking note of the positive side as well, the Tribal Cooperative Marketing Development Federation of India (TRIFED) under the Ministry of Tribal Affairs raised the issue of MFP collection which resulted in a revision of the Minimum Support Price for 49 MFPs by the government.[62] It also pushed tribal start-ups and worked towards linking artisans with corporate houses to supply their produce. The government also guaranteed an increase in the working days under the MGNREGA scheme from 100 days to at least 150/200 days, and also increased the wage by 20 rupees.[63] Further, the finance minister also announced an infusion of Rs. 6,000 crores into the Compensatory Afforestation Fund Management and Planning Authority to increase employment opportunities for tribal communities and forest conservation.[64]

There are other, more deep rooted issues related to healthcare and infrastructure in tribal areas with rebellions against the state. In the naxalite dominated region of Bastar, over the years the administration has ensured that no supplies, rations or medicines reach the naxal camps, cutting them off from resources because of their aggression against the state. One can only imagine the impact of the COVID pandemic in these areas where basic healthcare is unavailable and the government, using the army, takes active steps to isolate and starve the population for working towards autonomy and against centuries of exploitation. Not to delve on the merits of the Naxalite

[61] *Ibid.*
[62] *Ibid.*
[63] COVID-19: Centre's relief package an eyewash for NREGA workers, available at https://www.downtoearth.org.in/blog/economy/covid-19-centre-s-relief-package-an-eyewash-for-nrega-workers-70399.
[64] Atmanirbhar Bharat Package: CAMPA funds of Rs 6,000 crore for tribal employment in forestry jobs, says FM, available at https://www.moneycontrol.com/news/business/economy/atma-nirbhar-bharat-campa-funds-of-rs-6000-crore-for-tribal-employment-in-forestry-jobs-says-fm-5266891.html.

movement itself, even the neutral tribal communities which happen to find themselves between the rebels and the army, have historically suffered the most, and the consequence of a pandemic would be no different. Perhaps, what is worse is the fact that no data is also made available due to constant state censorship and white-washing of their atrocities committed in the name of maintaining the unity and integrity of India.[65]

Conclusive remarks

As might be clear by now, the mainstream population has always played a pivotal role in ensuring a hindrance-free life for native dwellers, and it is only with the efforts of the State, private society and the individuals on the ground level that we can take holistic steps in preserving tribal culture and empowering individuals belonging to native communities. After pointing out the various aspects of tribal protection codified under law, the author shall now attempt to suggest a few reforms to bridge the gaps within such legislation so as to ensure the objective and intention of the same are fulfilled.

1. The autonomous councils established by the 6th Schedule should be integrated with the village governance system as established by PESA.
2. Evaluation of all administrative and legal provisions, whether central or state legislations, for inconsistencies with the provisions of Article 244, the Fifth Schedule, the Sixth Schedule, and PESA, as well as Articles 371 A and 371 G, and correction of inconsistencies, including legislative amendments where necessary.
3. The safeguards provided by the Forest Rights Act to the forest resources and habitats should be used as a model for protecting all resources, including land, water, minerals etc. The concept of 'community rights to resources' must be embodied in subsequent legislations, which would mark a shift from the previous approach of profiteering at the expense of such resources.
4. Sensitization of law enforcement and administrative entities, throughout the country, to various types of discrimination against STs. Aside from that, procedures for the implementation and enforcement of specific legislation, such as the 1986 Prevention of

[65] For more information on the war in Bastar and its effects on the tribal community, the author would highly recommend reading 'The Burning Forest' by Nandini Sundar.

Atrocities Act, must be established. The 1986 Act must also cover the Denotified and Nomadic Tribes.

5. Immunity granted in criminal and other legislations against prosecution of armed forces, paramilitary forces, and police must be appropriately amended, and accountability must be established for those responsible for the policy of state repression being conducted in various forms across the country's tribal areas.
6. A specific legislation like PESA must be created to extend constitutional provisions pertaining to self-government in urban areas (or municipalities) in Scheduled Areas and Tribal areas, and municipal legislation at the state level must be extensively scrutinized for conflicts with this law and changed appropriately.
7. Mining and land policies should be completely revised at the state and federal levels to ensure compliance with the law and spirit of the FRA, 2006 and PESA. Decisions on the redirection of forest resources, the allocation of mining leases, the transfer of other government lands, and the acquisition of privately owned property, in particular, must be done in conjunction with and with prior informed consent of the established Gram Sabhas.
8. The recognition of culturally significant aspects of tribal communities is important in today's times. Tribal languages must be recognized under the VIII schedule, and various tribal religions must be given a distinct identity, rather than clubbing them all under Hinduism.

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