Reference Manual on
Indigenous Rights

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Prepared by

Centre for Research and Planning

SUPREME COURT OF INDIA

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Prepared by

Centre For Research and Planning (CRP), Supreme Court of India (2025)

Contributors

Dr. Anurag Bhaskar, Additional Registrar-cum-Director, CRP

Padmaja Menon, Consultant (Research), CRP

Bhoomika Babbar, Law Clerk-cum-Research Associate, CRP

Megha Bindal, Law Clerk-cum-Research Associate, CRP

Inputs from

Shubham Kumar, Consultant (Research), CRP

Rajesh Ranjan, Consultant (Research), CRP

Vrishti Shami, Consultant (Research), CRP

Shambhavi Gupta, Law Clerk-cum-Research Associate, CRP

Cover Designed by

Ajayendra Nath Tripathi, Consultant (Technology), CRP

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LIST OF ABBREVIATIONS

ATSIC	*Aboriginal and Torres Strait Islander Commission*	**CBD**	*United Nations Convention on Biological Diversity, 1992*
CCD	*Conservation-cum-Development*	**CDE**	*Convention Against Discrimination in Education, 1960*
CEDAW	*Convention on the Elimination of all Forms of Discrimination against Women, 1979*	**CERD**	*Committee on the Elimination of Racial Discrimination*
CESCR	*Committee on Economic, Social and Cultural Rights*	**CNPI**	*National Council for Indigenous Policy*
CRC	*Conventions on the Rights of the Child, 1989*	**DAPST**	*Development Action Plan for Scheduled Tribes*
DMF	*District Mineral Foundation*	**EMRS**	*Eklavya Model Residential Schools*
FIR	*First Information Report*	**FPIC**	*Free, Prior and Informed Consent*
FRA, 2006	*Forest Rights Act, 2006*	**FUNAI**	*National Foundation of Indigenous People*
GRATK	*Genetic Resources and Associated Traditional Knowledge, 2024*	**HAMA, 1956**	*Hindu Adoptions and Maintenance Act, 1956*
HMA, 1955	*Hindu Marriage Act, 1955*	**HMGA, 1956**	*Hindu Minority and Guardianship Act, 1956*
HRC	*Human Rights Committee*	**HSA, 1956**	*Hindu Succession Act, 1956*
ICCPR	*International Covenant on Civil and Political Rights, 1966*	**ICERD**	*International Convention on the Elimination of All Forms of Racial Discrimination, 1965*
ICESCR	*International Covenant on Economic, Social and Cultural Rights, 1966*	**ILO**	*International Labour Organisation*
IPC, 1860	*Indian Penal Code, 1860*	**ISA, 1925**	*Indian Succession Act, 1925*

LARR ACT, 2013	*Land Acquisition, Rehabilitation and Resettlement Act, 2013*	**MFP**	*Minor Forest Produce*
MMDR ACT, 1957	*Mines and Minerals (Development and Regulation) Act, 1957*	**MSP**	*Minimum Support Price*
NCST	*National Commission for Scheduled Tribes*	**NESTS**	*National Education Society for Tribal Students*
NSTFDC	*National Scheduled Tribes Finance and Development Corporation*	**NTRI**	*National Tribal Research Institute*
OHCHR	*Office of the UN High Commissioner for Human Rights*	**OIPC**	*Office of Indigenous Policy Coordination*
OTFD	*Other Traditional Forest Dweller*	**PESA ACT, 1996**	*Panchayats (Extension to the Scheduled Areas) Act, 1996*
PFMS	*Public Financial Management System*	**PM-JANMAN**	*Pradhan Mantri Janjati Adivasi Nyaya Maha Abhiyan*
PMAAGY	*Pradhan Mantri Adi Adarsh Gram Yojana*	**PMJVM**	*Pradhan Mantri Jan Jatiya Vikas Mission*
PoA ACT, 1989	*Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989*	**PVTG**	*Particularly Vulnerable Tribal Groups*
SCA	*State Channelising Agency*	**SDG**	*Sustainable Development Goal*
SHG	*Self Help Group*	**SIA**	*Social Impact Assessment*
SMA, 1954	*Special Marriage Act, 1954*	**TRI-ECE**	*Tribal Research Information, Education, Communication and Events*
TRIFED	*Tribal Cooperative Marketing Development Federation of India Limited*	**TRIPS**	*Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995*
TRI	*Tribal Research Institute*	**UGC**	*University Grants Commission*
UN	*United Nations*	**UNDRIP**	*United Nations Declaration on the Rights of Indigenous Peoples*

UNESCO	*United Nations Educational, Scientific and Cultural Organisation*	**UNPFII**	*UN Permanent Forum on Indigenous Issues*
UNWGIP	*UN Working Group on Indigenous Populations*	**VDSHG**	*VAN Dhan Self-Help Group*
VDVK	*Van Dhan Vikas Kendra*	**VGFN**	*Vuntut Gwitchin First Nation*
VGGT	*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest in the Context of National Food Security, 2012*	**WIPO**	*World Intellectual Property Organisation*
WTO	*World Trade Organisation*		

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CHAPTER I: INTRODUCTION

1. Objectives

Indigenous peoples, totalling approximately 370 million individuals across 70 countries,[1] are among the world's most dispossessed, disenfranchised and marginalised groups, sometimes referred to as 'The Fourth World'.[2] Although constituting only around 6 per cent of the global population, they are custodians of nearly 80 per cent of the planet's biodiversity and 40 per cent of the ecologically intact landscapes.[3] The relationship of indigenous peoples with their ancestral lands, traditional territories, and natural resources is central to their survival.[4] Despite being the descendants of those considered the original inhabitants of a region, colonisation, conquest, settlement, and occupation have led to indigenous peoples being excluded, and their inherent sovereign powers ignored.[5] Yet, indigenous peoples have managed to retain their unique identity for millennia, through tumultuous histories of resistance, contact, and/or collaboration with non-indigenous communities.[6]

Against this backdrop, the Centre for Research and Planning of the Supreme Court of India has prepared this Reference Manual to spotlight the rights of indigenous peoples, as recognised at the international and national levels, with special focus on the constitutional, legislative, and institutional mechanisms unique to India. This Reference Manual, therefore, seeks to fulfil the following objectives:

- Identify the international legal instruments which expressly or implicitly safeguard the rights of indigenous peoples to self-determination, self-governance, participation, and consultation; land, forest, and resources; economic, social, and cultural protections; languages; education; traditional knowledge; access to justice; and sustainable environment management.
- Contextualise India's pre-colonial, colonial and post-colonial historical trajectory in relation to indigenous rights, delineating the evolution to today's rights-based approach.
- Expound upon the constitutional, legislative, and policy measures adopted by India for securing

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1 United Nations Department of Economic and Social Affairs, *State of the World's Indigenous Peoples, Climate Crisis*, Vol. VI (Apr. 2025), p. no. 3; United Nations Permanent Forum on Indigenous Issues, *Indigenous Peoples, Indigenous Voices*, p. no. 1, *available at:* https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf (last visited on Oct. 5, 2025).

2 Katja Göcke, "Indigenous Peoples in International Law", in Brigitta Hauser-Schäublin (ed.), *Adat and Indigeneity in Indonesia Culture and Entitlements between Heteronomy and Self-Ascription* 20 (Göttingen University Press, 2017).

3 United Nations Department of Economic and Social Affairs, *State of the World's Indigenous Peoples, Climate Crisis,* Vol. VI (Apr. 2025)*,* p. no. 3*.*

4 *Ibid*.

5 United Nations Permanent Forum on Indigenous Issues, *Indigenous Peoples, Indigenous Voices*, p. no. 2, *available at:* https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf (last visited on Oct. 5, 2025).

6 United Nations Department of Economic and Social Affairs, *State of the World's Indigenous Peoples, Climate Crisis,* Vol. I (May 2011), p. nos. 1, 2.

the rights of Scheduled Tribes, including the constitutional recognition of their identity and their rights to equality and non-discrimination; reservations; political representation and self-governance; autonomy over resources; cultural and religious freedoms; and socio-economic justice.

- Offer a comparative description of the diverse strategies employed by select jurisdictions in addressing the rights of indigenous peoples to self-determination, self-governance and participation; ownership and/or use of land, forest, and resources; preservation of culture, tradition, religion and language; customary legal systems; consultation; and affirmative action.

- Highlight global best practices in the recognition, protection and promotion of the rights of indigenous peoples that could potentially inform constitutional, legal or administrative reform within the Indian domestic framework.

- Serve as a repository of legal, judicial and scholarly resources concerning indigenous rights, towards facilitating further research as well as enabling stakeholders, legal practitioners, policymakers, academics, and other interested parties in accessing consolidated information (albeit non-exhaustive) relating to indigenous peoples.

2. Methodology and Jurisdictions Covered

This Reference Manual adopts a qualitative methodology, founded in doctrinal legal research, supplemented by a comparative approach. In order to trace the constitutional, statutory and institutional guarantees accorded to indigenous peoples at the global, regional and domestic levels, with particular focus on the Scheduled Tribes in India, this Reference Manual relies on the following primary sources:

- international legal instruments (whether binding or not);
- constitutional provisions;
- legislative enactments;
- judicial pronouncements;
- policy frameworks;
- historical records, *inter alia*.

This Reference Manual also draws on secondary sources, including the documents of intergovernmental, governmental and non-governmental bodies, as well as academic publications, to aid in the interpretation and explanation of the primary sources cited.

With India as the main focus, this Reference Manual also delineates the constitutional, legislative and

policy measures established in the following countries for the protection of indigenous rights:

- Norway, Sweden, Finland (Nordic)
- Aotearoa (New Zealand), Australia (Oceania)
- Canada, United States of America (North America)
- Ecuador, Colombia, Brazil (South America)

The above jurisdictions have been carefully chosen for the comparative study, taking into account the following factors:

- presence of a significant population of indigenous people(s) within its territorial borders;
- a variety of constitutional, statutory and policy models in the recognition of indigenous peoples and their rights; and
- diversities in economic progress, geographical locations, and the nature of historical interactions with indigenous peoples.

This Reference Manual is guided by the need to situate the Indian approach to recognising, safeguarding and promoting the rights of Scheduled Tribes within the broader context of indigenous rights. This Reference Manual also serves to highlight the international standards, constitutional, legislative and policy best practices, and the contours of judicial activism in securing the rights of indigenous peoples that can inform the Indian parliamentary, executive and juridical efforts towards crafting a stronger protective ecosystem for Scheduled Tribes and other tribal communities.

3. Definition: Who are 'Indigenous Peoples'?

Etymologically, the word 'indigenous' stems from the Latin term "*indigenae*", signifying those who were born in a certain place, as opposed to "*advenae*", meaning those who arrived from elsewhere.[7] 'Indigenous' therefore "*suggests that the group to which it refers was the first to exist in the particular location*", based on the underlying conception of "*priority in time*" as to their presence in a given territory, if not immemorial occupancy.[8] Historically, the 'indigenous' label was used to distinguish between colonial powers and peoples who were living under colonial domination.[9] In this context, indigenous populations have been described as "*peoples not yet able to stand by themselves under the*

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[7] Erica-Irene A Daes, *Working paper on the concept of indigenous people,* UN Doc E/CN.4/Sub2/ACU/1996/2 (Jun. 10, 1996), para. 10.

[8] *Ibid*; Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy" 92(3) *The American Journal of International Law* 422 (1998).

[9] Erica-Irene A Daes, *Working paper on the concept of indigenous people,* UN Doc E/CN.4/Sub2/ACU/1996/2 (Jun. 10, 1996), para. 12; Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy" 92(3) *The American Journal of International Law* 426 (1998).

strenuous conditions of the modern world".[10] On account of their 'backwardness', they were seen as requiring the tutelage of 'advanced' nations,[11] perforce entailing "*for their own good*", their 'assimilation' into the mainstream society, thus suppressing or eroding their cultural, traditional, linguistic, religious and ethnic attributes, a strategy that was pursued from the 16th century well into the 20th century.[12] At its extreme, the stringent implementation of measures of assimilation often led to the gross violations of human rights of indigenous populations, and even worse, their ethnocide.[13]

Today, although there is no universally accepted legal definition of 'indigenous peoples', several attempts have been made to conceptualise the 'indigenous' identity.[14] The International Labour Organisation's (ILO) Indigenous and Tribal Populations Convention, 1957 (commonly referred to as the ILO Convention No. 107) was the first international attempt in this regard. The ILO Convention No. 107 characterised 'tribal populations' and 'indigenous populations' in the following terms:[15]

> "*(a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;*
>
> *(b) members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong.*"

According to the above formulation, all indigenous populations are defined as necessarily tribal in

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[10] The Covenant of the League of Nations, 1920, art. 22.

[11] *Ibid*.

[12] Katja Göcke, "Indigenous Peoples in International Law", in Brigitta Hauser-Schäublin (ed.), *Adat and Indigeneity in Indonesia Culture and Entitlements between Heteronomy and Self-Ascription* 20 (Göttingen University Press, 2017); Walter Kälin, "Assimilation, Forced", in *Max Planck Encyclopedia of Public International Law* (2020), *available at*: https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e754 (last visited on Nov. 11, 2025): *"Assimilation, i.e. the process of absorption into a society or culture, can be understood in legal/administrative or cultural terms. Legal and administrative assimilation can be defined as imposing one's own legal and administrative system on a foreign territory, e.g. a colony or an occupied territory. Meanwhile, cultural assimilation describes the process of growing internalization of and participation in the culture and values of a given society, eventually leading to the cultural absorption of members of minorities or immigrants into the dominant society."*

[13] Russel Lawrence Barsh, "Revision of ILO Convention No. 107" 81(3) *The American Journal of International Law* 759 (1987).

[14] United Nation Office of High Commissioner of Human Rights, *Indigenous Peoples and the United Nations Human Rights System*, Fact Sheet No. 9/ Rev.2 (2013), p. no. 2.

[15] The Indigenous and Tribal Populations Convention, 1957 (No. 107), art. 1.1.

nature, while not all tribal populations are indigenous.[16] This portrayal of tribal and indigenous populations came to be heavily criticised, first and foremost, for their depiction as being at a "*less advanced stage*", which is deeply rooted in colonialism, given the imagery of 'primitiveness' and 'inferiority'.[17] The ILO Convention No. 107 was also condemned on account of its 'integrationist' approach,[18] which failed to guarantee tribal and indigenous populations autonomy over their own economic, social and cultural development.[19] Instead, the 'integrationist' approach urged States to ensure, on a non-discriminatory basis, the participation of tribal and indigenous populations in national progress, their inclusion as beneficiaries of welfare schemes, limited collaboration in decision-making on matters affecting them, and respect for their distinct customs, traditions and legal systems, but "*only to the extent compatible with the objectives of integration programmes*".[20] States, pursuant to the 'integrationist' approach, also subjected tribal and indigenous populations to "*unprecedented pressures which threaten[ed] their cultural identity and even their very existence*" on the pretext of "*asserting their own unity*".[21] Indigenous organisations were hence hugely dissatisfied with the idea of 'indigeneity' propagated by the ILO Convention No. 107 and the protective safeguards it offered, which were formulated without consulting or deliberating with indigenous voices.[22]

Cognizant of the widespread disillusionment and disapproval of the indigenous communities, the ILO replaced the ILO Convention No. 107 with the Indigenous and Tribal Peoples Convention, 1989 (commonly referred to as the ILO Convention No. 169),[23] which re-characterised 'tribal peoples' and

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[16] Erica-Irene A Daes, *Working paper on the concept of indigenous people*, UN Doc E/CN.4/Sub2/ACU/1996/2 (Jun. 10, 1996), para. 23.

[17] Douglas Sanders, "Indians, AmerIndians, Tribes and Peoples" 20(3) *India International Centre Quarterly* 30 (1993).

[18] The Indigenous and Tribal Populations Convention, 1957 (No. 107), preamble: "*Having decided upon the adoption of certain proposals with regard to the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries, which is the sixth item on the agenda of the session...Considering that there exist in various independent countries indigenous and other tribal and semi-tribal populations which are not yet integrated into the national community and whose social, economic or cultural situation hinders them from benefiting fully from the rights and advantages enjoyed by other elements of the population...Considering that the adoption of general international standards on the subject will facilitate action to assure the protection of the populations concerned, their progressive integration into their respective national communities, and the improvement of their living and working conditions...*"

[19] Russel Lawrence Barsh, "Revision of ILO Convention No. 107" 81(3) *The American Journal of International Law* 756 (1987).

[20] *Id*. at 757.

[21] *Id*. at 758.

[22] Lee Sweptson, "Indigenous Peoples' Voices: Indigenous Participation in ILO Convention No. 169", in Richard Potz and René Kuppe (eds.) *International Yearbook of Legal Anthropology* 115 (Brill, Vol. 12, 2004); Russel Lawrence Barsh, "Revision of ILO Convention No. 107" 81(3) *The American Journal of International Law* 758-759 (1987).

[23] The Indigenous and Tribal Populations Convention, 1957 (No. 107), however, continues to remain in force in numerous countries having significant indigenous populations, including India. The Indigenous and Tribal Peoples Convention, 1989 (No. 169) has been ratified only by 24 countries thus far.

'indigenous peoples' as follows:[24]

> "*(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;*
>
> *(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.*"

The ILO Convention No. 169 altered its description of tribal peoples from those "*whose social and economic conditions are at a less advanced stage*" to those "*whose social, cultural and economic conditions distinguish them from other sections of the national community*". The ILO Convention No. 169 also amended the conceptualisation of all indigenous peoples as tribal peoples, instead specifically depicting them as peoples who descended "*from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries*". More pertinently, the ILO Convention No. 169 expressly recognised that one's tribal or indigenous identity is fundamentally determined by their own self-identification as such,[25] thereby precluding States from "*readily discard[ing] the categories of indigeneity and tribal [identity] as post-colonial anachronisms*".[26] The ILO Convention No. 169 also substituted the word 'populations' with 'peoples', *prima facie* having considerable legal ramifications for the protection of tribal and indigenous rights—'peoples' are legally entitled to the protection of their human rights, including the right to self-determination,[27] while 'populations' as such has no juridical significance.[28] Nevertheless, the ILO Convention No. 169 sought to pre-empt such a conclusion by explicitly clarifying that 'peoples' "*shall not be construed as having any implications as regards the rights which may attach to the term under*

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[24] The Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 1.1.

[25] *Id*. art. 1.2.

[26] Peter Bille Larsen and Jérémie Gilbert, "Indigenous rights and ILO Convention 169: Learning from the Past and Challenging the Future" 24 *The International Journal of Human Rights* 84 (2020).

[27] Douglas Sanders, "Indians, Amerlndians, Tribes and Peoples" 20(3) *India International Centre Quarterly* 31-32 (1993); Sharon Venne, "The New Language of Assimilation: A Brief Analysis of ILO Convention 169" 2(2) *The EAFORD International Review of Racial Discrimination* 56 (1989).

[28] Sharon Venne, "The New Language of Assimilation: A Brief Analysis of ILO Convention 169" 2(2) *The EAFORD International Review of Racial Discrimination* 55 (1989).

international law",[29] with the specific intention of restricting their right to self-determination.[30] Further, although the ILO Convention No. 169 avoided the express 'integrationist' approach of its predecessor, the language contained in several of its provisions continued to imply that tribal and indigenous peoples are "*backward and underdeveloped*" or that their "*lifestyle is inferior and unacceptable*".[31] Accordingly, the ILO Convention No. 169 has also been severely criticised for being drafted from a "*non-indigenous point of view*",[32] limiting the role of indigenous communities in the process to "*indirect and demeaning levels of participation*".[33]

The United Nations (UN), through the seminal Study of the Problem of Discrimination against Indigenous Populations, also attempted to define 'indigenous peoples', bestowing the UN Special Rapporteur on Discrimination against Indigenous Populations, José R. Martinez Cöbo, with this responsibility. In his preliminary report, the following working definition, partly relying on the ILO Convention No. 107, was proposed:

> "*Indigenous populations are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them and, by conquest, settlement or other means, reduced them to a non-dominant or colonial condition; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form part, under a State structure which incorporates mainly the national, social and cultural characteristics of other segments of the population which are predominant.*"[34]

Nonetheless, in his final report submitted in 1986, the Special Rapporteur categorically acknowledged that the definition of 'indigenous' identity must be left to the indigenous communities themselves: "*The fundamental assertion must be that indigenous populations must be recognized according to their own perception and conception of themselves in relation to other groups; there must be no attempt to define them according to the perception of others through the values of foreign societies or of the dominant sections in such societies.*"[35] The Special Rapporteur, nevertheless, went on to recommend the following

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[29] The Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 1.3.

[30] Sharon Venne, "The New Language of Assimilation: A Brief Analysis of ILO Convention 169" 2(2) *The EAFORD International Review of Racial Discrimination* 55 (1989).

[31] *Id*. at 57, 59, citing The Indigenous and Tribal Peoples Convention, 1989 (No. 169), arts. 2, 7.

[32] *Id*. at 54, 65.

[33] Dikshit Sarma Bhagabati, "How to Be Indigenous in India?" 35 *Law and Critique* 104 (2024).

[34] José R. Martinez, *Commission of Human Rights, Sub-Commission on Prevention of Discrimination of Minorities*, UN Doc E/CN.4/Sub.2/L.566 (Jun. 29, 1972), paras. 34-35.

[35] José R. Martinez Cobo, *Study of the Problem of Discrimination against Indigenous Populations*, Vol. V, UN Doc E/CN.4/Sub.2/1986/7/Add.4 (1986), para. 368.

definition of 'indigenous peoples' from an international perspective:[36]

> "*Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present nondominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.*
>
> *This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors: (a) Occupation of ancestral lands, or at least of part of them; (b) Common ancestry with the original occupants of these lands; (c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, life-style, etc.); (d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language); (e) Residence in certain parts of the country, or in certain regions of the world; (f) Other relevant factors*."

Further, the Special Rapporteur defined an 'indigenous person' as "*one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognised and accepted by these populations as one of its members*".[37] Besides the subjective criterion of 'self-identification', the definition of 'indigenous peoples' proposed by the Special Rapporteur identified the following objective criteria: historical continuity; distinctiveness; non-dominance; and the determination to preserve, develop and transmit to future generations their ancestral territories and identity as peoples.[38] Of the foregoing, the indicator of "*historical continuity with pre-invasion and precolonial societies*" has been critiqued for "*abjectly neglect[ing] the ontological ruptures of colonialism and underplay[ing] the metropolitan incursion into indigenous worldviews*".[39] Indigenous peoples, although having distinct ancestry, culture, religion, language and livelihoods, are not immune from social change resulting from "*an assemblage of affinities and contests with mainstream actors*", thus rendering 'historical continuity' in the strict sense a misnomer—"*shedding their traditional lifestyle need not imply an erosion of indigeneity.*"[40] Further, as a direct result of colonisation or environmental crises, indigenous peoples

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[36] *Id*. at paras. 379-380.

[37] *Id*. at para. 381.

[38] United Nation Office of High Commissioner of Human Rights, *Indigenous Peoples and the United Nations Human Rights System*, Fact Sheet No. 9/ Rev.2 (2013), p. nos. 2-3.

[39] Dikshit Sarma Bhagabati, "How to Be Indigenous in India?" 35 *Law and Critique* 101 (2024).

[40] *Id*. at 101, 110.

have often been displaced, breaking 'historical continuity' linked to the occupation of their ancestral lands.[41] Moreover, certain indigenous peoples who have nomadic lifestyles do not traditionally consider themselves bound to a particular ancestral territory.[42] Occupation and/or ownership of ancestral lands as an indicator of 'historical continuity', "*regardless of how these communities themselves approach their sites of living*", is hence both an inaccurate and obsolete evidence of 'indigeneity'.[43]

The differing definitions adopted in the ILO Convention No. 107, the ILO Convention No. 169, and the Study of the Problem of Discrimination against Indigenous Populations, and the resultant diverse criticisms, made it amply clear that 'indigenous peoples' is "*not a precise term of art with a single fixed meaning*".[44] In fact, there cannot be a universal definition of indigenous peoples "*[b]ecause of the varied and changing contexts in which Indigenous Peoples live*".[45] This was expressly acknowledged by the Chairperson-Rapporteur of the UN Working Group on Indigenous Populations (UNWGIP), established in 1982 based on the recommendation of the Special Rapporteur, José R. Martinez Cöbo:[46] "*the concept of 'indigenous' is not capable of a precise, inclusive definition which can be applied in the same manner to all regions of the world. However, greater agreement may be achieved with respect to identifying the principal factors which have distinguished "indigenous peoples" from other groups in the practice of the United Nations system and regional intergovernmental organizations....*"[47] The indigenous representatives also concurred that since "*no single accepted definition of indigenous peoples exists which captures their diversity...a definition of the concept of "indigenous people" is not necessary or desirable*" beyond the right to self-identify as 'indigenous' and acceptance of the same by the community.[48] Accordingly, for the limited purpose of guiding its efforts towards safeguarding indigenous rights, the UNWGIP identified the following non-exhaustive factors as being relevant to the notion of 'indigenous' identity:[49]

> "*(a) Priority in time, with respect to the occupation and use of a specific territory;*
> *(b) The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and*

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41 *Id*. at 102.

42 *Id*. at 106.

43 *Id*. at 108.

44 Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy" 92(3) *The American Journal of International Law* 420 (1998).

45 World Bank, *Operation Manual on Indigenous People* (Apr. 2013), para. 3, *available at:* https://thedocs.worldbank.org/en/doc/2e32d9beeec85a16da0bac98d14df191-0290012023/original/OP-4-10-Indigenous-Peoples.pdf (last visited on Oct. 8, 2025).

46 S. James Anaya, "Indigenous Peoples in International Law", *Cultural Survivor* (Mar. 25, 2010).

47 Erica-Irene A Daes, *Working paper on the concept of indigenous people*, UN Doc E/CN.4/Sub2/ACU/1996/2 (Jun. 10, 1996), para. 9.

48 *Id*. at para. 34.

49 *Id*. at paras. 69-70.

> *institutions;*
> *(c) Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and*
> *(d) An experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist."*

Consequently, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)[50] adopted in 2007 by the UN General Assembly, developed from a draft formulated by the UNWGIP, also refrained from proffering a definition of 'indigenous peoples'.[51] Instead, the UNDRIP emphasised 'self-identification' and stressed that it was for the indigenous peoples themselves to define their own identity as indigenous:[52] "*Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.*"[53]

In India, the idea of 'indigenous' identity is even more contentious.[54] While specific protections have been granted by the Constitution of India to tribal communities, commonly referred to as '*adivasis*', literally meaning "*the original inhabitants*",[55] by legally designating them as 'Scheduled Tribes',[56] it has not been explicitly accepted that they are indigenous to India.[57] To the contrary, since 1982, India has insisted that the notion of 'indigenous peoples', in the manner it has been internationally conceptualised,[58] is not applicable to the Indian context,[59] arguing that "*indigenous peoples are descendants of the original inhabitants who have suffered from conquest or invasion from outside*".[60] Accordingly, at the time of the adoption of the UNDRIP, India asserted that since its independence

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50 The United Nations Declaration on the Rights of Indigenous Peoples, 2007.

51 Katja Göcke, "Indigenous Peoples in International Law", in Brigitta Hauser-Schäublin (ed.), *Adat and Indigeneity in Indonesia Culture and Entitlements between Heteronomy and Self-Ascription* 19 (Göttingen University Press, 2017); United Nations Human Rights Council, *Working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of the General Assembly res. 49/214 of 23 December 1994*, UN Doc A/RES/61/295 (Jun. 29, 2006), *available at:* https://hrlibrary.umn.edu/hrcouncil2-2006.html (last visited on Oct. 5, 2025).

52 United Nations Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, Vol. I (May 2011), p. no. 5.

53 The United Nations Declaration on the Rights of Indigenous Peoples, 2007, art. 33.1.

54 Virginius Xaxa, "Tribes as Indigenous People of India" 34(51) *Economic and Political Weekly* 3589 (1999).

55 Richard W. Timm, *The Adivasis of Bangladesh* (Minority Rights Group, 1991); J. Rehman, "Indigenous peoples at risk: a survey of the indigenous peoples of South Asia", in B.K.R. Burman and B.G. Verghese (eds.), *Aspiring to Be: The Tribal/Indigenous Condition* (Konark Publisher, 1998).

56 The Constitution of India, 1950, art. 366(25).

57 Dikshit Sarma Bhagabati, "How to Be Indigenous in India?" 35 *Law and Critique* 95-96 (2024).

58 *Ibid*.

59 Lakshmi Puri, *Statement on Behalf of the Delegation of India to the United Nations Working Group on indigenous populations*, UN Files (Aug. 12, 1983); Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy" 92(3) *The American Journal of International Law* 433 (1998).

60 The Government of India, *Observations*, UN Doc E/CN.4/Sub.2/1984/2/Add.2.

from the British Colonial Government on 15 August 1947, *all* Indians are considered indigenous to India, regardless of the distinction between 'original inhabitants' and later settlers,[61] "*because, after centuries of migration, absorption and differentiation, it is impossible to say who came first*".[62] India also thus maintained that *adivasis* are not indigenous to India[63] as "*the tribes in India share ethnic, racial and linguistic characteristics with other people in the country, and that three to four hundred million people there are distinct in some way from other categories of people in India*".[64]

Whether *adivasis* are truly native to India as its original inhabitants, such that they can be traditionally understood as 'indigenous peoples', is in itself quite controversial.[65] One view suggests that "*when the history of internal movements of peoples is not known, it is utterly unscientific to regard some tribe or the other as the original owner of the soil. It is possible to contend that even if the tribes are not aborigines of the exact area they now occupy, they are the autochthonous of India, and to that extent they may be called the aborigines*".[66] A contrary view states: "*[T]here have been in India waves of movement of populations with different language, race, culture, religion dating back centuries and millennia. Even groups or communities described as tribes have not been outside of this process. Given this, how far back should one go in history to determine people who are natives and who are immigrants*."[67] A related view notes that "*it is difficult to speak of 'original' inhabitants, for tribal traditions themselves make repeated mention of migration of their ancestors. There is considerable evidence to suggest that several groups were pushed out of the areas where they were first settled and had to seek shelter elsewhere*".[68]

A reconciliatory view notes that while certain tribal communities may be native to India, not all tribal communities are, and resultantly, 'tribal' and 'indigenous' identities need not be synonymous: "*there are tribal groups which could be treated as indigenous and others which could not*".[69] The ILO Convention No. 107 (ratified by India) also treats indigenous populations as a subset of tribal populations,[70] although the later ILO Convention No. 169 characterises tribal peoples as being distinct from indigenous peoples.[71] The latter seems to find favour amongst communities that self-identify as

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61 International Work Group for Indigenous Affairs, *The Indigenous World 2020* (34th edn., 2020), p. no. 234.

62 Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy" 92(3) *The American Journal of International Law* 434-435 (1998).

63 Douglas Sanders, "Indians, AmerIndians, Tribes and Peoples" 20(3) *India International Centre* 36 (1993).

64 Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy" 92(3) *The American Journal of International Law* 435 (1998).

65 Virginius Xaxa, "Tribes as Indigenous People of India" 34(51) *Economic and Political Weekly* (1999).

66 Govind Sadashiv Ghurye, *The Scheduled Tribes of India* (Popular Prakashan, 1963).

67 Virginius Xaxa, "Tribes as Indigenous People of India" 34(51) *Economic and Political Weekly* 3591 (1999).

68 Shyama Charan Dube, *Tribal Heritage of India: Ethnicity, Identity and Interaction* (Vikas Publishing House Pvt. Ltd., 1977).

69 Virginius Xaxa, "Tribes as Indigenous People of India" 34(51) *Economic and Political Weekly* 3592 (1999).

70 The Indigenous and Tribal Populations Convention, 1957 (No. 107), art. 1.1.

71 The Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 1.1.

'indigenous' in India[72]—'indigenous' identity "*evokes a sense of self-esteem and pride*" and has certain rights and privileges associated with it (at least in international human rights law),[73] while the term 'tribe' has been generally used to imply a "*lowly and inferior society*",[74] or synonymously with 'primitive', since the 19th century.[75]

Irrespective of whether *adivasis* (all or few) may be deemed indigenous to India or not, the Constitution of India, taking special note of their historical deprivation, marginalisation, and powerlessness, protects them as 'Scheduled Tribes', guaranteeing their political, social, and economic rights.[76] The Supreme Court of India, in *Kailas v. State of Maharashtra*, noted (obiter dictum): "*now the generally accepted belief is that the original inhabitants of India were the pre-Dravidian aborigines i.e. the ancestors of the present tribals or Adivasis (Scheduled Tribes)....the Adivasis (STs), who...are the descendants of the original inhabitants of India.*"[77]

Whether in the Indian or in the larger global context, it is clear that no definition is capable of "*fully captur[ing] the full diversity of the Indigenous Peoples of the world*".[78] 'Indigenous peoples' are therefore not a heterogeneous monolith; hence, referring to indigenous peoples as a collective 'them' is not ideal.[79] Such reference also leads to the 'othering' of indigenous peoples.[80]

Having acknowledged the foregoing, this Reference Manual refers to indigenous peoples as a community only for ease of drafting, and does not, in the least, imply that all indigenous peoples are homogenous in their culture, traditions, languages, religions, livelihoods and other attributes of their identity. Further, throughout this Reference Manual, the phrase 'indigenous peoples' encompasses all peoples native to a specific region, by the name they self-identify with, or are assigned to them, viz., Aboriginals, First Peoples, Natives, *adivasis*, *janajatis*, tribes, mountain dwellers, hunter-gatherers, nomads, peasants, hill people, *inter alia*.[81]

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72 Mahendra Ved, "We are tribals, not indigenous" *The Times of India,* Sep. 30, 2004.

73 Virginius Xaxa, "Tribes as Indigenous People of India" 34(51) *Economic and Political Weekly* 3595 (1999).

74 *Ibid*.

75 B.K.R. Burman and B.G. Verghese, *Aspiring to Be: The Tribal/Indigenous Condition* (Konark Publisher, 1998).

76 Dikshit Sarma Bhagabati, "How to Be Indigenous in India?" 35 *Law and Critique* 93-123 (2024).

77 *Kailas v. State of Maharashtra* (2011) 1 SCC 793, paras. 19, 26.

78 United Nation Office of High Commissioner of Human Rights, "About Indigenous Peoples and Human Rights" *available at:* https://www.ohchr.org/en/indigenous-peoples/about-indigenous-peoples-and-human-rights (last visited on Sep. 23, 2025)

79 Dikshit Sarma Bhagabati, "How to Be Indigenous in India?" 35 *Law and Critique* 96 (2024).

80 *Ibid*.

81 United Nations Permanent Forum on Indigenous Issues, *Indigenous Peoples, Indigenous Voices*, p. no. 2, *available at:* https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf (last visited on Oct. 5, 2025).

CHAPTER II: INTERNATIONAL STANDARDS

After decades of receiving little to no attention for their concerns from the international community,[82] the first international forum to address indigenous issues and emphasise the need for global collaboration on this front was the ILO. As demonstrated in Chapter I, although the ILO Convention No. 107 sought to defend and advance the rights of indigenous peoples, it was not well-received by them. Given the 'assimilationist' approach employed by the ILO Convention No. 107, indigenous peoples demanded new international standards, especially in light of the Study of the Problem of Discrimination against Indigenous Populations undertaken by the UN Special Rapporteur, José R. Martinez Cöbo.[83] It laid the foundations for the modern indigenous rights system at the international level, and led to the creation of the UNWGIP, the first UN mechanism with the exclusive mandate to deal with matters relating to indigenous peoples, including by developing standards for the protection of their rights.[84] In 1993, the UNWGIP submitted a Draft Declaration on the Rights of Indigenous Peoples, which was approved by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1994.[85] In June 2006, at the first session of the Human Rights Council, the Draft Declaration on the Rights of Indigenous Peoples was adopted.[86] Subsequently, on 13 September 2007, it came to be adopted by the UN General Assembly as the UNDRIP.[87]

The UNDRIP, although not legally binding, is the most extensive international document pertaining to the rights of indigenous peoples, establishing a universal framework of minimum standards for the survival, dignity, and well-being of indigenous peoples all over the world.[88] The UNDRIP elaborates on existing human rights standards and fundamental freedoms as they apply to the unique situation of indigenous peoples, and affords collective rights a level of prominence never before accorded in

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[82] United Nations Human Rights Office of the High Commissioner, *The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions*, UN Doc HR/PUB/13/2 (Aug. 2013), p. no. 10.

[83] *Id*. at 4.

[84] Erica-Irene A Daes, *Draft Declaration on the Rights of Indigenous Peoples: revised working paper/submitted by the Chairperson-Rapporteur, pursuant to Sub-Commission resolution 1992/33 and Commission on Human Rights resolution 1993/31,* UN Doc E/CN.4/Sub.2/1993/26 (Jun. 8, 1993), p. no. 1.

[85] United Nations Department of Economic and Social Affairs, *United Nations Declaration on the Rights of Indigenous Peoples: Historical Overview*, *available at:* https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples (last visited on Sep. 27, 2025).

[86] United Nations Human Rights Office of the High Commissioner, *Human Rights Council Concludes First Session* (Jun. 29, 2006).

[87] United Nation General Assembly, *Resolution adopted by the General Assembly on 13 September 2007*, GA Res 61/295 (Oct. 2, 2007).

[88] United Nations Permanent Forum on Indigenous Issues, *Frequently Asked Questions, Declaration on The Rights Of Indigenous Peoples* (2007), *available at:* https://www.un.org/esa/socdev/unpfii/documents/faq_drips_en.pdf (last visited on Oct. 29, 2025).

international human rights law.[89] Concomitantly, in response to the criticism that the ILO Convention No. 107 was subjected to, the ILO formulated the ILO Convention No. 169, which provided a comprehensive framework for the protection of indigenous peoples under international law. The ILO Convention No. 169 has since also served as a basis for the development of policies and programmes for the protection of indigenous peoples by several international organisations.[90] Today, the ILO Convention No. 169 is deemed to be the most advanced binding international treaty specifically designed to promote the rights of indigenous peoples. Certain rights of indigenous peoples are also explicitly protected by international treaties, including the Convention on the Rights of the Child, 1989 (CRC),[91] the Convention on Biological Diversity, 1982 (CBD),[92] and the UN Framework Convention on Climate Change, 1992.[93]

Other international legal instruments, though not expressly addressing indigenous rights, but which have been applied in the indigenous context include the International Covenant on Civil and Political Rights, 1966 (ICCPR); the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD); and the Convention on the Elimination of all Forms of Discrimination against Women, 1979 (CEDAW). The Human Rights Committee (HRC), responsible for monitoring the implementation of the ICCPR, has extensively interpreted its provisions to recognise the right of indigenous peoples to self-determination.[94] Likewise, the Committee on Economic, Social and Cultural Rights (CESCR), charged with monitoring the implementation of the ICESCR, has also applied its provisions to safeguard the rights of indigenous peoples to adequate housing, food, education, health, water, and intellectual property.[95] The Committee on the Elimination of Racial Discrimination (CERD), tasked with the supervision of the ICERD, has deployed its procedural mechanisms to combat discrimination against indigenous people.[96] Further, the Committee on the Elimination of Discrimination against Women has paid special attention to the situation of indigenous women as a

[89] United Nations Human Rights Office of the High Commissioner, *The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions*, UN Doc HR/PUB/13/2 (Aug. 2013), p. no. 5.

[90] United Nations, *State of the World's Indigenous Peoples*, Vol. I (May 2011), p. no. 2.

[91] The Convention on the Rights of the Child, 1989.

[92] The United Nations Convention on Biological Diversity, 1992.

[93] The United Nations Framework Convention on Climate Change, 1992.

[94] United Nations Special Rapporteur on the Rights of Indigenous Peoples, *International Standards*, *available at:* https://www.ohchr.org/en/special-procedures/sr-indigenous-peoples/international-standards (last visited on Sep. 25, 2025).

[95] *Ibid*.

[96] *Ibid*.

particularly vulnerable and disadvantaged group.[97]

Throughout the UN system, a range of measures have also been introduced to garner further attention for the rights of indigenous peoples. These include the establishment of a UN Voluntary Fund for Indigenous Populations in 1985,[98] the proclamation of the International Year of the World's Indigenous Peoples in 1993, and the adoption of two consecutive International Decades of the World's Indigenous Peoples, beginning in 1995.[99] Similarly, to safeguard the rights of indigenous peoples, the UN has set up several mechanisms with distinct mandates:

- The UN Permanent Forum on Indigenous Issues (UNPFII) was established in 2000 as a high-level advisory body of the Economic and Social Council to address the concerns of indigenous peoples pertaining to their economic and social development, culture, environment, education, health, and human rights.[100] The UNPFII is also responsible for encouraging the coordination of initiatives dealing with indigenous issues within the UN system.[101]

- The Special Rapporteur on the Right of Indigenous Peoples was first appointed in 2001,[102] tasked with examining the ways and means of overcoming existing obstacles to the full and effective protection of the human rights of indigenous peoples; identifying, exchanging and promoting best practices in this regard; gathering, requesting, receiving and exchanging information and communications from all relevant sources relating to the alleged violations of

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97 United Nation Department of Economic and Social Affairs, *CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health),* UN Doc A/54/38/Rev.1 (1999), ch. 1, para. 6.

98 United Nations General Assembly, *United Nations Voluntary Fund for Indigenous Populations,* GA Res 40/131, UN Doc A/RES/40/131 (Dec. 13, 1985); The United Nations Voluntary Fund on Indigenous Populations was established to assist representatives of indigenous communities and organizations to participate in the deliberations of the Working Group on Indigenous Populations. The General Assembly expanded the mandate of the Fund vide Resolution 56/140, Resolution 63/161 and Resolution 65/198 to assist representatives to participate in sessions of the Permanent Forum, the Expert Mechanism, the Human Rights Council and the human rights treaty bodies.

99 United Nations General Assembly, *International Decade of the World's Indigenous People,* GA Res 48/163, UN Doc A/RES/48/163 (Feb. 18, 1994); General Assembly Resolution 48/163 established the first International Decade of the World's Indigenous People (1995-2004), under the coordination of the United Nations High Commissioner for Human Rights. A second International Decade (2005-2014) was established by Resolution 59/174, under the coordination of the Under-Secretary General for Economic and Social Affairs. A Trust Fund was established in 1995 and 2004 to fund projects and programmes for the respective decades.

100 United Nations Economic and Social Council, *Establishment of a Permanent Forum on Indigenous Issues,* ESC Dec 2000/22, UN Doc E/RES/2000/22 (Jul. 28, 2000).

101 United Nations Human Rights Office of the High Commissioner, *The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions*, UN Doc HR/PUB/13/2 (Aug. 2013), p. no. 4.

102 United Nations Commission on Human Rights, *Human rights and indigenous issues*, UN Doc E/CN.4/RES/2001/57 (Apr. 24, 2001), p. no. 2; The mandate was continued by the Human Rights Council and, in its Resolution 15/14, the title of "Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People" was modified to "Special Rapporteur on the Rights of Indigenous Peoples".

the human rights and fundamental freedoms of indigenous peoples; and formulating recommendations and proposals for appropriate measures to prevent and remedy such violations.[103]

- The Expert Mechanism on the Rights of Indigenous Peoples was established in 2007 to provide the Human Rights Council with thematic advice on matters concerning the rights of indigenous peoples.[104] The Expert Mechanism has so far focused its work on the rights of indigenous peoples to education, decision-making, and access to justice, as well as the role that languages and culture play in advancing and defending the rights of indigenous peoples and their sense of self.[105]

The following sections of this Chapter offer a detailed account of the manner in which the international legal system guarantees and safeguards the rights of indigenous peoples relating to: self-determination, self-governance and participation; land, forest, and resources; economic, social, and cultural protection; languages; education; traditional knowledge; access to justice; and sustainable environment management.

A snapshot of the provisions of international legal instruments, whether treaties, declarations or guiding principles, relevant to the protection of indigenous rights is given in Annexure A. The status of ratification or adoption of these international legal instruments by India and the select States chosen for the comparative study in this Reference Manual is presented in Annexure B.

1. Self-determination, Self-governance, Participation, Consultation, and Free Prior and Informed Consent

The right to self-determination of all peoples is recognised as a fundamental right by various international legal instruments, and also in customary international law.[106] It is rooted in the decolonisation movement, and includes internal and external aspects, and is devised to ensure that subjugated peoples are able to recover their autonomy, preside over their destinies, make decisions for themselves and control their resources.[107] Broadly, the right to self-determination encompasses the right

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[103] United Nations Human Rights Office of the High Commissioner, *The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions*, UN Doc HR/PUB/13/2 (Aug. 2013), p. no. 5.

[104] United Nations Human Rights Office of the High Commissioner, *Expert mechanism on the rights of indigenous peoples*, UN Res 6/36 (Jun. 18, 2007).

[105] *Ibid*.

[106] International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, 1966, art. 1.

[107] United Nations Human Rights Council, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples,* UN Doc A/HRC/39/62 (Aug. 10, 2018), para. 6; Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press, 1995); United Nations

of peoples to be free from coercion, live with dignity and to enjoy all their other rights equally, including the right to be responsible for their futures, to be fully informed and to be in a position to freely refuse or accept offers, plans, projects, programmes and proposals that affect them or their resources.[108]

Based on their right to self-determination, indigenous peoples have long traditions of self-government, independent decision-making and institutional self-reliance. It is well-understood that "*control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs*".[109] This conception stems from the recognition that indigenous peoples have 'inherent' rights "*which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources*".[110]

Pursuant to their right to self-determination, indigenous peoples have also always had the inherent power to make binding agreements between their 'nations' as well as with other polities. Historically, indigenous peoples organised as sovereign nations to negotiate mutually with governments and conclude binding treaties, consensually agreeing upon their rights and obligations *inter se* each other, for several hundred years in many regions of the world.[111] Many such treaties recognise the right of indigenous peoples to participate in political and administrative decision-making through representatives chosen by them per their own procedures, and to maintain and develop their own indigenous institutions. This practice persists today in many countries wherein such treaties remain the law of the land, even if they have often not been fully implemented.[112]

From the right to self-determination flows the notion of free, prior and informed consent (FPIC),[113] which is a more onerous obligation than merely consulting with the peoples concerned or inviting their participation in decision-making on matters involving their interests. Pertinently, FPIC includes the option of withholding consent. FPIC has been conceptualised by the UN as follows in the context of indigenous peoples:

General Assembly, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, UN Doc A/RES/1514(XV) (Dec. 14, 1960), p. nos. 1-2.

[108] United Nations Human Rights Council, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples,* UN Doc A/HRC/39/62 (Aug. 10, 2018), para. 6.

[109] The United Nations Declaration on the Rights of Indigenous Peoples, 2007, preamble, para. 10.

[110] *Id*. preamble, para. 7.

[111] United Nations Human Rights Council, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples,* UN Doc A/HRC/39/62 (Aug. 10, 2018), para. 4.

[112] *Ibid*.

[113] *Id*. at para. 3.

> "*Free implies that there is no coercion, intimidation or manipulation; Prior implies that consent is to be sought sufficiently in advance of any authorization or commencement of activities and respect is shown to time requirements of indigenous consultation/consensus processes; and Informed implies that information is provided that covers a range of aspects, including the nature, size, pace, reversibility and scope of any proposed project or activity, the purpose of the project as well as its duration, locality and areas affected, a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks, personnel likely to be involved in the execution of the project; and procedures the project may entail.*"[114]

FPIC is thus a manifestation of the right of indigenous peoples to self-determine their political, social, economic and cultural priorities and constitutes three interrelated rights of indigenous peoples, i.e., the right to be consulted, the right to participate, and the right to their lands, territories and resources.[115]

The following sub-section traces the international legal instruments which expressly or implicitly affirm the right of indigenous peoples to self-determination, and the associated rights to participation, consultation, and FPIC:

1.1. United Nations Declaration on the Rights of Indigenous Peoples, 2007

Self-determination and Self-governance

Article 3 enshrines the fundamental right to self-determination, enabling indigenous peoples to *"freely determine their political status and pursue their own economic, social, and cultural development*".[116] Article 4 clarifies that in exercising their right to self-determination, indigenous peoples have the right to autonomy or self-government. This autonomy extends to matters concerning their *"internal and local affairs"*, including the methods for *"financing their autonomous functions*".[117] Article 5 recognises the right of indigenous peoples "*to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State*".[118] Article 33 underlines the importance of self-identification, which allows indigenous peoples themselves to "*determine their own identity or*

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[114] United Nations Human Rights Office of the High Commissioner, "*What is the exact meaning of free, prior and informed consent?, Consultation and free, prior and informed consent (FPIC)*" (Sep. 2013), *available at:* https://www.ohchr.org/en/indigenous-peoples/consultation-and-free-prior-and-informed-consent-fpic (last visited on Oct. 7, 2025).

[115] United Nations Human Rights Council, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples,* UN Doc A/HRC/39/62 (Aug. 10, 2018), para. 14.

[116] The United Nations Declaration on the Rights of Indigenous Peoples, 2007, art. 3.

[117] *Id*. art. 4.

[118] *Id*. art. 5.

membership in accordance with their customs and traditions".[119] Article 34 acknowledges the right of indigenous peoples "*to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, judicial systems or customs, in accordance with international human rights standards*".[120] Consequently, indigenous peoples have the right to determine their own economic, social and cultural development and to manage, for their own benefit, their own natural resources. The duties to consult with indigenous peoples and to obtain their FPIC are crucial elements of the right to self-determination.[121]

Participation and Consultation

Article 18 establishes that "*indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions*".[122] Article 41 requires the UN system and other intergovernmental organisations to contribute to the full realisation of the provisions of the UNDRIP, including by establishing "*ways and means of ensuring participation of indigenous peoples on issues affecting them*".[123] The Expert Mechanism has noted that self-determination is an ongoing process that ensures that indigenous peoples continue to participate in decision-making and have control over their own destinies.[124]

FPIC

States have the obligation to seek the FPIC of indigenous peoples before any of the following actions are taken:

- the relocation of indigenous peoples from their lands or territories;[125]
- the adoption of "*legislation or administrative measures*" that affect indigenous peoples;[126]
- "*the storage or disposal of hazardous materials*" on indigenous lands;[127] and
- the undertaking of projects that affect the right of indigenous peoples to "*lands or territories*

[119] *Id*. art. 33.1.
[120] *Id*. art. 34.
[121] United Nations Human Rights Council, *Final study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples,* UN Doc A/HRC/EMRIP/2011/2 (May 26, 2011) paras. 17-26.
[122] The United Nations Declaration on the Rights of Indigenous Peoples, 2007, art. 18.
[123] *Id*. art. 41.
[124] United Nations Human Rights Council, *Progress report on the study on indigenous peoples and the right to participate in decision-making - Report of the Expert Mechanism on the Rights of Indigenous Peoples,* UN Doc A/HRC/15/35 (Aug. 23, 2010), para. 31.
[125] The United Nations Declaration on the Rights of Indigenous Peoples, 2007, art. 10.
[126] *Id*. art. 19.
[127] *Id*. art. 29.2.

and other resources", including "*development, utilization or exploitation of mineral, water or other resources*".[128]

Furthermore, per Article 28, indigenous peoples whose lands have been "*confiscated, taken, occupied or damaged without their free, prior and informed consent*" are entitled to restitution or other appropriate redress that can include lands equal in size and quality, or just, fair and equitable compensation.[129] Similarly, under Article 11, indigenous peoples are also entitled to redress with respect to their "*cultural, intellectual, religious and spiritual property*" taken without their FPIC.[130]

According to the Expert Mechanism, the right of FPIC is an "*integral element*" of the right to self-determination, and is quintessential in matters of fundamental importance for the rights, survival, dignity and well-being of indigenous peoples.[131] Similarly, the Special Rapporteur on the Rights of Indigenous Peoples has stressed that "*a significant direct impact on indigenous peoples' lives or territories establishes a strong presumption that the proposed measure should not go forward without indigenous peoples' consent. In certain contexts, the presumption may harden into a prohibition of the measure or project in the absence of indigenous consent*".[132]

1.2. Indigenous and Tribal Peoples Convention, 1989 and Indigenous and Tribal Populations Convention, 1957

Self-determination and Self-governance

The ILO Convention No. 169 underscores the importance of self-identification for indigenous peoples. Article 1 stipulates that the ILO Convention No. 169 applies to indigenous peoples who 'self-identify' as such.[133] However, the right to self-identify as indigenous is not recognised in the earlier ILO Convention No. 107.

Participation and Consultation

Article 2 of the ILO Convention No. 169 stipulates that "*[g]overnments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the*

[128] *Id*. arts. 32.1, 32.2.

[129] *Id*. art. 28.

[130] *Id*. art. 11.2.

[131] United Nations Human Rights Council, *Final study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples,* UN Doc A/HRC/EMRIP/2011/2 (May 26, 2011), p. no. 17.

[132] United Nations Human Rights Council, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, UN Doc A/HRC/12/34 (Jul. 15, 2009), para. 47.

[133] The Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 1.2.

rights of these peoples and to guarantee respect for their integrity".[134] Further, consultation with indigenous peoples is mandatory "*whenever consideration is being given to legislative or administrative measures which may affect them directly*";[135] before "*exploration or exploitation of such resources pertaining to their lands*";[136] and in decision-making to "*alienate their lands or to transmit them outside their own community*".[137] Article 22 also provides for the voluntary participation of, as well as cooperation and consultation with, indigenous peoples in the organisation and operation of special vocational training programmes.[138]

Meanwhile, in the ILO Convention No. 107, Article 5 mandates States, in applying its provisions, to "*seek the collaboration of*" indigenous populations and their representatives,[139] and stimulate *"the development among these populations of civil liberties and the establishment of or participation in elective institutions*".[140]

FPIC

Article 16 of the ILO Convention No. 169 states that the "*free and informed consent*" of indigenous peoples is mandatory where it is necessary, as an exceptional measure, to relocate them from their lands.[141] Nevertheless, an exemption is carved out in this regard: "*[w]here their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.*"[142]

In comparison, in Article 12 of the ILO Convention No. 107, the scope of FPIC is limited and only encapsulates the foregoing exemption contained in the ILO Convention No. 169: indigenous populations "*shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations*".[143]

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[134] *Id*. art. 2.1.
[135] *Id*. art. 6.1.a.
[136] *Id*. art. 15.2.
[137] *Id*. art. 17.2.
[138] *Id*. art. 22.3.
[139] The Indigenous and Tribal Populations Convention, 1957 (No. 107), art. 5.a.
[140] *Id*. art. 5.c.
[141] The Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 16.2.
[142] *Ibid*.
[143] The Indigenous and Tribal Populations Convention, 1957 (No. 107
), art. 12.1.

1.3. International Covenant on Civil and Political Rights, 1966

Self-determination and Self-governance

Article 1 guarantees the right of self-determination to *all* peoples.[144] Article 1 further asserts that all peoples have the right to freely dispose of their natural wealth and resources for their own ends.[145] Article 1 also obligates States to "*promote the realization of the right of self-determination, and...respect that right, in conformity with the provisions of the Charter of the United Nations*".[146] Since Article 1 applies in general to all peoples, it also applies to indigenous peoples.[147]

Participation and Consultation

Article 25 grants to every citizen the right "*to take part in the conduct of public affairs, directly or through freely chosen representatives*" and "*to vote and to be elected at genuine periodic elections*".[148] Although a general provision, Article 25 has been understood as safeguarding the specific rights of indigenous peoples to political participation as no distinctions are permitted between citizens on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[149]

1.4. International Covenant on Economic, Social and Cultural Rights, 1966

Self-determination and Self-governance

Similar to the ICCPR, Article 1 of the ICESCR also prescribes that *all* peoples have the right to self-determination.[150] Several countries have explicitly conceded that the indigenous communities in their territories fall within the scope of Article 1 of the ICESCR and the ICCPR.[151]

Participation and Consultation

The CESCR, in its General Comment No. 21, has specifically referred to the obligation of States to:

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144 The International Covenant on Civil and Political Rights, 1966, art. 1.1.

145 *Id*. art. 1.2.

146 *Id*. art. 1.3.

147 Office of the United Nations High Commissioner for Human Rights, *Reporting under the International Covenant on Civil and Political Rights, Training Guide* (2021), p. no. 20.

148 The International Covenant on Civil and Political Rights, 1966, arts. 25.a, 25.b.

149 United Nations Human Rights Committee, *General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote) The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, UN Doc CCPR/C/21/Rev.1/Add.7 (Jul. 12, 1996), para. 3.

150 The International Covenant on Economic, Social and Cultural Rights, 1966, art. 1.1.

151 United Nations Committee on Economic, Social and Cultural Right, *Fifth Period Report on the implementation of ICESCR*, UN Doc E/C.12/SWE/5 (Sept. 6, 2006), para. 7.

"*...allow and encourage the participation of persons belonging to ... indigenous peoples...in the design and implementation of laws and policies that affect them.*"[152] Accordingly, the CESCR also recommended that, before the construction of hydro-electric projects, a State is duty-bound to undertake comprehensive impact assessments and extensive consultations with affected indigenous communities, providing them with genuine opportunities to present their views and influence decision-making.[153]

FPIC

In General Comment No. 21, the CESCR has called on States to "*respect the principle of free, prior, and informed consent of indigenous peoples in all matters covered by their specific rights*" and to "*obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk*".[154] The CESCR further noted that the right to participate in cultural life includes the right of indigenous peoples to restitution or return of lands, territories and resources traditionally used and enjoyed by indigenous communities, if taken without their FPIC.[155] The CESCR has also highlighted the need to obtain the consent of indigenous peoples in relation to resource exploitation and stated that it was "*deeply concerned that natural extracting concessions have been granted to international companies without the full consent of the concerned communities*".[156] The CESCR also observed "*with regret that the traditional lands of indigenous peoples have been reduced or occupied, without their consent, by timber, mining and oil companies, at the expense of the exercise of their culture and the equilibrium of the ecosystem*".[157]

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[152] United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1(a) of the International Covenant on Economic, Social and Cultural Rights),* UN Doc E/C.12/GC/21 (Dec. 21, 2009), para. 55e.

[153] United Nations Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights,* UN Doc E/C.12/ETH/CO/1-3 (May 31, 2012), para. 24.

[154] United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1(a) of the International Covenant on Economic, Social and Cultural Rights),* UN Doc E/C.12/GC/21 (Dec. 21, 2009), para. 37.

[155] *Id*. at para. 36.

[156] United Nations Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 And 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights,* UN Doc E/C.12/1/Add.100 (Jun. 7, 2004), para. 12.

[157] United Nations Committee on Economic, Social and Cultural Rights*, Report On The Twenty-Fifth, Twenty-Sixth And Twenty-Seventh Sessions, Consideration of Reports Of States Parties*, U.N. Doc E/C.12/2001/17 (2002), para. 761.

1.5. International Convention on the Elimination of All Forms of Racial Discrimination, 1965

Participation, Consultation, and FPIC

The CERD has called for both consultation with and informed consent of indigenous peoples in its interpretation and application of the ICERD. In its General Recommendation No. 23, the CERD urged States to "*ensure that members of indigenous peoples have rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent*".[158] The CERD has also recommended that the principle of FPIC ought to be respected during constitutional negotiation processes and has underlined the significance of the participation of indigenous peoples' representatives.[159] The CERD has also reiterated the obligation of States to ensure that the right of indigenous peoples to FPIC is especially respected in the planning and implementation of projects affecting the use of their lands and resources.[160]

1.6. Convention on Biological Diversity, 1992

Participation and FPIC

The Fifth Conference of Parties to the CBD Decision V/16 expresses a firm commitment to the implementation of FPIC in its general principles: "*access to traditional knowledge, innovation and practices of indigenous and local communities should be subject to prior informed consent or prior informed approval from the holders of such knowledge, innovations and practices.*"[161] Decision V/16 further calls upon "*parties to take measures to enhance and strengthen the capacity of indigenous and local communities to be effectively involved in decision- making related to the use of their traditional knowledge, innovations and practices relevant to the conservation and sustainable use of biological diversity subject to their prior informed approval and effective involvement*".[162]

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[158] United Nations Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples,* UN Doc A/52/18 (Aug. 18, 1997), para. 4(d).

[159] United Nations Committee for the Elimination of Racial Discrimination, *Early warning letter to the Government of Nepal* (Mar. 13, 2009), *available at*: https://www.lahurnip.org/uploads/resource/file/cerd-committee%27s-first-early-warning-letters-to-nepal-government-eng.pdf (last visited on Oct. 10, 2025).

[160] United Nations Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention Concluding observations of the Committee on the Elimination of Racial Discrimination*, CERD/C/LAO/CO/16-18 (Apr. 13, 2012) para. 17; United Nations Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the convention, Concluding observations of the Committee on the Elimination of Racial Discrimination,* CERD/C/CAN/CO/19-20 (Apr. 4, 2012).

[161] Parshuram Tamang, *An Overview of the Principle of Free, Prior and Informed Consent and Indigenous Peoples in International and Domestic Law and Practices*, UNDESA, UN Doc PFII/2004/WS.2/8 (2005), para. 14.

[162] *Ibid*.

2. Land, Forest, and Resources

Land and territories are fundamentally important to the identity of indigenous peoples—their unique way of life, including their traditional occupations, crafts, and other cultural expressions, has always relied on their access to and rights over their ancestral lands, forests, and natural resources.[163] Besides forming the basis of the indigenous economy, indigenous peoples also share a profound spiritual connection with the land, often worshipping elements of nature, or the sacred sites where their forefathers are buried.[164] Indigenous peoples, therefore, constantly endeavour to sustainably use the land and preserve water, soil, flora, and fauna for themselves and for future generations. Acknowledging the centrality of land and territories to the survival of indigenous peoples, the UNPFII reiterated:[165]

> "*Land is the foundation of the lives and cultures of indigenous peoples all over the world. This is why the protection of their right to lands, territories and natural resources is a key demand of the international indigenous peoples' movement and of indigenous peoples and organisations everywhere. It is also clear that most local and national indigenous peoples' movements have emerged from struggles against policies and actions that have undermined and discriminated against their customary land tenure and resource management systems, expropriated their lands, extracted their resources without their consent and led to their displacement and dispossession from their territories. Without access to and respect for their rights over their lands, territories and natural resources, the survival of indigenous peoples' particular, distinct cultures is threatened. Land rights, access to land and control over it and its resources are central to indigenous peoples throughout the world, and they depend on such rights and access for their material and cultural survival. In order to survive as distinct peoples, indigenous peoples and their communities need to be able to own, conserve and manage their territories, lands and resources.*"[166]

The following sub-section identifies the key international legal instruments which protect the right of indigenous peoples to land, forest, and natural resources:

2.1. United Nations Declaration on the Rights of Indigenous Peoples, 2007

The Preamble expressly acknowledges that "*control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations*

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[163] United Nations, *State of the World's Indigenous Peoples*, Vol. I, (May 2011), p. no. 53.

[164] *Ibid*.

[165] *Id*. at 54.

[166] United Nations Permanent Forum on Indigenous Issues, *Report on the Sixth Session (14-25 May 2007)*, UN Doc. E/2007/43 (2007), paras. 5, 6.

and needs".[167] Several provisions of the UNDRIP address the rights of indigenous peoples to lands, territories and resources:

- Article 25 affirms indigenous peoples' right to "*maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources*";[168]
- Article 26(3) establishes the obligation of States to "*give legal recognition to these lands, territories and resources…with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned*";[169]
- Article 27 provides that States must "*establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process… to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources*";[170]
- Article 28 recognises the right of indigenous peoples "*to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation*" for lands and resources taken without their FPIC;[171]
- Article 29 prohibits the "*storage or disposal of hazardous materials*" on their lands without the FPIC of indigenous peoples, as well as recognises their right to "*the conservation and protection of the…productive capacity of their lands or territories and resources*";[172]
- Article 30 regulates the military use of "*lands or territories of indigenous peoples, unless justified by a relevant public interest*";[173] and
- Article 32 enshrines the right of indigenous peoples "*to determine and develop priorities and strategies for the development or use of their lands or territories*" and requires States to obtain their FPIC for the "*approval of any project affecting their lands or territories*".[174]

2.2. Indigenous and Tribal Peoples Convention, 1989 and Indigenous and Tribal Populations Convention, 1957

Article 7 of the ILO Convention No. 169 safeguards the right of indigenous peoples "*to decide their own priorities for the process of development as it affects…the lands they occupy or otherwise use…*"[175] Article 13 defines 'lands' as including "*the concept of territories, which covers the total environment of the areas which*

[167] The United Nations Declaration on the Rights of Indigenous Peoples, 2007, preamble, para. 10.
[168] *Id*. art. 25.
[169] *Id*. art. 26.3.
[170] *Id*. art. 27.
[171] *Id*. art. 28.1.
[172] *Id*. arts. 29.1, 29.2.
[173] *Id*. art. 30.1.
[174] *Id*. arts. 32.1, 32.2.
[175] The Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 7.1.

the peoples concerned occupy or otherwise use".[176] Article 13 also obligates States to respect the "*special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories*".[177] Article 14 requires the States to recognise the "*rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy*", as well as protect their right to "*use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities*".[178] Article 15 guarantees the "*rights of the peoples concerned to the natural resources pertaining to their lands*", and mandates consultation with indigenous peoples before any resource exploration or exploitation.[179] Article 16 prohibits the removal of indigenous peoples "*from the lands which they occupy*", except when necessary as an "*exceptional measure*" and with their FPIC.[180] Article 16 also secures the right of such displaced indigenous peoples "*to return to their traditional lands, as soon as the grounds for relocation cease to exist*".[181] Article 17 stipulates that the "*procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected*", and that others be "*prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them*".[182] Article 18 mandates the establishment of "*adequate penalties...for unauthorised intrusion upon, or use of, the lands of the peoples concerned*" and tasks States with taking measures to prevent such offences.[183] Article 19 calls for national agrarian programs to ensure for indigenous peoples "*treatment equivalent to that accorded to other sectors of the population*" in "*the provision of more lands...necessary for providing the essentials of a normal existence*" and "*the provision of the means required to promote the development of the lands which these peoples already possess*".[184]

Article 11 of the ILO Convention No. 107 also recognises the "*right of ownership, collective or individual*" of the indigenous populations "*over the lands which these populations traditionally occupy*".[185] Article 12 prohibits the removal of the indigenous populations "*from their habitual territories*" without their free consent, "*except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations*".[186] If the removal of indigenous populations is necessary as an "*exceptional*

[176] *Id*. art. 13.2.
[177] *Id*. art. 13.1.
[178] *Id*. art. 14.1.
[179] *Id*. art. 15.
[180] *Id*. arts. 16.1, 16.2.
[181] *Id*. art. 16.3.
[182] *Id*. arts. 17.1, 17.3.
[183] *Id*. art. 18.
[184] *Id*. art. 19.
[185] The Indigenous and Tribal Populations Convention, 1957 (No. 107), art. 11.
[186] *Id*. art. 12.1.

measure", Article 12 also mandates that they be "*provided with lands of quality at least equal to that of the lands previously occupied by them*".[187] Article 13 requires that the *"procedures for the transmission of rights of ownership and use of land which are established by the customs of the populations concerned*" be respected,[188] and that measures be put in place to "*prevent persons who are not members of the populations concerned from taking advantage of these customs or of lack of understanding of the laws on the part of the members of these populations to secure the ownership or use of the lands belonging to such members*".[189] Article 14 stipulates that national agrarian programs must afford to indigenous populations "*treatment equivalent to that accorded to other sections of the national community*" in the provision of additional land or the provision of the means to develop the lands already possessed by them.[190]

2.3. The Discrimination (Employment and Occupation) Convention, 1958

In relation to the Discrimination (Employment and Occupation) Convention, 1958 (commonly referred to as the ILO Convention No. 111),[191] the ILO has expressly acknowledged that a lack of access to or control over their traditional lands and resources can be a significant barrier for indigenous peoples in accessing equal opportunities to occupation, thereby constituting a form of discrimination: "*Access to land and natural resources is generally the basis for indigenous peoples to engage in their traditional occupations. Recognition of the ownership and possession of the lands which they traditionally occupy, access to land which they have used for traditional activities, and measures to protect the environment of the territories they inhabit are therefore crucial with a view to enabling indigenous peoples to pursue their traditional occupations.*"[192]

2.4. International Covenant on Civil and Political Rights, 1966

Article 1 guarantees the right of all peoples to self-determination, including in "*freely dispos[ing] of their natural wealth*" and securing their "*means of subsistence*".[193] Though not specifically addressing the rights of indigenous peoples, Article 1 has been extensively applied for the protection of their right to their traditional lands, territories, and resources by the HRC. For instance, in response to a national measure related to land and resource allocation, the HRC noted: "*The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the*

[187] *Id*. art. 12.2.
[188] *Id*. art. 13.1.
[189] *Id*. art. 13.2.
[190] *Id*. art. 14.
[191] The Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
[192] International Labour Standards Department, *Eliminating discrimination against indigenous and tribal peoples in employment and occupation: A Guide to ILO Convention No. 111* (2007), p. no. 14.
[193] The International Covenant on Civil and Political Rights, 1966, art. 1.2.

Covenant."[194] The HRC has also noted the inter-relationship between the right to self-determination in Article 1 and the right of minorities, including indigenous peoples, to enjoy their culture per Article 27,[195] which entails the protection of their land and resources, subsistence and sacred sites: "*necessary steps should be taken to restore and protect the titles and interests of indigenous persons in their native lands…securing continuation and sustainability of traditional forms of economy of indigenous minorities (hunting, fishing and gathering), and protection of sites of religious or cultural significance for such minorities… must be protected under article 27.*"[196]

2.5. International Covenant on Economic, Social and Cultural Rights, 1966

The CESCR has interpreted the provisions of the ICESCR to protect the rights of indigenous peoples to their traditional territories and natural resources as an essential facet of their self-determination and cultural survival. In its General Comment No. 21, the CESCR observed that the "*strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired*".[197] The CESCR has also expressly referred to the right of access of indigenous peoples to natural resources in connection with their right to self-determination: "*[t]aking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not 'be deprived of its means of subsistence', States parties should ensure that there is adequate access to water …*

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[194] United Nations International Covenant on Civil and Political Rights Human Rights Council, *Consideration of reports submitted by States parties under article 40 of the Covenant- Concluding observations of the Human Rights Committee, Canada,* UN Doc CCPR/C/79/Add.105 (Apr. 7, 1999), para. 8; United Nations International Covenant on Civil and Political Human Rights Council, *Consideration of Reports Submitted by State Parties under Article 40 of the Covenant- Concluding observations of the Human Rights Committee, Mexico*, UN Doc No. CCPR/C/79/Add.109 (Jul. 27, 1999), para. 19; United Nations International Covenant on Civil and Political Rights Human Rights Council, *Consideration of reports submitted by States parties under article 40 of the Covenant- Concluding observations of the Human Rights Committee, Norway*, UN Doc No. CCPR/C/79/Add.112 (1999), paras. 10, 17; and United Nations International Covenant on Civil and Political Rights Human Rights Council, *Consideration of reports submitted by States parties under article 40 of the Covenant- Concluding observations of the Human Rights Committee, Australia*, UN Doc No. CCPR/CO/69/AUS (2000), para. 8.

[195] The Human Rights Committee, *Guidelines for the treaty-specific document to be submitted by States parties under article 40 of the International Covenant on Civil and Political Rights*, UN Doc CCPR/C/2009/1 (Nov. 22, 2010), para. 28; United Nations Human Rights Committee, *Apirana Mahuika et. al. v. New Zealand, Communication No. 547/1993, New Zealand*, UN Doc No. CCPR/C/70/D/547/1993 (Nov. 16, 2000), para. 9.2.

[196] United Nations Human Rights Committee, *Concluding observations of the Human Rights Committee: Australia,* UN Doc No. CCPR/CO/69/AUS (2000), paras. 10, 11.

[197] United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 21, Right of everyone to take part in cultural life, art. 15, para. 1(a) of the International Covenant on Economic, Social and Cultural Rights,* UN Doc E/C.12/GC/21 (Dec. 21, 2009), para. 36.

for securing the livelihoods of indigenous peoples."[198]

2.6. International Convention on the Elimination of All Forms of Racial Discrimination, 1965

Article 1 allows for the adoption of special measures exclusively for "*securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure [their] equal enjoyment or exercise of human rights and fundamental freedoms*".[199] Further, Article 5 secures the right of persons against racial discrimination and their right to "*equality before the law*",[200] including with regards to the "*right to own property*".[201] The CERD has applied these rights in relation to the ownership and control of lands and resources historically occupied or used by indigenous populations. In its General Recommendation No. 23, the CERD has called upon states "*to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources*".[202] Moreover, the CERD's early warning and urgent action procedures are increasingly being used to address cases related to indigenous peoples' land and resource rights.[203]

2.7. Convention on the Rights of the Child, 1989

Article 30 explicitly safeguards, among other, the cultural rights of indigenous children,[204] which the Committee on the Rights of the Child has interpreted as also including the right to their traditional land and resources: "*the enjoyment of the rights under article 30, in particular the right to enjoy one's culture, may consist of a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority.*"[205]

2.8. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, 2012

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, 2012 (VGGT) has been developed under the aegis of the CBD to

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198 International Covenant on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water (arts. 11 and 12)*, UN Doc No. E/C.12/2002/11 (Jan. 20, 2003), para. 7.

199 The International Convention on the Elimination of All Forms of Racial Discrimination, 1965, art. 1.4.

200 *Id*. art. 5.

201 *Id*. art. 5.d.v.

202 United Nations Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples,* UN Doc A/52/18 (Aug. 18, 1997), para. 5.

203 Birgitte Feiring, *Indigenous peoples' Rights to Lands, Territories and Resources* (International Land Coalition, 2013), p. no. 25.

204 The United Nations Convention on the Rights of the Child, 1989, art. 30.

205 United Nation Committee on the Rights of the Child, *Day of general discussion on the rights of indigenous children: recommendations,* UN Doc CRC/C/133 (Dec. 4, 2003), para. 4.

govern the cultural, environmental and social impact assessments in relation to indigenous communities.[206] The VGGT sets out principles and recommendations for improving the management of land, fisheries, and forests "*for the benefit of all, with an emphasis on vulnerable and marginalized people*".[207] In the context of indigenous peoples, the VGGT requires States to "*acknowledge that land, fisheries and forests have social, cultural, spiritual, economic, environmental and political value to indigenous peoples and other communities with customary tenure systems*".[208] Accordingly, the VGGT stipulates that, in the process of recognising or allocating land tenure rights, States ought to "*first identify all existing tenure rights and right holders, whether recorded or not*", as well as consult with the affected indigenous peoples having "*customary tenure systems*".[209]

2.9. 2030 Agenda for Sustainable Development, 2015

The 2030 Agenda, adopted by the UN General Assembly, seeks to end poverty and hunger, in all their forms and dimensions, ensuring that "*no one is left behind*".[210] For indigenous peoples, the UN Sustainable Development Goals (SDGs) prioritise poverty reduction, particularly through the recognition of their land rights: "*By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources....*"[211]

3. Economic, Social, and Cultural Safeguards

Economic, social, and cultural rights are "*those human rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education*".[212] It also includes the right to an adequate standard of living, benefit from scientific advancement, as well as the protection of moral and material interests in literary and artistic productions.[213] Although international human rights law mandates States to secure the economic, social and cultural rights of

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[206] Secretariat of the Convention on Biological Diversity, *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities* (2004), *available at:* https://www.cbd.int/doc/publications/akwe-brochure-en.pdf. (last visited on Oct. 5, 2025).

[207] Food and Agriculture Organization of the United Nations, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (2012), para. 1.1.

[208] *Id*. at para. 9.1.

[209] *Id*. at para. 7.3.

[210] United Nations General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development: Resolution adopted by the General Assembly on 25 September 2015,* UN Doc A/RES/70/1 (Oct. 2015), preamble, para. 2.

[211] *Id*. Goal 2, Target 2.3.

[212] The Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions on Economic, Social and Cultural Rights*, *available at:* https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf (last visited on Oct. 5, 2025).

[213] *Ibid*.

peoples, "*the full realization of the[se] rights*" may be hindered by the availability of necessary resources.[214] For indigenous peoples, their inability (in most cases) to exercise their right of self-determination as regards the preservation of their own economic, social and cultural lives constitutes an additional obstacle.[215] The Special Rapporteur for Indigenous Peoples has therefore stressed: "*it is the duty of States to respect, protect and fulfil indigenous peoples' economic, social and cultural rights based not only on their commitment to specific instruments on indigenous peoples' rights, such as the UNDRIP and ILO Convention No. 169, but is an integral element of their duty under the International Covenant and other applicable human rights instruments.*"[216] The responsibilities and obligations of States stemming from these (and other) international legal instruments are detailed below:

3.1. United Nations Declaration on the Rights of Indigenous Peoples, 2007

In its Preamble, the UNDRIP recognises that "*indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonisation and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests*".[217] Article 5 affirms the right of indigenous peoples to "*maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State*".[218] Article 8 safeguards the cultural values and identity of indigenous peoples, so as to prevent their "*forced assimilation or destruction of their culture*".[219] Further, Article 9 recognises the right of indigenous peoples "*to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned*".[220] Article 11 acknowledges their "*right to practice and revitalise their cultural traditions and customs*", including the ability to "*maintain, protect, and develop past, present, and future manifestations of their cultures*".[221] Article 13 protects the right of indigenous peoples to "*revitalize, use, develop, and transmit*" their cultural heritage including "*histories, languages, oral*

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[214] This is evident from the formulation of The International Covenant on Economic, Social and Cultural Rights, 1966, art. 2.1: "*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*"

[215] United Nations Human Rights Council, Special Rapporteur on Rights of Indigenous Peoples, *Rights of Indigenous Peoples, Including Their Economic, Social and Cultural Rights in The Post-2015 Development Framework Note by The Secretary-General*, UN Doc A/69/267 (Aug. 6, 2014), p. no. 2.

[216] *Id*. at para. 13.

[217] The United Nations Declaration on the Rights of Indigenous Peoples, 2007, preamble, para. 6.

[218] *Id*. art. 5.

[219] *Id*. art. 8.

[220] *Id*. art. 9.

[221] *Id*. art. 11.1.

traditions, philosophies, writing systems and literatures".[222]

Article 15 states that indigenous peoples have the right to have their "*cultures, traditions, histories, and aspirations reflected in both education and public information*".[223] Article 17 provides for the protection of indigenous children from "*economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment*".[224] Article 20 establishes the right of indigenous peoples to maintain and develop their *"political, economic and social systems*" and engage in traditional economic activities, while also ensuring they are entitled to just and fair redress if deprived of their means of subsistence.[225] Relatedly, Articles 21 and 22 guarantee the right of indigenous peoples to the improvement of their "*economic and social conditions*" in areas like "*education, employment, vocational training and retraining, housing, sanitation, health and social security*",[226] with a specific focus on shielding the rights and needs of vulnerable groups like "*indigenous elders, women, youth, children and persons with disabilities*".[227] Lastly, Articles 23 and 24 empower indigenous peoples to determine priorities and strategies for their own development, actively participate in programs that affect their development, and access the highest attainable standard of conventional social and health services without discrimination.[228]

3.2. Indigenous and Tribal Peoples Convention, 1989 and Indigenous and Tribal Populations Convention, 1957

Under the ILO Convention No. 169, Article 2 obligates States to develop "*coordinated and systematic action*" to promote "*the full realisation of the social, economic and cultural rights*" of indigenous peoples "*with respect for their social and cultural identity, their customs and traditions and their institutions*".[229] Article 7 recognises the right of indigenous peoples to "*decide their own priorities…and to exercise control, to the extent possible, over their own economic, social and cultural development*".[230] Accordingly, Article 7 also obligates States to ensure that "*whenever appropriate, studies are carried out…to assess the social, spiritual, cultural and environmental impact…of planned development activities*" on indigenous

[222] *Id*. art. 13.1.
[223] *Id*. art. 15.1.
[224] *Id*. art. 17.2.
[225] *Id*. art. 20.
[226] *Id*. art. 21.1.
[227] *Id*. art. 22.1.
[228] *Id*. arts. 23, 24.
[229] The Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 2.
[230] *Id*. art. 7.1.

peoples.[231] Article 10 requires States to take into account the "*economic, social and cultural characteristics*" of indigenous peoples, when imposing penalties on them under domestic criminal laws.[232] Article 20 requires States to do "*everything possible to prevent any discrimination*" against indigenous workers as regards "*medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing*".[233] Article 22 states that special training programmes of indigenous workers shall be "*based on the economic environment, social and cultural conditions and practical needs of the peoples concerned*".[234] Article 23 recognises "*handicrafts, rural and community-based industries, and subsistence economy and traditional activities*" of indigenous peoples "*as important factors in the maintenance of their cultures and in their economic self-reliance and development*".[235] Article 24 mandates States to progressively extend social security schemes to indigenous peoples.[236] Article 25 prescribes that health services "*shall be planned and administered in co-operation with*" indigenous peoples, and account for their "*economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines*".[237] Article 27 stipulates that the education programmes for indigenous peoples shall be "*developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations*".[238] Article 25 requires health services to be "*planned and administered in co-operation with the peoples concerned"* and to incorporate traditional preventive care and healing practices.[239]

The Preamble to ILO Convention No. 107 states that "*there exist in various independent countries indigenous and other tribal and semi-tribal populations which are not yet integrated into the national community and whose social, economic or cultural situation hinders them from benefiting fully from the rights and advantages enjoyed by other elements of the population*".[240] Article 2 mandates States to promote the "*social, economic and cultural development*" of indigenous populations and raise "*their standard of living*".[241] Article 3 requires States to take "*special measures*" to ensure that the "*social, economic and cultural conditions*" of indigenous populations do not prevent them from "*enjoying the*

[231] *Id*. art. 7.3.
[232] *Id*. art. 10.1.
[233] *Id*. art. 20.2.c.
[234] *Id*. art. 22.3.
[235] *Id*. art. 23.1.
[236] *Id*. art. 24.
[237] *Id*. art. 25.2.
[238] *Id*. art. 27.1.
[239] *Id*. art. 25.2.
[240] The Indigenous and Tribal Populations Convention, 1957 (No. 107), preamble, para. 5.
[241] *Id*. art. 2.2.b.

benefits of the general laws of the country to which they belong", provided these measures "*are not used as a means of creating or prolonging a state of segregation*" and are discontinued once such special protection is no longer necessary.[242] Article 4 stipulates that when integrating indigenous populations, the cultural and religious values and the forms of existing social control ought to be taken into account towards facilitating their social and economic change.[243] Article 6 states that the "*improvement of the conditions of life and work and level of education*" of indigenous populations shall be given "*high priority in plans for the over-all economic development*".[244] Article 15 obligates States to do "*everything possible to prevent all discrimination*" against indigenous workers as regards "*medical and social assistance, the prevention of employment injuries, workmen's compensation, industrial hygiene and housing*".[245] Article 16 safeguards equality in opportunities for vocational training to indigenous workers,[246] and Article 17 guarantees special training facilities based on "*careful study of the economic environment, stage of cultural development and practical needs*" to indigenous populations.[247] Article 18 requires States to encourage handicrafts and rural industries as "*factors in the economic development*" of indigenous populations, while preserving the cultural heritage of indigenous populations and improving "*their artistic values and particular modes of cultural expression*".[248] Per Article 19, social security schemes must be "*extended progressively*" to indigenous populations.[249] Under Article 20, States have the duty to provide "*adequate health services*" to indigenous populations, based on "*systematic studies of the[ir] social, economic and cultural conditions*", and in coordination with the "*general measures of social, economic and cultural development*".[250]

3.3. International Covenant on Economic, Social and Cultural Rights, 1966

Article 1 recognises the right of "*all peoples*" to self-determination, including the right to "*freely pursue their economic, social and cultural development*".[251] Article 15 guarantees the right of all persons to "*take part in cultural life*", and requires States to take steps to achieve the "*full realisation*" of the right to culture.[252] In its General Comment No. 21, the CESCR Comment No. 21 specifically addresses indigenous cultural rights, emphasising that the cultural rights of indigenous peoples often have

[242] *Id*. arts. 3.1, 3.2.a.
[243] *Id*. art. 4.a.
[244] *Id*. art. 6.
[245] *Id*. art. 15.2.c.
[246] *Id*. art. 16.
[247] *Id*. art. 17.
[248] *Id*. art. 18.
[249] *Id*. art. 19.
[250] *Id*. art. 20.
[251] The International Covenant on Economic, Social and Cultural Rights, 1966, art. 1.1.
[252] *Id*. art. 15.

collective dimensions that require special protective measures.[253] The CESCR has stated "*everyone has the right freely to participate in the cultural life of the community*", which also includes indigenous people.[254] This also includes the rights of indigenous peoples to their cultural institutions, ancestral lands, natural resources and traditional knowledge, and the right to development.[255]

3.4. International Covenant on Civil and Political Rights, 1966

Article 27 proscribes States from denying to "*ethnic, religious or linguistic minorities*", the right to "*enjoy their own culture, to profess and practise their own religion, or to use their own language*".[256] In its General Comment No. 23, the HRC observed: "*[C]ulture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting, and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.*"[257]

3.5. Convention on the Rights of the Child, 1989

Article 30 prohibits states from denying indigenous children the right to "*enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language*".[258]

3.6. International Convention on the Elimination of All Forms of Racial Discrimination, 1965

Article 5 mandates States to "*prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin*" in the enjoyment of social, economic and cultural rights,[259] which include the rights to work, form and join trade unions, housing, public health, medical care, social security and social services, education and training; equal participation in cultural activities, and access any place or service intended for use by the

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[253] United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights),* UN Doc E/C.12/GC/21 (Dec. 21, 2009), para. 37.

[254] *Id*. at para. 4.

[255] *Id*. at para. 3.

[256] The International Covenant on Civil and Political Rights, 1966, art. 27; The Office of the United Nations High Commissioner for Human Rights, *Reporting under the International Covenant on Civil and Political Rights, Training Guide* (2021), p. no. 20.

[257] United Nations International Human Rights Instruments, *General Comment No. 23, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies,* UN Doc. HRI/GEN/1/Rev.1 (Jul. 29, 1994), para. 6(2).

[258] The United Nations Convention on the Rights of the Child, 1989, art. 30.

[259] The International Convention on the Elimination of All Forms of Racial Discrimination 1965, art. 5.e.

general public, such as transport hotels, restaurants, cafes, theatres and parks.[260] Further, CERD in its General Recommendation No. 23, has called on States to recognise and respect the distinct culture, history, language, and way of life of indigenous peoples; ensure that indigenous peoples are free from discrimination; provide conditions for the sustainable economic and social development of indigenous peoples compatible with their cultural characteristics; and encourage the effective participation of indigenous peoples in public life.[261]

3.7. Convention for the Safeguarding of the Intangible Cultural Heritage, 2003

The Preamble recognises that *"communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and re-creation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity*".[262]

3.8. Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005

The Preamble acknowledges *"the importance of the vitality of cultures, including for persons belonging to minorities and indigenous peoples, as manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto, so as to benefit them for their own development*".[263]Article 2 enumerates the principle of equal dignity of and respect for all cultures "*including the cultures of persons belonging to minorities and indigenous peoples*".[264] Article 7 provides for measures to promote cultural expressions which includes creating, producing, disseminating, distributing and having access to their own cultural expressions, while "*paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples*".[265]

4. Languages

Language is a crucial component of one's identity,[266] necessary for the comprehension and exchange of information, thereby enabling individuals to communicate with one another, exchange ideas, access

[260] *Id*. arts. 5.e.i-vi, 5.f.
[261] United Nations Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples,* Gen. Rec. No. 23, UN Doc A/52/18 (Aug. 18, 1997), para. 4.
[262] Convention for the Safeguarding of the Intangible Cultural Heritage, 2003, preamble, para. 6.
[263] Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005, preamble, para. 15.
[264] *Id*. art. 2(3).
[265] *Id*. art. 7(1)(a).
[266] United Nations, *State of the World's Indigenous Peoples*, Vol. I (May 2011), p. no. 57.

knowledge, and express themselves creatively.[267] Conserving languages is therefore essential to safeguarding the unique identity of distinct communities, their traditional knowledge and literary arts, as well as the cultural diversity of humankind.[268] On account of the assimilationist policies that indigenous peoples all over the world have often been subjected to, several indigenous languages, in particular those which are verbally used but have no written alphabet (and therefore have never been documented), are especially at risk of extinction.[269] In response, the international community, as a result of decades of advocacy by indigenous peoples, has incrementally worked towards recognising and preserving indigenous languages, as delineated below:

4.1. United Nations Declaration on the Rights of Indigenous Peoples, 2007

The UNDRIP contains several provisions addressing the linguistic rights of indigenous peoples. Article 13 enshrines the right of indigenous peoples "*to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons*".[270] Article 13 also entrenches the obligation of States to adopt "*effective measures*" to ensure that indigenous peoples "*can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means*".[271] Article 14 recognises the right of indigenous peoples "*to establish and control their educational systems and institutions providing education in their own languages*".[272] As a corollary, Article 14 also stipulates that States are required to adopt "*effective measures*" for "*indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language*".[273] The right of indigenous peoples to the dignity and diversity of their cultures, traditions, histories, and aspirations is recognised in Article 15, which also highlights that the protection of indigenous languages should be appropriately reflected in education and public information.[274] Lastly, Article 16 provides for the right of indigenous peoples to establish their "*own media in their own languages and to have access to all forms of non-indigenous media without discrimination*".[275]

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[267] The United Nations Educational, Scientific and Cultural Organization, *Background paper for "Thematic Debate: Protection Indigenous and Endangered Languages and the Role of Languages in promoting EFA in the Context of Sustainable Development*, UN Doc. 180 EX/INF.8 (2008), p. no. 2.

[268] United Nations, *State of the World's Indigenous Peoples*, Vol. I (May 2011), p. no. 57.

[269] *Id*. at 58.

[270] The United Nations Declaration on the Rights of Indigenous Peoples, 2007, art. 13.1.

[271] *Id*. art. 13.2.

[272] *Id*. art. 14.1.

[273] *Id*. art. 14.3.

[274] *Id*. art. 15.1.

[275] *Id*. art. 16.1.

4.2. Indigenous and Tribal Peoples Convention, 1989 and Indigenous and Tribal Populations Convention, 1957

The Preamble to the ILO Convention No. 169 acknowledges the aspirations of indigenous peoples to maintain and develop their languages.[276] In particular, Article 28 guarantees to indigenous children "*wherever practicable*", the right to "*be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong*".[277] Even when not practicable, States are mandated to hold consultations with the indigenous peoples to devise ways to achieve this objective.[278] Article 28 further mandates States to adopt measures "*to preserve and promote the development and practice of the indigenous languages*".[279] Where measures are taken by States in relation to indigenous peoples, Article 30 requires that, where necessary, they be made known of their rights and duties in this regard "*by means of written translations and through the use of mass communications in the languages of these peoples*".[280]

Under the ILO Convention No. 107, Article 23 protects the right of indigenous children to "*be taught to read and write in their mother tongue or, where this is not practicable, in the language most commonly used by the group to which they belong*".[281] However, the ILO Convention No. 107, on account of its 'assimilationist' approach, stipulates that States ought to make provisions "*for a progressive transition from the mother tongue or the vernacular language to the national language or to one of the official languages of the country*".[282] Article 23, nevertheless, does obligate States to take measures "*as far as possible*" to "*preserve the mother tongue or the vernacular language*".[283] Article 26, akin to Article 30 of the ILO Convention No. 169, calls for communications with indigenous populations regarding government measures affecting them in their own languages.[284]

4.3. International Covenant on Civil and Political Rights, 1966

Article 27 explicitly stipulates that "*persons belonging to…minorities shall not be denied the right, in community with the other members of their group…to use their own language*".[285] Although Article 27 safeguards the rights of "*ethnic, linguistic and religious minorities*", the ICCPR has clarified that it is

[276] The Indigenous and Tribal Peoples Convention, 1989 (No. 169), preamble, para. 5.
[277] *Id*. art. 28.1.
[278] *Id*. art. 28.1.
[279] *Id*. art. 28.3.
[280] *Id*. art. 30.
[281] The Indigenous and Tribal Populations Convention, 1957 (No. 107), art. 23.1.
[282] *Id*. art. 23.2.
[283] *Id*. art. 23.3.
[284] *Id*. art. 26.
[285] The International Covenant on Civil and Political Rights, 1966, art. 27.

also applicable to the protection of the linguistic rights of indigenous peoples.[286]

4.4. Convention on the Rights of the Child, 1989

Specifically in relation to indigenous children, Article 30 expressly guarantees their right to "*use his or her own language*".[287]

4.5. International Convention on the Elimination of All Forms of Racial Discrimination, 1965

The ICERD seeks to "*promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion*".[288] Accordingly, the CERD has noted in its General Recommendation No. 23 that States have the obligation to "*[e]nsure that indigenous communities can exercise their rights…to preserve and to practice their languages*".[289]

5. Education

Education is a critical vehicle for the transmission of knowledge, languages, and traditions. Particularly for indigenous peoples, who have been widely marginalised on social, economic, and political fronts, education is a crucial tool in the pursuit of equality, dignity and justice.[290] Indigenous communities have therefore maintained their own education systems, based on their languages, spiritual beliefs, customary values, and community involvement.[291] However, the forced admission of indigenous children into state schooling systems has led to the erosion of their unique cultural identity.[292] It is hence essential to preserve and mainstream indigenous education systems, and ensure access to education to all indigenous peoples in a manner that is culturally appropriate,[293] as demonstrated by the following international legal instruments:

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[286] United Nations Human Rights Commission, *CCPR General Comment No. 23, The rights of minorities (art. 27)*, UN Doc CCPR/C/21/Rev.1/Add.5 (Apr. 8, 1994), para. 3.2.

[287] The United Nations Convention on the Rights of the Child, 1989, art. 30.

[288] The International Convention on the Elimination of All Forms of Racial Discrimination 1965, preamble, para. 1.

[289] United Nations Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples,* UN Doc A/52/18 (Aug. 18, 1997), para. 4 (e).

[290] United Nations Department of Economic and Social Affairs, *State of the World's Indigenous Peoples, Education*, Vol. III (Dec. 2017), p. no. 3.

[291] *Id*. at 5.

[292] Antonio Voce, Leyland Cecco, *et. al.*, "'Cultural genocide': the shameful history of Canada's residential schools – mapped" *The Guardian*, Sep. 6, 2021.

[293] United Nations Department of Economic and Social Affairs, *State of the World's Indigenous Peoples, Education*, Vol. III (Dec. 2017), p. no. 5.

5.1. United Nations Declaration on the Rights of Indigenous Peoples, 2007

The Preamble to the UNDRIP recognises the "*right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children*".[294] The right to education of indigenous peoples is inextricably interlinked to their linguistic rights. Article 14 stipulates that indigenous peoples have the "*right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning*".[295] Article 14 also reiterates that indigenous peoples, particularly children, are entitled to "*all levels and forms of education*" without discrimination.[296] Resultantly, Article 14 stipulates that States, "*in conjunction with indigenous peoples*", must take "*effective measures in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language*".[297]

5.2. Indigenous and Tribal Peoples Convention, 1989 and Indigenous and Tribal Populations Convention, 1957

In the ILO Convention No. 169, Article 26 entitles indigenous peoples "*to acquire education at all levels on at least an equal footing with the rest of the national community*".[298] Article 27 requires that education programs be formulated and implemented by States with the cooperation of indigenous peoples "*to address their special needs, and…incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations*".[299] Article 27 further recognises the right of indigenous peoples to establish their own "*educational institutions and facilities*", for which States are duty-bound to provide appropriate resources.[300] Article 28 stipulates that indigenous children should "*be taught to read and write in their own indigenous language*" where practicable, while also having the opportunity to "*attain fluency in the national language*".[301] Article 29 specifies that the education of indigenous peoples should aim to provide general knowledge and skills that enable them to participate fully and equally in both their own and the national community.[302] Article 31 mandates States to ensure that "*history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures*" of indigenous peoples so as to eliminate any prejudices

[294] The United Nations Declaration on the Rights of Indigenous Peoples, 2007, preamble, para. 13.
[295] *Id*. art. 14.1.
[296] *Id*. art. 14.2.
[297] *Id*. art. 14.3.
[298] The Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 26.
[299] *Id*. art. 27.1.
[300] *Id*. art. 27.3.
[301] *Id*. arts. 28.1, 28.2.
[302] *Id*. art. 29.

that any sections of the national community, especially those in direct contact with indigenous peoples, may harbour against them.[303]

In the ILO Convention No. 107, Article 21, akin to the ILO Convention No. 169, secures the right of indigenous populations to "*acquire education at all levels on an equal footing with the rest of the national community*".[304] However, pursuant to the 'assimilationist' approach of the ILO Convention No. 107, Article 22 provides that education programs be "*adapted…to the stage these populations have reached in the process of social, economic and cultural integration into the national community*", based on "*ethnological surveys*".[305] Further Article 24 states that general knowledge and skills shall be imparted to indigenous children so that they "*become integrated into the national community*".[306] Nevertheless, Article 23 safeguards the right of indigenous children to "*be taught to read and write in their mother tongue or, where this is not practicable, in the language most commonly used by the group to which they belong*".[307] Article 25 obligates States to adopt such education measures as would eliminate the prejudices harboured by other sections of the national community towards indigenous populations.[308]

5.3. Convention on the Rights of the Child, 1989

Several provisions of the CRC guarantee varied aspects of the right of *all* children to education. Article 28 calls on States to recognise "*the right of the child to education…with a view to achieving this right progressively and on the basis of equal opportunity*".[309] Article 29 prescribes that the education of the child must be directed towards the holistic development of their "*personality, talents and mental and physical abilities*", while also fostering respect for human rights, their own "*cultural identity, language and values*", and preparing them for a responsible life in a free society.[310] In specific reference to indigenous children, Article 30 obligates States to ensure that they are "*not denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language*".[311]

5.4. International Covenant on Economic, Social and Cultural Rights, 1966

Article 13 establishes that education ought to aim for the "*full development of the human personality*"

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303 *Id*. art. 31.
304 The Indigenous and Tribal Populations Convention, 1957 (No. 107), art. 21.
305 *Id*. art. 22.
306 *Id*. art. 24.
307 *Id*. art. 23.1.
308 *Id*. art. 25.
309 The United Nations Convention on the Rights of the Child, 1989, art. 28.1.
310 *Id*. art. 29.1.
311 *Id*. art. 30.

and strengthen respect for "*human rights and fundamental freedoms*".[312] Article 14 addresses States that have not yet achieved free and compulsory primary education, requiring them to create a "*detailed plan of action for the progressive implementation of this principle within a set timeframe*".[313]

5.5. Convention against Discrimination in Education, 1960

Article 1 of the Convention against Discrimination in Education, 1960 (CDE) stipulates that "*depriving any person or group of persons of access to education of any type or at any level*" constitutes discrimination.[314] Although the CDE does not specifically address the right of indigenous peoples to education, Article 1 characterises 'discrimination' as including "*any distinction, exclusion, limitation or preference (...) based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth*",[315] which indubitably protects indigenous peoples against prejudicial treatment in educational affairs. Furthermore, Article 4 requires States to "*formulate, develop and apply a national policy*" which will "*promote equality of opportunity and of treatment in the matter of education*".[316] The provisions of the CDE have been relied upon by States in extending the right to education to *all* on a national level and making their respective education systems more inclusive, in particular, by providing access to education at all levels, especially for the most vulnerable groups, including indigenous peoples.[317]

6. Traditional Knowledge

'Traditional knowledge', in the indigenous context, *"refers to the complex bodies and systems of knowledge, know-how, practices and representations maintained and developed by indigenous peoples around the world, drawing on a wealth of experience and interaction with the natural environment and transmitted orally from one generation to the next*".[318] Traditional knowledge is generally collectively owned, and takes various forms, including stories, songs, artwork, beliefs, customary norms, scientific, agricultural, technical, and ecological know-how, and the skills to implement them.[319] Traditional knowledge of indigenous peoples is also closely related to their right of self-determination, as it equips

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312 The International Covenant on Economic, Social and Cultural Rights, 1966, art. 13.1.

313 *Id*. art. 14.

314 The Convention against Discrimination in Education, 1960, art. 1.1.a.

315 *Id*. art. 1.1.

316 *Id*. art. 4.

317 United Nations Educational, Scientific and Cultural Organization, *Indigenous peoples' right to education: overview of the measures supporting the right to education for indigenous peoples reported by Member States in the context of the ninth Consultation on the 1960 Convention and Recommendation against Discrimination in Education*, ED/PLS/EDP/2019/03/REV (2019).

318 United Nations, *State of the World's Indigenous Peoples*, Vol. I (May 2011), p. nos. 64, 65.

319 *Ibid*.

them to manage, control and govern their lands, communities, resources and heritage.[320] It is also now well-accepted that depriving indigenous peoples of the protection of their traditional knowledge is violative of their human rights.[321] Accordingly, the following international legal instruments safeguard the traditional knowledge of indigenous peoples:

6.1. United Nations Declaration on the Rights of Indigenous Peoples, 2007

Article 31 of the UNDRIP affirms the right of indigenous peoples to "*maintain, control, protect, and develop their…traditional knowledge…as well as the manifestations of their sciences, technologies, and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts*".[322] Article 31 also recognises their right to "*maintain, control, protect, and develop their intellectual property*" over such traditional knowledge, and requires States to take "*effective measures*" in collaboration with indigenous peoples towards ensuring that they are able to exercise these rights.[323]

6.2. Indigenous and Tribal Peoples Convention, 1989

Article 27 requires that the *"histories, their knowledge and technologies, their value systems"* of indigenous peoples be incorporated by the States in the education programs and services targeted at indigenous peoples.[324]

6.3. United Nations Convention on Biological Diversity, 1992

Article 8 mandates States to "*respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices*".[325]

6.4. Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995

The Agreement on Trade-Related Aspects of Intellectual Property Rights, 1955 (TRIPS Agreement)[326] sets minimum standards for the protection and enforcement of intellectual property rights, which

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[320] *Id*. at 65.

[321] Mattias Ahren, *An introduction to the WIPO Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Expressions of Folklore Indigenous Affairs*, 66 (2002).

[322] The United Nations Declaration on the Rights of Indigenous Peoples, 2007, art. 31.1.

[323] *Id*. art. 31.

[324] The Indigenous and Tribal Peoples Convention, 1989 (No. 169), arts. 27.1, 27.2.

[325] The United Nations Convention on Biological Diversity, 1992, art. 8.j.

[326] The Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995.

include patents, copyrights, trademarks, geographical indications, and industrial designs. Although the TRIPS Agreement does not specifically protect the traditional knowledge of indigenous peoples, in practice, its mechanisms could be utilised for this purpose. For example, TRIPS facilitates the patenting of medicinal plants and seeds that are grown and used by indigenous peoples, such as quinoa, ayahuasca, Mexican yellow beans, maca, sangre de drago, hoodia, etc.[327] Further, copyright can be used to protect traditional cultural expressions, such as folklore, music, dance, and visual arts, which are often an integral part of an indigenous community's traditional knowledge.[328] Nevertheless, the intellectual property rights framework needs to be more responsive to the protection of the traditional knowledge of indigenous peoples around the world.[329]

6.5. Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, 2024

Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, 2024 (GRATK Treaty), under the aegis of the World Intellectual Property Organisation (WIPO), specifically addresses the interlinkage between intellectual property, genetic resources, and traditional knowledge. The Preamble to the GRATK Treaty not only expressly acknowledges the UNDRIP and commits to achieve its objectives[330] but also affirms that "*best efforts should be made to include Indigenous Peoples and local communities"*, in implementing the GRATK Treaty.[331] Article 3 stipulates a mandatory patent disclosure requirement, pursuant to which patent applicants are obligated to disclose the country of origin of genetic resources or the indigenous peoples or local communities who provided the associated traditional knowledge, if the invention is "*based on*" it.[332] Further, Article 6 requires that when establishing "information systems (such as databases) of genetic resources and traditional knowledge associated with genetic resources", indigenous peoples be consulted, where applicable.[333] Article 10 calls on States to *"encourage the effective participation of representatives from Indigenous Peoples and local communities as accredited observers*" in the Assembly of States.[334] The GRATK Treaty is thus a significant step forward, transforming the non-binding provisions of the UNDRIP in this regard into a

[327] United Nations, *State of the World's Indigenous Peoples*, Vol. I (May 2011), p. no. 20.

[328] Carlos Maria Correa and Abdulqawi A. Yusuf (eds.) *Intellectual Property and International Trade: The TRIPS Agreement* (Kluwer Law International, 2016).

[329] Dina Haryati Sukardi, Tahura Malagano, *et. al.*, "International Legal Framework for Traditional Knowledge and Intellectual Property Rights" 11(10) *International Journal of Multicultural and Multireligious Understanding* 359-360 (2024).

[330] The WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, 2024, preamble, para. 7.

[331] *Id*. preamble, para. 8.

[332] *Id*. art. 3.2.a.

[333] *Id*. art. 6.1.

[334] *Id*. art. 10.1(c).

binding legal duty to protect the intellectual property rights over the traditional knowledge of indigenous peoples.

6.6. International Covenant on Economic, Social and Cultural Rights, 1966

Article 15 guarantees the right "*to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author*".[335] The CESCR has highlighted in its General Comment No. 17 that the information relating to the implementation of Article 15 should also be published in the languages of linguistic minorities and indigenous peoples so that they may seek protection for their traditional knowledge of literary, visual, or performing arts under Article 15.[336]

6.7. Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005

The Preamble recognises *"the importance of traditional knowledge as a source of intangible and material wealth, and in particular the knowledge systems of indigenous peoples, and its positive contribution to sustainable development, as well as the need for its adequate protection and promotion*".[337]

7. Indigenous Legal Systems and Access to Justice

Indigenous peoples, with their deeply enriched and self-sustaining cultural norms, have always utilised their own framework of juridical systems and laws based on their conceptions of justice and as an inherent right,[338] which are handed down to future generations through oral traditions.[339] However, States have often ignored, diminished, or undermined indigenous peoples' customary laws and legal systems,[340] adopting a narrow view of justice that ignores the cultures, traditions and values of indigenous peoples, and increases the burden on ordinary domestic legal systems.[341] Indigenous legal

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335 The International Covenant on Economic, Social and Cultural Rights, 1966, art. 15.1.c.

336 The United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 17, The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (art. 15, para. 1(c) of the Covenant)*, UN Doc E/C.12/GC/17 (Jan. 12, 2006), para. 18(b)(iii).

337 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005, preamble, para. 8.

338 The United Nations Declaration on the Rights of Indigenous Peoples, 2007, preamble, para. 7.

339 The United Nations General Assembly Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities- Study by the Expert Mechanism on the Rights of Indigenous Peoples*, UN Doc A/HRC/27/65 (Aug. 7, 2014), para. 7.

340 *Id*. at para. 8.

341 Whitney Bell, "Book Note: Canada's Indigenous Constitution, by John Borrows" 48 (3-4) *Osgoode Hall Law Journal* 6–9 (2010).

systems are also crucial in providing better access to justice to indigenous peoples, as they reduce the need for travel outside indigenous territories, are less expensive, are less prone to corruption and discrimination, and involve individuals from within the indigenous community dispensing justice in a common language and in a culturally accessible manner.[342]

Particularly in the context of the collective land rights of indigenous peoples, customary law and titles to ancestral territories are crucial. The Expert Mechanism has therefore called for the legal recognition and protection of such lands "*with due respect for indigenous peoples' customs, customary law and traditions*".[343] The Expert Mechanism also underlined the need to recognise "*indigenous peoples' governance structures, including their laws and dispute resolution processes*".[344] The Expert Mechanism has also urged States to utilise conflict resolution procedures that "*take into account the customs, traditions, rules and legal systems of Indigenous peoples concerned*", including "*traditional mechanisms like justice circles and restorative justice models where indigenous elders and other traditional knowledge keepers may be helpful*".[345] The following sub-section catalogues the international legal instruments which protect and advance the right of indigenous peoples to access justice, whether through their own indigenous legal systems, or through the ordinary domestic courts:

7.1. United Nations Declaration on the Rights of Indigenous Peoples, 2007

Article 5 stipulates that "*indigenous peoples have the right to maintain and strengthen their distinct...legal...institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State*".[346] In the specific context of the recognition or adjudication of the right of indigenous peoples to their "*traditionally owned or otherwise occupied or used*" lands, territories and resources, Article 27 requires States to "*establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due*

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342 United Nations General Assembly Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities- Study by the Expert Mechanism on the Rights of Indigenous Peoples*, UN Doc A/HRC/27/65 (Aug. 7, 2014), para. 20.

343 United Nations General Assembly Human Rights Council, *Human Rights Bodies and Mechanisms Study on Lessons Learned and Challenges to Achieve the Implementation of The Right of Indigenous Peoples to Education- Report of the Expert Mechanism on the Rights of Indigenous Peoples,* UN Doc A/HRC/12/33 (Aug. 31, 2009), para. 11.

344 United Nations General Assembly Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities- Study by the Expert Mechanism on the Rights of Indigenous Peoples*, UN Doc A/HRC/27/65 (Aug. 7, 2014), para. 9.

345 United Nations Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, *Comment on the Human Rights Council's Guiding Principles on Business and Human Rights as related to Indigenous Peoples and the Right to Participate in Decision-Making with a Focus on Extractive Industries*, UN Doc A/HRC/EMRIP/2012/CRP.1 (Jul. 4, 2012), paras. 46, 55.

346 The United Nations Declaration on the Rights of Indigenous Peoples, 2007, art. 5.

recognition to indigenous peoples' laws, traditions, customs and land tenure systems".[347]

Article 34 further affirms the right of indigenous peoples to "*promote, develop and maintain their…juridical systems or customs*", provided they are "*in accordance with international human rights standards*".[348] Per Article 35, indigenous peoples are also entitled "*to determine the responsibilities of individuals to their community*".[349] Besides the recognition of indigenous laws, customs and systems, Article 40 acknowledges the right of indigenous peoples to access conflict resolution procedures that are prompt, just and fair, as well as effective remedies for the infringement of their individual or collective rights, "*giving due consideration to the customs, traditions and legal systems of the indigenous peoples concerned and international human rights*".[350]

7.2. Indigenous and Tribal Peoples Convention, 1989 and Indigenous and Tribal Populations Convention, 1957

Article 8 of the ILO Convention No. 169 mandates that when national laws and regulations are applied to indigenous peoples, their "*customs or customary laws*" must be given "*due regard*".[351] Article 8 also guarantees to indigenous peoples "*the right to retain their own customs and institutions*", provided they are "*not incompatible with the fundamental rights defined by the national legal system and internationally recognized human rights*".[352] Article 9 states that for trying offences committed by a member of an indigenous people, "*the methods customarily practised*" by such indigenous community must be respected "*to the extent compatible with the national legal system and internationally recognised human rights*".[353] Article 9 further requires that the customs of indigenous peoples relating to penal matters be taken into consideration by the authorities dealing with such cases.[354] Article 10 stipulates that when penalties are imposed on indigenous peoples under the general laws of a State, the "*economic, social and cultural characteristics*" of the concerned indigenous peoples are accounted for, and that preference be given to "*methods of punishment other than confinement in prison*".[355] Article 12 guarantees to indigenous peoples access to justice by taking "l*egal proceedings, either individually or through their representative bodies, for the effective protection of [their] rights*".[356] For the effective access of indigenous peoples to judicial remedies, Article 12 also calls for the adoption of such measures to

[347] *Id*. art. 27.
[348] *Id*. art. 34.
[349] *Id*. art. 35.
[350] *Id*. art. 40.
[351] The Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 8.1.
[352] *Id*. art. 8.2.
[353] *Id*. art. 9.1.
[354] *Id*. art. 9.2.
[355] *Id*. arts. 10.1, 10.2.
[356] *Id*. art. 12.

ensure that indigenous peoples "*can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means*".[357]

In comparison, the ILO Convention No. 107 offers limited safeguards to the laws, customs and legal systems of indigenous 'populations' on account of its assimilationist approach. Article 7 stipulates that "*regard shall be had*" to the customary laws of indigenous populations when defining their rights and duties.[358] Article 7 also affords indigenous populations the right to "*retain their own customs and institutions*", but only so long as they are "*not incompatible with the national legal system or the objectives of integration programmes*".[359] With respect to the crimes or offences committed by a member of an indigenous population, Article 8 prescribes that "*as far as possible*", "*the methods of social control*" practised by such indigenous community be used "*[t]o the extent consistent with the interests of the national community and with the national legal system*".[360] Article 8 further provides that where the foregoing is not feasible, the customs of such indigenous populations in relation to penal matters *"shall be borne in mind*" by the concerned authorities.[361] Article 10 specifically safeguards indigenous populations against "*the improper application of preventive detention*", as well as guarantees their right to "*take legal proceedings for the effective protection of their fundamental rights*".[362] In imposing penalties on indigenous populations under the general laws of a State, Article 10 requires that "*account shall be taken of [their] degree of cultural development*", and that preference be "*given to methods of rehabilitation rather than confinement in prison*".[363]

7.3. Convention on the Rights of the Child, 1989

Article 12 secures for all children "*the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law*".[364] The Committee on the Rights of the Child has clarified in its General Comment No. 11, which identified a number of barriers to access to justice for indigenous children, that the effective implementation of Article 12 warrants measures such as providing an interpreter free of charge and guaranteeing legal assistance in a culturally sensitive manner.[365] Article 40 requires that if children are accused of committing offences, "*whenever appropriate*

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[357] *Ibid*.

[358] The Indigenous and Tribal Populations Convention, 1957 (No. 107), art. 7.1.

[359] *Id*. art. 7.2.

[360] *Id*. art. 8.a.

[361] *Id*. art. 8.b.

[362] *Id*. art. 10.1.

[363] *Id*. arts. 10.2, 10.3.

[364] The United Nations Convention on the Rights of the Child, 1989, art. 12.2.

[365] United Nations Committee on the Rights of the Child, *General Comment No. 11 (2009), Indigenous children and their rights under the Convention on the Rights of the Child*, UN Doc CRC/C/GC/11 (Jan. 12, 2009), para. 76.

and desirable", judicial proceedings are not resorted to.[366] In this regard, the Committee on the Rights of the Child has reiterated that "*the arrest, detention or imprisonment of a child may be used only as a measure of last resort*".[367] In the case of indigenous children, the Committee on the Rights of the Child has recommended the development of community-based programmes and services that consider the needs and cultures of indigenous children, their families and communities.[368] In particular, the Committee on the Rights of the Child called on States to provide adequate resources to juvenile justice systems developed and implemented by indigenous peoples.[369]

7.4. International Convention on the Elimination of All Forms of Racial Discrimination, 1965

Article 6 guarantees to everyone "*effective protection and remedies*" against racial discrimination through "*competent national tribunals and other State institutions*", which includes the right to seek "*just and adequate reparation or satisfaction for any damage suffered*" due to racial discrimination.[370] In its General Recommendation No. 23, the CERD, in the context of indigenous peoples being "*deprived of their lands and territories traditionally owned or otherwise inhabited or used*" without their FPIC, has recommended States to ensure that indigenous peoples have the right of restitution, where factually possible; if not, indigenous peoples are entitled to "*just, fair and prompt compensation*", which ought to "*as far as possible take the form of lands and territories*".[371]

7.5. UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2012

Principle 1 stipulates that "*States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution*".[372] Specifically, Principle 10 calls for the adoption of special measures to ensure that certain "*groups with special needs, including, but not limited to...indigenous and aboriginal people*" have equity in access to legal aid.[373] Further, Guideline 11 reinforces the foregoing by requiring States to "*take into account the needs of specific groups, including but not limited to...indigenous and aboriginal people*" when formulating national legal aid schemes.[374]

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366 The United Nations Convention on the Rights of the Child, 1989, art. 40.3.

367 United Nations Committee on the Rights of the Child, *General Comment No. 11 (2009), Indigenous children and their rights under the Convention on the Rights of the Child*, UN Doc CRC/C/GC/11 (Jan. 12, 2009), para. 74.

368 *Id*. at para. 75.

369 *Ibid*.

370 The International Convention on the Elimination of All Forms of Racial Discrimination, 1965, art. 6.

371 United Nations Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples,* UN Doc A/52/18 (Aug. 18, 1997), para. 5.

372 The United Nations Principles and Guidelines on Access to Legal Aid, 2012, principle 1.

373 *Id*. principle 10.

374 *Id*. guideline 11.

Guideline 11 also recommends that legal aid providers working with children "*should receive basic interdisciplinary training on the rights and needs of children... and training on psychological and other aspects of the development of children, with special attention...children who are members of...indigenous groups*".[375]

8. Sustainable Environment Management

Since time immemorial, indigenous peoples have had an intricate connection with nature, preserving their environments, ecosystems, flora and fauna, and genetic variety through their cultural practices.[376] Resultantly, the regions inhabited by indigenous peoples often coincide with areas of high biological diversity and ecological balance.[377] The distinctive knowledge systems of indigenous peoples passed down through the generations,[378] their spiritual attachment to their ancestral lands, and their cultural responsibility to preserve territories and resources for future generations, have been quintessential to sustainable development.[379] Their close relationship with nature also equips them to be its best guardians.[380] Concomitantly, indigenous peoples also have the right to flourish in a clean and healthy environment and be protected against the adverse impacts of climate change.[381] However, practice shows that indigenous interests are rarely taken into consideration in formulating policies that affect the rights of indigenous peoples to occupy or utilise their ancestral lands, traditional territories, and natural resources. In light of this harsh reality, the following international legal framework recognises the rights and duties of indigenous peoples vis-à-vis their natural environment:

8.1. United Nations Declaration on the Rights of Indigenous Peoples, 2007

The Preamble to the UNDRIP categorically acknowledges that "*respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment*".[382] Further, Article 29 affirms the right of indigenous peoples to "*the*

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[375] *Ibid*.

[376] United Nations Department of Economic and Social Affairs, *State of the World's Indigenous Peoples, Climate Crisis,* Vol. VI (Apr. 2025), p. no. 17.

[377] World Wild Fund, *International and Terralingua, Indigenous and Traditional Peoples of the World and Ecoregion Conservation: An Integrated Approach to Conserving the World's Biological and Cultural Diversity* (2000), p. no. 7.

[378] Fulvio Mazzocchi, "A deeper meaning of sustainability: Insights from indigenous knowledge" 7(1) *Anthropocene Review* 77–93 (2020).

[379] United Nations, *State of the World's Indigenous Peoples*, Vol. I (May 2011), p. no. 84.

[380] *Ibid*.

[381] United Nations Environment Program, United Nations Development Program, and Office of the High Commissioner for Human Rights, *Joint statement of United Nations Entities on the Right to Healthy Environment* (Mar. 8, 2021), *available at*: https://www.unep.org/news-and-stories/statements/joint-statement-united-nations-entities-right-healthy-environmen (last visited on Oct. 10, 2025).

[382] The United Nations Declaration on the Rights of Indigenous Peoples, 2007, preamble, para. 11.

conservation and protection of the environment and the productive capacity of their lands or territories and resources".[383] In this regard, Article 29 also requires States to put in place and operationalise "*assistance programmes for indigenous peoples for such conservation and protection*".[384] Besides, Article 29 requires States to take "*effective measures*" to prevent the "*storage or disposal of hazardous materials…in the lands or territories of indigenous peoples*" without their FPIC.[385] Article 32 recognises the right of indigenous peoples to "*just and fair redress*" for any development, exploration or resource exploitation on their lands or territories; concomitantly, States ought to take "*appropriate measures…to mitigate adverse environmental…impact*" of such activities.[386]

8.2. Indigenous and Tribal Peoples Convention, 1989

Article 4 mandates the adoption of special measures to safeguard the environment of indigenous peoples.[387] Along the same lines, Article 7 requires States to take measures, "*in co-operation with*" indigenous peoples, "*to protect and preserve the environment of the territories they inhabit*".[388] Article 7 also endorses the right of indigenous peoples to "*decide their own priorities for the process of development as it affects…the lands they occupy or otherwise use*".[389] Accordingly, Article 7 obligates States to conduct studies, "*whenever appropriate*", to assess the environmental impact of potential development activities, in cooperation with indigenous peoples and use the results as "*the fundamental criteria for implementation*" of such activities.[390] Further, Article 32 stipulates that States must take "*appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders*" in various fields, including environmental conservation.[391]

8.3. Convention on Biological Diversity, 1992

The Preamble recognises "*the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components*".[392] In this regard, Article 8(j) obligates States to *"respect, preserve and maintain*" such traditional knowledge, innovations and

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383 *Id*. art. 29.1.
384 *Ibid*.
385 *Id*. art. 29.2.
386 *Id*. art. 32.3.
387 The Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 4.1.
388 *Id*. art. 7.3.
389 *Id*. art. 7.1.
390 *Id*. art. 7.3.
391 *Id*. art. 32.
392 The United Nations Convention on Biological Diversity, 1992, preamble, para. 12.

practices, and to "*promote their application with the holders' approval and involvement, and encourage equitable benefit-sharing from their use*".[393] Article 10 specifically obligates States to "*protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements*".[394] For the conservation of biodiversity, Articles 17 and 18 also call on States to cooperate with one another for the exchange of information relating to "*indigenous and traditional knowledge*" and the use of "*indigenous and traditional technologies*".[395]

8.4. Indigenous Peoples Earth Charter, 1992

Indigenous peoples, through their representatives, have also developed their own Earth Charter, which is a pioneering endeavour in documenting indigenous approaches to sustainable development at a global level, and for influencing the official and civil society summits.[396] Statement 57 highlights that climatic changes, which affect indigenous peoples and all humanity, also disrupt ecological rhythms, worsening our quality of life and increasing our dependency.[397] Statement 58 calls attention to forests that are being destroyed in the name of development and economic gains, without considering the destruction of ecological balance, and demands the cancellation of logging concessions and incentives to the timber, cattle, and mining industries.[398] Statement 59 asserts that indigenous peoples value the protection of biodiversity but reject being treated as an inert part of it for scientific or folkloric purposes.[399] Statement 60 advocates that indigenous strategies ought to be used as a framework for national environmental policies.[400] Statement 67 recognises the indigenous peoples' harmonious relationship with nature, and implores States to respect indigenous sustainable development models, development strategies, and cultural values as distinct and vital sources of knowledge.[401]

8.5. Rio Declaration on Environment and Development, 1992

Principle 22 specifically acknowledges the crucial role that indigenous peoples play in "*environmental management and development because of their knowledge and traditional practices*", and accordingly

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393 *Id*. art. 8.j.

394 *Id*. art. 10.c.

395 *Id*. arts. 17.2, 18.4.

396 United Nations Economic and Social Council, *Other matters, including meetings and seminars and the Voluntary Fund for Indigenous Populations: information received from indigenous peoples' and non-governmental organizations*, UN Doc E/CN.4/Sub.2/AC.4/1994/12 (Jun. 6, 1994).

397 The Indigenous Peoples Earth Charter, 1992, statement 57.

398 *Id*. statement 58.

399 *Id*. statement 59.

400 *Id*. statement 60.

401 *Id*. statement 67.

calls on States to "*enable their effective participation in the achievement of sustainable development*".[402]

8.6. Agenda 21, 1992

Chapter 26 of Agenda 21 addresses the theme of "*recognizing and strengthening the role of indigenous people and their communities*" in the conservation and sustainable management of the natural environment.[403] Chapter 26 affirms the *"interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people*" and requires that the domestic and international action to "*implement environmentally sound and sustainable development…recognise, accommodate, promote and strengthen the role of indigenous people and their communities*".[404] Chapter 26 also calls for the *"adoption or strengthening of appropriate policies and/or legal instruments at the national level"*[405] for the protection of indigenous lands from *"environmentally unsound"* and *"culturally inappropriate"* activities.[406] Chapter 26 also emphasises the value of indigenous peoples' "*traditional knowledge*" and "*resource management practices*" in promoting sustainable development.[407] Chapter 26 further highlights the importance of indigenous peoples' *"traditional and direct dependence"* on *"renewable resources and ecosystems"* for their *"cultural, economic, and physical well-being*".[408] Chapter 26 also advocates for finding *"alternative, environmentally sound means of production"* to improve the *"quality of life"* of indigenous peoples.[409] Chapter 26 also underscores the pertinence of ensuring the *"active participation of Indigenous peoples in the national formulation of policies, laws and programmes"* related to *"resource management and conservation strategies*".[410]

8.7. Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, 1992

Although non-legally binding, the Statement of Principles is an authoritative document which calls on States to "*promote and provide opportunities for the participation of interested parties, including local communities and indigenous people…and forest dwellers*" in the formulation and implementation of their respective national forest policies.[411] It also specifically recommends States to *"recognise and duly support*

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[402] The Rio Declaration on Environment and Development, 1992, principle 22.
[403] The Rio Conference on Environment and Development, Agenda 21, 1992, ch. 26.
[404] *Id*. ch. 26.1.
[405] *Id*. ch. 26.3.a.i.
[406] *Id*. ch. 26.3.a.ii.
[407] *Id*. ch. 26.3.a.iii.
[408] *Id*. ch. 26.3.a.iv.
[409] *Id*. ch. 26.3.a.vi.
[410] *Id*. ch. 26.3.b, 26.3.c.
[411] The Forest Principles, 1992, principle 2.d.

the identity, culture and the rights of indigenous people, their communities and other communities and forest dwellers" in their national forest policies.[412] Further, for the conservation and sustainable development of forests, it requires States to respect, develop, rely on and compensate for "*appropriate indigenous capacity and local knowledge*".[413]

[412] *Id*. principle 5.a.

[413] *Id*. principle 13.d.

Annexure A: International Legal Framework for the Protection of Indigenous Rights

	Self-Determination, Self-Governance, Participation, Consultation, and FPIC	**Land, Forest, and Resources**	**Economic, Social, and Cultural Safeguards**	**Languages**	**Education**	**Traditional knowledge**	**Indigenous Legal Systems and Access to Justice**	**Sustainable Environment Management**
United Nations Declaration on the Rights of Indigenous Peoples, 2007	**Self-Determination and Self-Governance:** Article 3 Article 4 Article 5 Article 33 Article 34 **Participation and Consultation:** Article 18 Article 41 **FPIC:** Article 10 Article 11 Article 19 Article 28	Preamble, para. 10 Article 25 Article 26 Article 27 Article 28 Article 29 Article 30 Article 32	Preamble, para. 6 Article 5 Article 8 Article 9 Article 11 Article 13 Article 15 Article 17 Article 20 Article 21 Article 22 Article 23 Article 24	Article 13 Article 14 Article 15 Article 16	Preamble, para. 13 Article 14	Article 31	Article 5 Article 27 Article 34 Article 35 Article 40	Preamble, para. 11 Article 29 Article 32

	Article 29 Article 32							
Indigenous and Tribal Peoples Convention, 1989	**Self-Determination and Self-Governance:** Article 1 **Participation and Consultation:** Article 2 Article 6 Article 15 Article 17 **FPIC:** Article 16 Article 22	Article 7 Article 13 Article 14 Article 15 Article 16 Article 17 Article 18 Article 19	Article 2 Article 7 Article 10 Article 22 Article 23 Article 24 Article 25 Article 27	Preamble, para. 5 Article 28 Article 30	Article 26 Article 27 Article 28 Article 29 Article 31	Article 27	Article 8 Article 9 Article 10 Article 12	Article 4 Article 7 Article 32
Indigenous and Tribal Populations Convention, 1957	**Self-Determination and Self-Governance:** Article 1 **Participation and Consultation:** Article 5 **FPIC:** Article 12	Article 11 Article 12 Article 13 Article 14	Preamble para. 5 Article 2 Article 3 Article 4 Article 6 Article 15 Article 16 Article 17 Article 18	Article 23 Article 26	Article 21 Article 22 Article 23 Article 24 Article 25		Article 7 Article 8 Article 10	

			Article 19 Article 20					
Discrimination (Employment and Occupation) Convention, 1958		Article 2						
International Covenant on Economic, Social and Cultural Rights, 1966	**Self-Determination and Self-Governance:** Article 1 **Participation and Consultation:** Article 15 Article 16 Article 17	Article 11 Article 12 Article 15	Article 1 Article 15		Article 13 Article 14	Article 15		
International Covenant on Civil and Political Rights, 1966	**Self-Determination and Self-Governance:** Article 1 **Participation and Consultation:**	Article 1 Article 27 Article 40	Article 27	Article 27				

	Article 25							
United Nations Convention on the Rights of the Child 1989		Article 30	Article 30	Article 30	Article 28 Article 29 Article 30		Article 12 Article 40	
International Convention on the Elimination of All Forms of Racial Discrimination 1965		Article 1 Article 5	Article 5	Preamble, para. 1			Article 6	
Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, 2012		Preliminary Objective 1						

2030 Agenda for Sustainable Development, 2015		Goal 2 Target 2.3						
Indigenous Peoples Earth Charter, 1992								Statements 57 Statements 58 Statements 59 Statements 60 Statements 67
Rio Declaration on Environment and Development, 1992								Principle 22
Agenda 21								Chapter 26
United Nations Convention on Biological Diversity, 1992						Article 8 (j)		Preamble, para. 12 Article 8(j) Article 10(c)

								Article 17 Article 18
Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995						Article 14 (copyrights) Article 27 (patents)		
Convention for the Safeguarding of Intangible Cultural Heritage, 2003			Preamble, para. 6					
Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005			Preamble, para. 15 Article 2(3) Article 7			Preamble, para. 8		
Statement of								Principle 2(d)

Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, 1992								Principle 5(a) Principle 13(d)
WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, 2024						Preamble, para. 7 Preamble, para. 8 Article 3 Article 6 Article 10		
Convention against Discrimination in Education, 1960					Article 1 Article 4			

UN Principles and Guidelines on Access to Legal Aid, 2012							Principle 1 Principle 10 Guideline 11	

Annexure B: Country-wise Status of Ratification or Adoption of International Legal Instruments Relevant to the Protection of Indigenous Rights

	Australia	**Aotearoa (New Zealand)**	**Canada**	**USA**	**Colombia**	**Ecuador**	**Brazil**	**Norway**	**Finland**	**Sweden**	**India**
United Nations Declaration on the Rights of Indigenous Peoples, 2007 *Non-Binding*	Voted against on 13 September 2007, but later endorsed it in April 2009	Voted against on 13 September 2007, but later endorsed it in April 2010	Initially voted against in September 2007, but endorsed it in November 2010	Voted against on 13 September 2007, but later endorsed it on 12 January 2011	Abstained from voting in 2007 but declared its support in 2009	Voted in favour on 13 September 2007	Voted in favour on 13 September 2007	Voted in favour on 13 September 2007	Voted in favour on 13 September 2007	Voted in favour on 13 September 2007	Voted in favour in 2007
Indigenous and Tribal Peoples Convention, 1989 *Binding*	Not ratified	Not ratified	Not ratified	Not ratified	Ratified on 7 August 1991	Ratified on 15 May 1998	Ratified on 25 July 2002	Ratified on 19 June 1990	Not ratified	Not ratified	Not ratified
Indigenous and	Not	Not	Not	Not	Ratified	Ratified	Ratified	Not	Not	Not	Ratified

Tribal Populations Convention, 1957 *Binding*	ratified	ratified	ratified	ratified	on 4 March 1969, but currently not in force	on 3 October 1969, but currently not in force	on 18 June 1965, but currently not in force	ratified	ratified	ratified	on 29 September 1958
International Covenant on Economic, Social and Cultural Rights, 1966 *Binding*	Ratified on 10 December 1975	Ratified on 28 December 1978	Accession on 19 May 1976	Ratified on 8 June 1992	Ratified on 29 October 1969	Ratified on 6 March 1969	Accession on 24 January 1992	Ratified on 13 September 1972	Ratified on 19 August 1975	Ratified on 6 December 1971	Accession on 10 April 1979
International Covenant on Civil and Political Rights, 1966 *Binding*	Ratified on 13 August 1980	Ratified on 28 December 1978	Accession on 19 May 1976	Ratified on 8 June 1992	Ratified on 29 October 1969	Ratified on 6 March 1969	Accession on 24 January 1992	Ratified on 13 September 1972	Ratified on 19 August 1975	Ratified on 6 December 1971	Accession on 10 April 1979
United Nations Convention on the Rights of	Ratified on 17 December 1990	Ratified on 6 April 1993	Ratified on 13 December 1991	Signed on 16 February 1995, but	Ratified on 28 January 1991	Ratified on 23 March 1990	Ratified on 24 September 1990	Ratified on 8 January 1991	Ratified on 20 June 1991	Ratified on 29 June 1990	Accession on 11 December 1992

the Child 1989 *Binding*				not ratified							
International Convention on the Elimination of All Forms of Racial Discrimination 1965 *Binding*	Ratified on 30 September 1975	Ratified on 22 November 1972	Ratified on 14 October 1970	Ratified on 21 October 1994	Ratified on 2 September 1981	Acceded on 22 September 1966	Ratified on 27 March 1968.	Ratified on 6 August 1970	Ratified on 14 July 1970	Ratified on 6 December 1971	Ratified on 3, December 1968
Discrimination (Employment and Occupation) Convention, 1958 *Binding*	Ratified on 15 June 1973.	Ratified on 3 June 1983	Ratified on 26 November 1964	Not Ratified	Ratified on 4 March 1969	Ratified on 10 July 1962	Ratified on 26 November 1965	Ratified on 24 September 1959	Ratified on 23 April 1970	Ratified on 20 June 1962	Ratified on 3 June 1960
Rio Declaration on Environment and Development,	Adopted in Earth Submit from 3-14 June 1992	Adopted in Earth Submit from 3-14 June 1992	Adopted in Earth Submit from 3-14 June 1992	Adopted in Earth Submit from 3-14 June 1992	Adopted in Earth Submit from 3-14 June 1992	Adopted in Earth Submit from 3-14 June 1992	Adopted in Earth Submit from 3-14 June 1992	Adopted in Earth Submit from 3-14 June 1992	Adopted in Earth Submit from 3-14 June 1992	Adopted in Earth Submit from 3-14 June 1992	Adopted in Earth Submit from 3-14 June 1992

1992 *Non-binding* (Adopted by consensus by 179 countries)											
United Nations Convention on Biological Diversity, 1992 *Binding*	Ratified on 18 June 1993	Ratified on 16 September 1993	Ratified on 4 December 1992	Signed on 4 July 1993 but not ratified	Ratified on 28 November 1994	Ratified on 23 February 1993.	Ratified on 28 February 1994	Ratified on 9 July 1993	Ratified on 27 July 1994	Ratified on 16 December 1993	Ratified on 18 February 1994
Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995 *Binding* (All WTO members are signatories to TRIPS)	Signed on 15 April 1994 Came into force on 1 January 1995	Signed on 15 April 1994 Came into force on 1 January 1995	Signed on 15 April 1994 Came into force on 1 January 1995	Signed on 15 April 1994 Came into force on 1 January 1995	Signed on 15 April 1994 Came into force on 30 April 1995	Signed on 15 April 1994 Came into force on 21 January 1996	Signed on 15 April 1994. Came into force on 1 January 1995	Signed as a founding member of the WTO on 15 April 1994 Came into force on 1 January 1995	Signed as a founding member of the WTO on 15 April 1994 Came into force on 1 January 1995	Signed as a founding member of the WTO on 15 April 1994 Came into force on 1 January 1995	Signed as a founding member of the WTO on 15 April 1994 Came into force on 1 January 1995

Convention for the Safeguarding of Intangible Cultural Heritage, 2003 *Binding*	Not ratified	Not ratified	Not ratified	Not ratified	Ratified on 19 March 2008	Ratified on 13 February 2008	Ratified on 1 March 2006	Ratified on 17 January 2007	Accepted on 21 February 2013	Ratified on 26 January 2011	Ratified on 9 September 2005
Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005 *Binding*	Acceded on 18 September 2009	Acceded on 5 October 2007	Accepted on 28 November 2005	Not ratified	Acceded on 19 March 2013	Acceded on 8 November 2006	Ratified on 16 January 2007	Ratified on 17 January 2007	Accepted on 18 December 2006	Ratified on 18 December 2006	Ratified on 15 December 2006
WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge,	Signed on 24 May 2024	Not yet signed or ratified	Not yet signed or ratified	Not yet signed or ratified	Signed on 24 May 2024	Signed on 21 May 2025	Signed on 24 May 2024	Not yet signed or ratified	Not yet signed or ratified	Not yet signed or ratified	Not yet signed or ratified

2024 *Non-binding*											
UNESCO Convention against Discrimination in Education, 1960 *Binding*	Accepted on 29 November 1966	Ratified on 12 February 1963	Not ratified	Not ratified	Not ratified	Accepted on 5 March 1979	Ratified on 19 April 1968	Ratified on 8 January 1963	Ratified on 18 October 1971	Ratified on 21 March 1968	Not ratified
UN Principles and Guidelines on Access to Legal Aid, 2012 *Non-binding* (Unanimously adopted without voting by the UN General Assembly)	Adopted on 28 March 2013	Adopted on 28 March 2013	Adopted on 28 March 2013	Adopted on 28 March 2013	Adopted on 28 March 2013	Adopted on 28 March 2013	Adopted on 28 March 2013	Adopted on 28 March 2013	Adopted on 28 March 2013	Adopted on 28 March 2013	Adopted on 28 March 2013

CHAPTER III: INDIAN CONSTITUTIONAL, LEGISLATIVE, AND INSTITUTIONAL FRAMEWORKS

This Chapter traces and expounds upon the constitutional, legislative, and institutional measures that are designed to guarantee the rights of 'Scheduled Tribes' and other tribal communities in India. Having elaborated upon the historical context of the manner in which tribal communities have been treated in the pre-colonial and colonial periods, this Chapter delineates the constitutional designation of the 'Scheduled Tribe' identity, and their rights to equality and non-discrimination; reservations in education and public employment; political representation and self-governance; autonomy over resources; and cultural and religious freedoms. This Chapter further elucidates the statutory provisions that expressly or implicitly safeguard Scheduled Tribes from exploitation, secure their rights to their ancestral lands, recognise their customary practices, and promote social and economic justice. This Chapter also outlines the welfare schemes, initiatives, and administrative mechanisms established for the protection, advancement and empowerment of Scheduled Tribes.

1. Historical Treatment of Scheduled Tribes

1.1. Pre-colonial Oppression

Ancient texts often depicted tribal communities as 'robber tribes' or 'outsiders', living on the margins of the society (on burial grounds, mountains, and groves), wearing "*the garments of the dead*", and "*always wandering from place to place*".[414] Tribal communities were also described as "*riteless, void of sense, inhuman*", "*frightful and terrible*", "*flesh-eating*", and "*wine-drinking*".[415] Specifically, the *Dāsyu*, *Mleccha*, *Drāvida*, *Pulinda*, *Śabara*, *Bhilla*, and *Barbara* tribes were perceived as being associated with lawlessness and depravity—in particular, the *Dāsyu* were seen as robbers, demons, or outcastes; the *Barbara* as foreigners or hillmen who were not eligible to participate in Brahmanical rituals; and the *Bhilla* as 'separate' or 'outcastes' .[416]

Manusmriti, amongst others, further portrayed forest tribes and those considered 'low-borns' as naturally drawn to forbidden occupations, including theft, and were deemed to fall outside the moral and legal order.[417] Such communities were thus barred from participating in rituals or acting as

[414] Georg Bühler, *The Laws of Manu: Translated, with Extracts from Seven Commentaries* 414 (Clarendon Press, 1886); Anastasia Piliavsky, "The 'Criminal Tribe' in India before the British" 57(2) *Comparative Studies in Society and History* 330 (2015).

[415] Anastasia Piliavsky, "The 'Criminal Tribe' in India before the British" 57(2) *Comparative Studies in Society and History* 330 (2015).

[416] *Id*. at 330-331.

[417] Georg Bühler, *The Laws of Manu: Translated, with Extracts from Seven Commentaries* 192, 238, 410, 499 (Clarendon Press, 1886).

witnesses,[418] and the possessions of such "*jungly thieves*" were allowed to be freely taken.[419] According to certain narratives, banditry was regarded as a 'family business'; consequently, tribal villages were referred to as 'thief settlements', pushing generations of tribal communities to dwell in caves and forests in the wild.[420]

This exclusionary treatment continued well into the 16th century, with communities such as the *Gujars*, *Jats*, *Kolis*, *Minas*, *Bhattis*, *Mewatis*, and *Bhils* also acquiring the ill-repute of 'robber castes'.[421] The *Mughal* Emperor *Babur*, in his journal, noted that *Jats* and *Gujars* frequently descended from the hills to loot villages, labelling them "*senseless oppressors*".[422] By the mid-seventeenth century, this was formalised, with *Aurangzeb's* 1672 decree terming all *Grasia* tribes as "*habitual robbers*" and "*wicked men*".[423] Such negative stereotypes of tribal communities as being inherently deviant, "*sworn by the laws of their caste to commit crime*", were later officially codified by the British during the colonial period, thus reinforcing and normalising their systemic marginalisation, subjugation, and oppression that persisted since time immemorial, long before the British had arrived in India.[424]

1.2. Colonial 'Othering'

Under British rule, legal recognition was accorded to tribal communities, not with the objective of safeguarding their rights, but to facilitate the regulation of regions inhabited by them, which were deemed difficult to govern in terms of land, resources, and revenue.[425] Within this colonial framework, tribal communities were construed as a population "*outside civilisation*", thereby positioning them as external not only to the administrative structure, but also to the social order itself.[426] The tribal communities living largely in remote hill and forest regions, subsisting on hunting, gathering, or shifting cultivation, were collectively categorised as 'aboriginals' or 'primitive tribes' or 'jungle tribes', commonly

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[418] Anastasia Piliavsky, "The 'Criminal Tribe' in India before the British" 57(2) *Comparative Studies in Society and History* 331 (2015).

[419] *Ibid*.

[420] Helen M. Johnson, "Rãuhineya's Adventures, the Rãuhineyacarita", in Group of his Pupils (eds.), *Studies in Honor of Maurice Bloomfield* 159-96 (Yale University Press, 1920); Anastasia Piliavsky, "The 'Criminal Tribe' in India before the British" 57(2) *Comparative Studies in Society and History* 331 (2015).

[421] Anastasia Piliavsky, "The 'Criminal Tribe' in India before the British" 57(2) *Comparative Studies in Society and History* 335 (2015).

[422] *Id*. at 335-336.

[423] Jadunath Sarkar, *Mughal Administration* 111 (M.C. Sarkar, 1952); Anastasia Piliavsky, "The 'Criminal Tribe' in India before the British" 57(2) *Comparative Studies in Society and History* 335-336 (2015).

[424] Louis A. Knafla (ed.), *Crime, Gender, and Sexuality in Criminal Prosecutions* 124 (Greenwood Publishing Group, 2002); Anastasia Piliavsky, "The 'Criminal Tribe' in India before the British" 57(2) *Comparative Studies in Society and History* 326 (2015); *Sukanya Shantha v. Union of India,* 2024 SCC OnLine SC 2694, para. 113-114.

[425] Susana B.C. Devalle, "Tribe in India: The Fallacy of a Colonial Category", in David N. Lorenzen (ed.), *Studies on Asia and Africa from Latin America* 71-116 (El Colegio de Mexico, 1990).

[426] Virginius Xaxa, "Tribes as Indigenous People of India" 34(51) *Economic and Political Weekly* 3591 (1999).

also referred to as '*adivasis*'.[427] This categorisation is also reflected in successive census reports, where tribal communities were classed under terms such as 'forest tribes', 'animists', or those following 'tribal religions'.[428] Government documents also referred to 'aboriginal tribes', who, across the hill and forest regions of British India, continued to practise belief systems centred around the "*unseen world*", describing them as 'primitive peoples'.[429] As a result of these characterisations, tensions were rife between tribal communities on one side, and the non-tribal populations and the colonial officers on the other, on matters of religion, culture, and tradition.[430] In response, several special laws were enacted by the British Government to govern tribal communities and their inhabitants.

1.2.1. 'Criminal Tribes'

One such legislation was the Criminal Tribes' Act, 1871, which provided a statutory basis for the "*registration, surveillance and control*" of certain 'criminal tribes', and the penalisation of marginalised groups, including tribal communities.[431] Section 2 thereof authorised the Governor General to declare any "*tribe, gang or class of persons*" as a 'criminal tribe', if the local government had "*reason to believe*" that they were "*addicted to the systematic commission of non-bailable offences*".[432] Likewise, Section 4 authorised the local government to term a 'wandering tribe', having no fixed place of residence, as criminals, except where they could demonstrate that they were engaged in a 'lawful occupation'.[433] Sections 13 and 14 further permitted the local government to prescribe a place of settlement for 'criminal tribes' who had no fixed place of residence.[434] Sections 18 and 19 further authorised the

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[427] Bhangya Bhukya, "The Mapping of the Adivasi Social: Colonial Anthropology and Adivasis" 43(39) *Economic and Political Weekly* 103-109 (2008).

[428] Virginius Xaxa, "Transformation of Tribes in India: Terms of Discourse" 34(24) *Economic and Political Weekly* 1519-24 (1999).

[429] Indian Statutory Commission, "Report of the Indian Statutory Commission Volume 1-Survey" (May 1930), p. no. 32.

[430] Virginius Xaxa, "Politics of Language, Religion and Identity: Tribes in India" 40(13) *Economic and Political Weekly* 1363-1370 (2005).

[431] Anurag Bhaskar, *The Foresighted Ambedkar: Ideas That Shaped Indian Constitutional Discourse* 24 (Penguin Random House, 2024).

[432] The Criminal Tribes' Act, 1871, s. 2: "*If the Local Government has reason to believe that any tribe, gang or class of persons is addicted to the systematic commission of non-bailable offences, it may report the case to the Governor General in Council, and may request his permission to declare such tribe, gang or class to be a criminal tribe*."

[433] The Criminal Tribes' Act, 1871, s. 4: "*If such tribe, gang or class has no fixed place Occupation of wandering of residence, the report shall state whether such tribe, tribe to ,be gang or class follows any lawful occupation, and stated; whether such occupation is, in the opinion of the Local Government, the real occupation of such tribe, gang or class, or a pretence for the purpose of facilitating the commission of crimes, and shall set forth the grounds on which such opinion is based; and the report shall also specify the place of residence in which also proposed such wandering tribe, gang or class is to be settled residence under the provisions hereinafter contained, and the livelihood. and means of arrangements which are proposed to be made for enabling it to earn its living therein.*"

[434] The Criminal Tribes' Act, 1871, s. 13: "*Any tribe, gang or class, which has been declared to be criminal, and which has no fixed place of residence, may be settled in a place of residence prescribed by the Local Government.*"

imposition of sweeping control over the daily lives of those belonging to a 'criminal tribe', and corporal penalties such as whipping.[435]

Later, the Criminal Tribes Act, 1911, was passed to repeal the earlier Criminal Tribes Act, 1871. The application of the Criminal Tribes Act, 1911, unlike its predecessor, was not merely limited to tribal areas,[436] but extended to the whole of British India.[437] Further, Section 3 authorised the local government to declare as a 'criminal tribe', any "*any tribe, gang or class of persons*" if it had "*reason to believe*" that they were "*addicted to the systematic commission of non-bailable offences*", without having to seek the permission of or consult any higher authority.[438] Moreover, the draconian Section 24 offered a firm legal basis for punishing registered members of a 'criminal tribe', where a court was of the view that they were "*about to commit, or aid in the commission of, theft or robbery*" or were "*waiting for an opportunity to*

The Criminal Tribes' Act, 1871, s. 14: "*Any tribe, gang or class which has been declared to be criminal, or any part thereof, may, by other place. order of the Local Government, be removed to any other place of residence.*"

435 The Criminal Tribes' Act, 1871, s. 18: "*The Local Government may, with the previous consent of the Governor General in Council, make rules to prescribe- (1) the form in which the register shall be made by the said Magistrate; (2) the mode in which the said Magistrate shall publish the notice prescribed in section eight, and the means by which the persons whom it concerns, and the Headmen, Village-Watchmen and landowners or occupiers of the village, in which such persons reside, shall be informed of its publication; (3) the mode in which the notice prescribed in section eleven shall be given; (4) the limits within which persons whose names are on the register shall reside; (5) conditions as to holding passes, under which such persons may be permitted to leave the said limits; (6) conditions to be inserted in any such pass as to (a) the places where the holder of the pass may go or reside; (b) the officers before whom, from time to time, he shall be bound to present himself; (c) and the time during which he may absent himself; (7) conditions as to answering at roll-call or otherwise, in order to satisfy the said Magistrate or persons authorized by him, that the persons whose names are on the register are actually present at given times within the said limits; (8) the inspection of the residences and villages of any such tribe, gang or class, and the prevention or removal of contrivances for enabling the residents therein to conceal stolen property, or to leave their place of residence without leave; (9) the terms upon which registered persons may pe discharged from the operation of this Act; (10) the mode in which criminal tribes shall be settled and removed; (11) the control and supervision of reformatory settlements; (12) the works on which, and the hours during which, persons placed in a reformatory settlement shall be employed, the rates at which they shall be paid, and the disposal, for thhe benefit of such persons, of the surplus proceeds of their labour after defraying the whole or such part of the expenses of their supervision and control as to the Local Government shall seem fit; (13) the discipline to which persons endeavouring to escape from any such settlement, or otherwise offending against the rules for the time being in force, shall be submitted; the periodical visitation of such settlement, and the removal from it of such persons as it shall seem expedient to remove; (14) and generally to carry out the purposes of this Act.*"
The Criminal Tribes' Act, 1871, s. 19: "*Any person violating any of the rules made under section eighteen shall be punished with rigorous imprisonment for a term which may extend to six months, or with fine, or with whipping, or with all or any two of those punishments; and, on any second conviction for a breach of any of the said rules, with rigorous imprisonment which may extend to one year, or with fine, or with whipping to be inflicted in the manner prescribed by any law in force for the time being in relation to whipping, or with all or any two of those punishments.*"

436 The Criminal Tribes Act, 1871, s. 1: "*This section and section twenty extend to the whole of British India: the rest of this Act extends only to the territories under the governments of the Lieutenant-Governors of the North-Western Provinces and the Panjáb, respectively, and under the administration of the Chief Commissioner of Oudh.*"

437 The Criminal Tribes Act, 1911, s. 1(2): "*It extends to the whole of British India.*"

438 The Criminal Tribes Act, 1911, s. 3: "*If the Local Government has reason to believe that any tribe, gang or class of persons is addicted to the systematic commission of non-bailable offences, it may, by notification in the local official Gazette, declare that such tribe, gang or class is a criminal tribe for the purposes of this Act*."

commit theft or robbery".[439] The penalties under the Criminal Tribes Act, 1911, ranged from imprisonment up to six months for offences like refusing to allow their finger-impressions taken[440] to imprisonment of up to seven years or transportation for life, in case of repeated convictions.[441]

Subsequently, the Criminal Tribes' Act, 1924, was enacted, thereby repealing the Criminal Tribes' Act, 1911. While the Criminal Tribes' Act, 1924, retained most of the provisions of the earlier Criminal Tribes' Act, 1911, it revised and expanded administrative control and police powers in relation to the 'criminal tribes'. For instance, Section 22 allowed officers not below the rank of sub-inspectors to arrest any person who has or is reasonably suspected to have breached any of the rules formulated under the Criminal Tribes' Act, 1924, without a warrant.[442] Accordingly, the Criminal Tribes' Acts, 1871,1911, and 1924 entrenched the pre-existing social stigma associated with tribal communities, by branding them as 'born criminals'.

1.2.2. 'Scheduled Districts', 'Backward Tracts', 'Excluded Areas', and 'Partially Excluded Areas'

The Scheduled Districts Act, 1874, was enacted to create administrative divisions, known as 'Scheduled Districts' (such as the Santhal Parganas and Chhotanagpur),[443] wherein tribal communities were

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[439] The Criminal Tribes Act, 1911, s. 24: "*Whoever, being a registered member of any criminal tribe, is found in any place under such circumstances as to satisfy the Court-(a) that he was about to commit, or aid in the commission of, theft or robbery, or (b) that he was waiting for an opportunity to commit theft or robbery, shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine which may extend to one thousand rupees.*"

[440] The Criminal Tribes Act, 1911, s. 21 - "*Whoever, being a member of a criminal tribe, without lawful excuse, the burden of proving which shall lie upon him,- (a) fails to appear in compliance with a notice issued under section 5 or section 7, or (b) intentionally omits to furnish any information required under those sections, or, (c) when required to furnish information under either of those sections, furnishes as true any information which he knows or has reason to believe to be false, or (d) refuses to allow his finger-impressions to be taken, may be arrested without warrant, and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.*"

[441] The Criminal Tribes Act, 1911, s. 23: "*(1) Whoever, being a member of any criminal tribe, and, having been convicted of any of the offences under the Indian Penal Code (XLV of 1860) specified in the Schedule, is hereafter convicted of the same or any other offence specified in the said schedule, shall, in the absence of special reasons to the contrary to be mentioned in the judgment of the Court, be punished,-- (a) on a second conviction, with imprisonment for a term of not less than seven years, and (b) on a third conviction, with transportation for life. (2) Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the Indian Penal Code or any other law.*"

[442] The Criminal Tribes' Act, 1924, s. 22(3): "*Any person who commits or is reasonably suspected of having committed an offence made punishable by this section which is not a cognizable offence as defined in the Code of Criminal Procedure, 1898 (V of 1898), may be arrested without a warrant by any officer in charge of a police station or by any police officer not below the rank of a sub-inspector.*"

[443] The Scheduled Districts Act, 1874, s. 1: "*Local extent. - This Act extends in the first instance to the whole of British India other than the territories mentioned in the first schedule (here to) annexed, and it shall come into force in each of the Scheduled Districts on the issue of a notification under Section 3 relating to such District. Interpretation clause. - In this Act the term "Scheduled Districts" means the territories mentioned in the first schedule hereto annexed; and, from the date fixed*

permitted to continue regulating their local affairs in accordance with their own customary practices, including traditional methods of leadership selection.[444] The laws in force in the rest of British India were not automatically applicable to these Scheduled Districts; instead, the Governor General had the authority to create special laws for these territories.[445] Although framed as an arrangement to protect tribal communities from further exploitation and marginalisation, the Scheduled Districts Act, 1874, was reflective of the colonial tendency to isolate them from the non-tribal populations, so as to contain any potential revolt.[446]

Under the subsequent Government of India Act, 1919, the concept of 'backwards tracts' was introduced, covering certain regions predominantly inhabited by tribal communities.[447] Section 21 limited the legislative competence of the Parliament to enact laws applicable to 'backward tracts', instead allowing the Governor-General to declare any territory in British India as a 'backward tract', and to decide how general laws would apply there, including by preventing the enactments of the Parliament from applying to a 'backward tract' altogether, or modifying their application, as he thought necessary.[448]

Per the Report of the Indian Statutory Commission, commonly known as the Simon Commission Report,[449] the 'backward tracts' of British India covered an area of 2,07,900 square miles (with a population of about 13 million).[450] Out of these 'backward tracts', certain territories like the Laccadive Islands and Minicoy in Madras, Chittagong Hill Tracts in Bengal, Spiti in Punjab, Burma and Angul in

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in the resolution next hereinafter mentioned, it shall also include any other territory to which the Secretary of State for India, by resolution in Council, may declare the provisions of the thirty-third of Victoria, Chapter III, Section 1, to be applicable."

444 *Union of India v. Rakesh Kumar* (2010) 4 SCC 50, para. 2.

445 Nandini Sundar, *The Making of the 5th and 6th Schedule*, Talk delivered at 5th Annual History for Peace Conference, The Idea of the Indian Constitution (Jul. 2019), *available at:* https://www.historyforpeace.pw/post/the-making-of-the-5th-and-6th-schedule (last visited on Sep. 29, 2025).

446 Virginius Xaxa, "Tribes and Indian National Identity" 23(1) *The Brown Journal of World Affairs* 227-228 (2016).

447 *Id*. at 227.

448 The Government of India Act, 1919, s. 21(2): "*The Governor-General in Council may declare any territory in British India to be a 'backward tract', and may, by notification, with such sanction as aforesaid, direct that the principal Act and this Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification. Where the Governor-General in Council has, by notification, directed as aforesaid, he may, by the same or subsequent notification, direct that any Act of the Indian Legislature shall not apply to the territory in question or any part thereof, or shall apply to the territory or any part thereof subject to such exceptions or modifications as the Governor- General thinks fit, or may authorize the governor in council to give similar directions as respects any Act of the local legislature.*"

449 Indian Statutory Commission, "Report of the Indian Statutory Commission Volume 1-Survey" (May 1930). The Simon Commission was formed under the Chairmanship of Sir John Simon to review the working of the system of the government established by the Government of India Act, 1919, and inquired into how the constitutional reforms were functioning in British India, particularly, the system of government, the growth of education, and the development of representative institutions.

450 Indian Statutory Commission, "Report of the Indian Statutory Commission Volume 1-Survey" (May 1930), p. no. 159.

Bihar and Orissa, were considered so backward that they were wholly excluded from reforms. Meanwhile, in the remaining 'backward tracts', the general laws of British India applied, subject to the exceptions and modifications made by the Governor General.[451] The Presidencies of Madras, Bombay, Bengal, and regions like Bihar and Orissa, Assam, and Burma fell under these special administrative arrangements, wherein the laws were made applicable per the characteristics and inhabitants of these territories.[452]

The Simon Commission Report emphasised the heterogeneity of these regions, noting that while parts of the Darjeeling district were inhabited by the Bengali population, the adjoining Himalayan tracts were home to numerous 'hill tribes' with distinct religion, language, and customs.[453] According to the Simon Commission Report, whereas the Chhotanagpur region comprised nearly equal 'aboriginal' and 'semi-aboriginal tribes' populations,[454] the Central Provinces (marked by both fertile plains and extensive hill and forest regions) were inhabited by the *Gonds* and other tribes who retained "*their own language and their own animistic religion*".[455] The Simon Commission Report described the Madras Agency as an area administered under special laws tailored to its "*primitive inhabitants, who practised distinct 'animistic and tribal faiths'*" and "*lived in largely underdeveloped regions marked by sensitivity to external interference*".[456] Similarly, the Simon Commission Report portrayed the 'backward tracts' of Assam in contrasting dissections of "*wild hillmen*" and "*civilisation of the plains*".[457]

The foregoing approach was reinforced by the Government of India Act, 1935, which classified territories largely populated by tribal communities as 'Excluded Areas' and 'Partially Excluded Areas'. Excluded Areas were directly administered by the Governor without legislative interference, while Partially Excluded Areas had limited oversight of provincial legislatures.[458] The intent behind these provisions was to insulate tribal communities from what the colonial authorities described as "*exploitation by advanced communities*", though in practice, it enabled the consolidation of colonial control over the resource-rich tribal regions.[459] In fact, the British colonial State itself was established on the basis of the expropriation of the ancestral lands of tribal communities, which disrupted the

[451] *Ibid*.
[452] *Id*. at 54-82.
[453] *Id*. at 62.
[454] *Id*. at 69.
[455] *Id*. at 71.
[456] *Id*. at 56.
[457] *Id*. at 75.
[458] The Government of India Act, 1935, ch. V: "*Excluded Areas and Partially Excluded Areas*."
[459] B. Shiva Rao, II *The Framing of India's Constitution: A Study* 371-373 (The Indian Institute of Public Administration, 1967).

traditional symbiotic relationship that they shared with land and nature.[460] Consequently, the manner in which tribal communities were adversely treated during the colonial rule was heavily criticised.[461]

1.2.3. Round Table Conferences

Although the Simon Commission Report lamented the tribal communities' "*loss of self-respect, of confidence in their warlike prowess, of belief in their tribal gods, and of unfettered enjoyment in their patriarchal customs*", suggesting that progress must come gradually to avoid destroying the unique cultural identities of tribal communities,[462] it was widely condemned, and rejected by the Indian populace.[463] The British Government therefore convened Round Table Conferences from 1930 to 1932 to deliberate upon a potential constitutional framework for independent India, bringing together representatives from both the British Government and Indian constituencies, including Dr. B.R. Ambedkar, who emerged as the leading spokesperson for the 'depressed classes'.[464] When consensus could not be reached on larger issues, the recommendations that emerged from the Round Table Conferences were sent as a white paper to the British Parliament for discussion.[465] In response, the British Parliament constituted a Joint Committee, consisting of the representatives of British India and Princely States.[466]

Before this Joint Committee, Dr. Ambedkar and Dr. J.H. Hutton debated on the question of the protection of the 'depressed' and 'primitive' classes.[467] Dr. Ambedkar clarified that the exclusion of the 'depressed' and 'primitive' classes from political representation would deprive them of agency and

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[460] Government of India, "Committee of Members of Parliament and Experts Constituted to Make Recommendations on Law Concerning Extension of Provisions of the Constitution (Seventy-Third Amendment) Act, 1992 to Scheduled Areas" (Ministry of Rural Development, 1995).

[461] Bhangya Bhukya, "The Mapping of the Adivasi Social: Colonial Anthropology and Adivasis" 43(39) *Economic and Political Weekly* 103-109 (2008).

[462] Indian Statutory Commission, "Report of the Indian Statutory Commission Volume 1-Survey" (May 1930), p. no. 76.

[463] Anurag Bhaskar, *The Foresighted Ambedkar: Ideas That Shaped Indian Constitutional Discourse* 113 (Penguin Random House, India, 2024).

[464] *Id*. at 113-125; Depressed classes is a loose term that referred to the *Dalits*, those considered 'untouchables', as well as the Scheduled Castes. Poona Pact 1932, *available at:* https://www.constitutionofindia.net/historical-constitution/poona-pact-1932-b-r-ambedkar-and-m-k-gandhi (last visited on Nov. 5, 2025).

[465] Anurag Bhaskar, *The Foresighted Ambedkar: Ideas That Shaped Indian Constitutional Discourse* 125 (Penguin Random House, India, 2024).

[466] *Id*. at 126.

[467] Vasant Moon (ed.), II *Dr. Babasaheb Ambedkar: Writings and Speeches* 736-742 (Ministry of Social Justice and Empowerment, 2019); Indian Statutory Commission, "Report of the Indian Statutory Commission Volume 1-Survey" (May 1930), p. no. 32: "*Primitive peoples do not claim to belong to any particular religion : they only know of their own beliefs, and are therefore unconscious of religious classifications.*"; Anurag Bhaskar, *The Foresighted Ambedkar: Ideas That Shaped Indian Constitutional Discourse* 128 (Penguin Random House, India, 2024): "*Dr. Ambedkar was strongly in favour of the inclusion of what the British called 'primitive tribes' (sic) in the political system.*"

obstruct essential reforms in education and welfare.[468] Dr. Ambedkar also pointed out that the interests of the 'primitive' classes could not be safeguarded solely through the Governor's discretionary powers, without granting them adequate legislative representation.[469] Dr. Ambedkar hence argued vehemently in favour of the inclusion of the 'primitive' classes in the political system, clarifying that "*a Minister cannot be expected to be interested in primitive peoples who are not part of the Legislature*".[470] Notably, he stated that if the tribal communities became a part of the Indian political system, they would find *"many friends*" in the 'depressed' classes.[471]

Thereafter, in the process leading up to the creation of a constitutional mechanism for independent India, an Advisory Committee was appointed by the Cabinet Mission Plan[472] to assist the Constituent Assembly in drawing up a separate charter of fundamental rights for Indian citizens, including specific guarantees for minorities and tribal communities.[473] For this purpose, three sub-committees were formed: a Fundamental Rights Sub-Committee, a Minorities Sub-Committee, and a Tribal and Excluded Areas Sub-Committee.[474]

1.3. Recognition in Constitutional Assembly Debates

Tribal communities viewed the framing of the constitution as an opportunity to be formally recognised as both equal citizens and distinct peoples, and offered concrete alternative ideas for constitutional design and forms of democracy, based on their own traditional governance systems.[475] The Constituent Assembly, however, comprised only six members hailing from tribal communities, of whom Jaipal Singh Munda and J.J.M. Nichols Roy were the only proactive voices who spoke passionately about the

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[468] Vasant Moon (ed.), II *Dr. Babasaheb Ambedkar: Writings and Speeches* 739-742 (Ministry of Social Justice and Empowerment, New Delhi, 2019).

[469] *Id*. at 740.

[470] *Id*. at 741.

[471] *Ibid*.; Anurag Bhaskar, *The Foresighted Ambedkar: Ideas That Shaped Indian Constitutional Discourse* chap. 9 (Penguin Random House, 2024).

[472] The Cabinet Mission Plan was a statement made by the Cabinet Mission and the Viceroy, Lord Wavell, on May 16, 1946, that contained proposals regarding the constitutional future of India in the wake of Indian political parties and representatives not coming to an agreement. Cabinet Mission Plan (Cabinet Mission, 1946), Constitution of India, *available at:* https://www.constitutionofindia.net/historical-constitution/cabinet-mission-plan-cabinet-mission-1946/ (last visited on Nov. 8, 2025).

[473] Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas, *available at*: https://www.constitutionofindia.net/committees/advisory-committee-on-fundamental-rights-minorities-and-tribal-and-excluded-areas-24-january-1947/ (last visited on Oct. 29, 2025).

[474] Anurag Bhaskar, *The Foresighted Ambedkar: Ideas That Shaped Indian Constitutional Discourse* 208 (Penguin Random House, India, 2024); Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 66-67 (Oxford University Press, 1999).

[475] Nandini Sundar, "We Will Teach India Democracy: Indigenous Voices in Constitution Making" 52(1) *The Journal of Imperial and Commonwealth History* 181-213 (2024).

identity, inherent rights and expectations of the tribal communities.[476]

When Pandit Jawaharlal Nehru moved the Objective Resolution dated 13 December 1946, iterating the Constituent Assembly's resolve to declare India as an Independent Sovereign Republic,[477] Jaipal Singh Munda, a prominent tribal leader, made compelling remarks in support of the Objective Resolution:

> *"...I rise to speak on behalf of millions of unknown hordes-yet very important-of unrecognised warriors of freedom, the original people of India who have variously been known as backward tribes, primitive tribes, criminal tribes and everything else, Sir, I am proud to be a Jungli, that is the name by which we are known in my part of the country. Living as we do in the jungles, we know what it means to support this Resolution. On behalf of more than 30 millions of the Adibasis (cheers), ... I support it because it is a resolution which gives expression to sentiments that throb in every heart in this country. I have no quarrel with the wording of, this Resolution at all. As a jungli, as an Adibasi, I am not expected to understand the legal intricacies of the Resolution. But my common sense tells me, the common sense of my people tells me that every one of us should march in that road of freedom and fight together. Sir, if there is any group of Indian people that has been shabbily treated it is my people. They have been disgracefully treated, neglected for the last 6,000 years. The history of the Indus Valley civilization, a child of which I am, shows quite clearly that it is the new comers-most of you here are intruders as far as I am concerned-it is the new comers who have driven away my people from the Indus Valley to the jungle fastnesses...The whole history of my people is one of continuous exploitation and dispossession by the non-aboriginals of India punctuated by rebellions and disorder...My people have been suffering for 6,000 years because of your racialism, racialism of the Hindus and everybody else...My people, the Adibasis—they are also Indians..."*[478]

Jaipal Singh Munda also repeatedly distinguished tribal communities, having inherent rights, from minorities:

> "*I regret there has been too much talk in this House in terms of parties and minorities. Sir, I do not consider my people a minority. We have already heard on the floor of the House this morning that the Depressed Classes also consider themselves as Adibasis, the original inhabitants of this country.*

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[476] Nandini Sundar, *The Making of the 5th and 6th Schedule*, Talk delivered at 5th Annual History for Peace Conference, The Idea of the Indian Constitution (Jul. 2019), *available at:* https://www.historyforpeace.pw/post/the-making-of-the-5th-and-6th-schedule (last visited on Sep. 29, 2025).

[477] Stages of Constitution Making, First Session of the Constituent Assembly, Constitution of India, *available at:* https://www.constitutionofindia.net/stages-of-constitution-making/ (last visited on Nov. 1, 2025).

[478] Constituent Assembly Debates on December 19, 1946, *available at*: https://www.constitutionofindia.net/debates/19-dec-1946/#85134 (last visited on Nov. 1, 2025).

> *If you go on adding people like the exterior castes and others who are socially in no man's land, we are not a minority. In any case, we have prescriptive rights that no one dare deny. I need to say no more.*"[479]
>
> "*I do not consider the Adivasis are a minority. I have always held that a group of people who are the original owners of this country, even if they are only a few, can never be considered a minority. They have prescriptive rights which no one can deny.*"[480]

Further, Jaipal Singh Munda highlighted the democratic traditions that were already prevalent in the tribal republics of ancient India:

> "*Sir, I say you cannot teach my people democracy. May I repeat that it is the advent of Indo-Aryan hordes that has been destroying that vestiges of democracy…There were many tribal republics, some of them covering large areas.*"[481]
>
> "*Sir, there will again be many tribal republics, republics which will be in the vanguard of the battle for Indian freedom…Let us fight for freedom together, sitting together and working together. Then alone, we shall have real freedom.*"[482]

Jaipal Singh Munda also clarified the nature of protections that tribal communities sought from the constitutional set-up, which was being formulated by the Constituent Assembly:

> "*What my people require, Sir, is not adequate safeguards as Pandit Jawahar Lal Nehru has put it. They require protection from Ministers, that is the position today. We do not ask for any special protection. We want to be treated like every other Indian…I take Pandit Jawahar Lal Nehru at his word. I take you all at your word that now we are going to start a new chapter, a new chapter of Independent India where there is equality of opportunity, where no one would be neglected. There is no question of caste in my society. We are all equal. Have we not been casually treated by the Cabinet Mission, more than 30 million people completely ignored?…Is there going to be any provision in the rules whereby it may be possible to bring in more Adibasis and by Adibasis I mean,*

[479] Constituent Assembly Debates on December 19, 1946, *available at*: https://www.constitutionofindia.net/debates/19-dec-1946/#85139 (last visited on Sep. 30, 2025).

[480] Constituent Assembly Debates on December 19, 1946, *available at*: https://www.constitutionofindia.net/debates/19-dec-1946/#85139 (last visited on Sep. 30, 2025).

[481] Constituent Assembly Debates on December 19, 1946, *available at*: https://www.constitutionofindia.net/debates/19-dec-1946/#85141 (last visited on Sep. 30, 2025).

[482] Constituent Assembly Debates on December 19, 1946, *available at*: https://www.constitutionofindia.net/debates/19-dec-1946/#85142 (last visited on Sep. 30, 2025).

Sir, not only men but women also?... "[483]

"*We want to be treated like anybody else. In the past, thanks to the major political parties, thanks to the British Government and thanks to every enlightened Indian citizen, we have been isolated and kept, as it were, in a zoo. That has been the attitude of all people in the past. Our point now is that you have got to mix with us. We are willing to mix with you, and it is for that reason, because we shall compel you to come near us, because we must get near you, that we have insisted on a reservation of seats as far as the Legislatures are concerned.*"[484]

Jaipal Singh Munda also reminded the Constituent Assembly that the tribal communities had never sought separate electorates, but only reserved seats in joint electorates.[485] He stressed that under the Government of India Act, 1935, there were only 24 *adivasi* Ministers of State Legislative Assemblies out of a total of 1585, with no *adivasi* representation at all in the Parliament.[486] He therefore appealed to the Princely States, wherein tribal communities had been denied representation altogether, expressing hope that the "*spirit of Indian India*" would permeate there as well.[487]

Jaipal Singh Munda also raised concerns regarding the dilution of representational guarantees for tribal communities, as stated in the Original Cabinet Mission Memorandum and its reprinted version in the Command Paper:

"*Jaipal Singh: .....When I was first given a copy of the Memorandum, as first submitted by the Cabinet Mission, in section 20 the language read as follows:- The Advisory Committee on the rights of citizens, minorities and tribal and excluded areas should contain full representation (mark you 'should contain full representation') of the interests affected.....*

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[483] Constituent Assembly Debates on December 19, 1946, *available at*: https://www.constitutionofindia.net/debates/19-dec-1946/#85134 (last visited on Nov. 1, 2025).

[484] Constituent Assembly Debates on December 19, 1946, *available at*: https://www.constitutionofindia.net/debates/19-dec-1946/#85139 (last visited on Sep. 30, 2025).

[485] "*We have not asked and, in fact, we have never had separate electorates; only a small portion of the Adibasis, that part of it which was converted to various religious and particularly to the Christian religions of the West, had a separate electorate but the vast majority, wherever it was enfranchised, was on a general electorate with, reservation of seats. So, as far as the Adibasis are concerned there is no change whatever. But numerically there is a very big change*". Constituent Assembly Debates on August 27, 1947, *available at*: https://www.constitutionofindia.net/debates/27-aug-1947/#90776 (last visited on Sep. 30, 2025).

[486] "*Under the 1935 Act, throughout the Legislatures in India, there were altogether only 24 Adibasi M. L. As. out of a total of 1,585, as far as the Provincial Legislatures were concerned and not a single representative at the Centre*". Constituent Assembly Debates on August 27, 1947, *available at*: https://www.constitutionofindia.net/debates/27-aug-1947/#90776 (last visited on Sep. 30, 2025).

[487] Constituent Assembly Debates on August 27, 1947, *available at*: https://www.constitutionofindia.net/debates/27-aug-1947/#90776 (last visited on Sep. 30, 2025).

> *Jaipal Singh: Now, when I read a reprint of that in Command Paper 6821, the same paragraph 20 seems to read differently. Here it reads: "The Advisory Committee on the rights of citizens, minorities and tribal and excluded areas will contain due representation."*
>
> *Sardar Harnam Singh: Just a misprint. The original text contained the words "should contain full representation of the interests affected."*
>
> *Jawaharlal Nehru: Is it so?*
>
> *Sardar Harnam Singh: "I am definite."*[488]

Jaipal Singh Munda also lamented the exclusion of tribal communities from the grant of assurances related to public employment:

> "*I deeply regret that the most needy, the most deserving group of Adivasis has been completely left out of the picture. We do not want reservation on any unequal terms. We desire that so long as we come up to the standards required for appointment, we should not be kept out of the picture at all.*"[489]

Vis-à-vis the composition of the Advisory Committee, Jaipal Singh Munda questioned the inequitable representation of tribal communities in comparison to other minorities, and also called attention to the complete absence of tribal women representatives:

> *"Sir, the mover and the seconder have indicated how the disposition, the distribution has been made in this Advisory Committee. This is a matter of life and death for the tribal people in particular...I congratulate also those minority communities who have been able to get more seats than are due to them numerically...I do not grudge them all this; but, the fact remains that they have been given many more seats than is their due, whereas when we come to my people, the real and most ancient people of this country, the position is different. But I do not grumble..... Let me assure you, that we are not dependent on numbers–the number of votes that will be given in the Advisory Committee. We have been inarticulate. I led no deputation to Sardar Patel, or to you, Mr. President, about our rights, about our claims and about our dues. I leave it to the good sense of the House and of the Advisory Committee, that, a long, last, they will right the injuries of six thousand years...I am not pleading for anymore seats; I have not submitted any amendment, I am not moving any amendment, but I must draw the attention of this House and of this country, if I may say so, that here we are all on trial. Hitherto it has been very easy for us to say it is the British–it is the British*

[488] Constituent Assembly Debates on December 19, 1946, *available at*: https://www.constitutionofindia.net/debates/19-dec-1946/#85135 (last visited on Nov. 1, 2025).

[489] Constituent Assembly Debates on August 27, 1947, *available at*: https://www.constitutionofindia.net/debates/27-aug-1947/#90779 (last visited on Sep. 30, 2025).

who have kept you in a zoo by making for you Partially Excluded Areas and Excluded Areas. Are you behaving any differently? I ask this question. I ask the Advisory Committee. I find my own name in it. While I find my own name in it, I am bound to point out that there is no name of any tribal woman in the Advisory Committee. How has that been left out? There is no tribal woman member in the Advisory Committee. That never occurred to the people who were responsible for the selection of members of the Committee. I am not saying that she should be included, but it is significant that the thing has not been seriously considered. Similarly, as I repeat thirteen or whatever the figure is that has been fixed–I accept that, I do not say any more, but I do want to expose the ignorance that is exposed in the suggestion of this figure, or for that matter, in the nomination of the Tribal Areas members. Look at the disposition of the tribal population throughout India. I have no quarrel. With the muddling that has been made in the census enumeration at every decennial reckoning, the latest figure is 254 lakhs, I accept that. Now in that we find that the largest tribal group in India are the Munda-speaking tribe. If you add up their 1941 figures, you will find that they are something like 43 lakhs. The next in magnitude are the Gonds. Now we have been given a Gond representative; I am glad there is one. The next come Bhils, 23 lakhs. No Bhil is on this Committee. Like that, we go on to Oraons, with 11 lakhs, there is no Oraon on this Committee. Mr. President, time is valuable. Pandit Jawaharlal Nehru elsewhere said that every day we take it costs something like Rs. 10,000. I think the life of 25 million tribals is worth more than Rs. 10,000 a day. This is an opportunity where I must have my say, if you will permit me. I note also that, for some reason or other, there is no tribal member at all in the Fundamental Rights Committee."[490]

J.J.M. Nichols Roy spoke on the need for autonomy for tribal communities, and asserted that the constitutional framework ought to be based on the notion of self-determination, rather than assimilation:

"*The Government report is that the people of the hills have their own culture which is sharply differentiated from that of the plains. The social organisation is that of the village, the clan and the tribe and the outlook and structure are generally strongly democratic. There is no system of caste or purdah and child marriage is not practised.*"[491]

"So that is the culture of the hill tribes. India should rise to that feeling or idea of equality and real democracy which the tribal people have. They should not for a second think that these people should

[490] Constituent Assembly Debates on January 24, 1947, *available at*: https://www.constitutionofindia.net/debates/24-jan-1947/#85977 (last visited on Nov. 1, 2025).

[491] Constituent Assembly Debates on September 6, 1949, *available at:* https://www.constitutionofindia.net/debates/06-sep-1949/#117934 (last visited on Nov. 9, 2025).

> *give up their democracy and equality and be swallowed up by another culture which is quite different from what they have been used to, and which is considered by them not at all suitable to their Society.*"[492]

These interventions of Jaipal Singh Munda and J.J.M. Nichols Roy clearly communicated the apprehensions and aspirations of the tribal communities about their constitutional future, not just as a matter of guaranteeing their rights as a marginalised group, but as an issue of justice, representation, and formal recognition. As a result, whereas the British colonial administration characterised tribal communities as subjects who needed to be governed, the Constituent Assembly began to conceptualise them as citizens with prescriptive rights and a specific identity deserving of constitutional protection.

2. Constitutional Designations

In acknowledgement of the historical subjugation, structural disadvantages and social isolation and/or exclusion suffered by tribal communities, the Constitution of India reflects a conscious and continuously evolving endeavour to specifically safeguard their rights, entitlements, and interests, as an inherent part of the Indian population, while simultaneously ensuring that their distinct social, cultural, traditional, linguistic, and religious identities are not eroded in the process.

2.1. Scheduled Tribes

When the Constitution was adopted, most tribal communities were recognised as 'Scheduled Tribes', and guaranteed special protections. Article 366(25) defines 'Scheduled Tribes' as "*such tribes or tribal communities or part of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of the Constitution*".[493] Article 342 authorises the President of India, after consultation with the Governor of the concerned State, to specify the tribes or tribal communities to be recognised as Scheduled Tribes in such States.[494] Any subsequent inclusion in or exclusion from the list of Scheduled Tribes can be made only vide legislation enacted by the Parliament.[495] Resultantly, not all communities that self-identify as tribal or that have been referred to

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[492] Constituent Assembly Debates on September 6, 1949, *available at:* https://www.constitutionofindia.net/debates/06-sep-1949/#117935 (last visited on Nov. 9, 2025).

[493] The Constitution of India, 1950, art. 366(25).

[494] The Constitution of India, 1950, art. 342: "*Scheduled Tribes. (1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.*"

[495] The Constitution of India, 1950, art. 342: "*Scheduled Tribes. (2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.*"

or treated as tribal communities automatically have the designation (and the associated rights) of 'Scheduled Tribes' in the Constitution.

In the case of *State of Maharashtra v. Milind,* a two-judge bench of the Supreme Court held that once a Presidential notification issued under Article 342(1) specifies a tribal community as a Scheduled Tribe, it is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes.[496] The Supreme Court also noted: "*it is not permissible to hold any inquiry or lead any evidence to 'decide or declare' that any part of or group within any tribe or tribal community is included in the general name even though it is not specially mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950.*"[497] The Supreme Court further clarified that the earlier two-judge bench decisions of the Supreme Court in *Bhaiya Ram Munda v. Anirudh Patar*[498] and *Dina v. Narayan Singh*[499] did not lay down the correct law in stating that such an enquiry was permissible or that such evidence was admissible.[500]

As per the most recent data available (based on the Census of India, 2011),[501] the population of Scheduled Tribes in the country stands at 10,454,716, accounting for about 8.6 per cent of the total national population. Of this, 94,083,844 persons reside in rural areas and 10,461,872 in urban areas. States and Union Territories with a very high proportion of the Scheduled Tribes' population include Lakshadweep (94.8 per cent), Mizoram (94.4 per cent), Nagaland (86.5 per cent), Meghalaya (86.1 per cent), Arunachal Pradesh (68.8 per cent), Manipur (40.9 per cent), and Sikkim (33.8 per cent). In states with comparatively larger geographical areas, the highest concentrations of Scheduled Tribes are in the States of Chhattisgarh (30.6 per cent), Jharkhand (26.2 per cent), Odisha (22.8 per cent), Madhya Pradesh (21.1 per cent), Gujarat (14.8 per cent), Rajasthan (13.5 per cent), and Maharashtra (9 per cent).[502]

2.2. Scheduled Areas

Regulation X of 1822 introduced the idea of "non-regulated" areas, which were tracts that would not be governed by the usual laws applied elsewhere. In these places, the executive exercised wide discretionary powers under the authority of the governor-general. This approach eventually evolved

[496] *State of Maharashtra v. Milind* (2001) 1 SCC 4, para. 15.
[497] *Id*. at para. 36.
[498] *Bhaiya Ram Munda v. Anirudh Patar* (1970) 2 SCC 825.
[499] *Dina v. Narayan Singh* (1968) SCC OnLine SC 326.
[500] *State of Maharashtra v. Milind* (2001) 1 SCC 4, para. 36.
[501] Government of India, "Annual Report 2023-24" (Ministry of Tribal Affairs, 2024), p. no. 154.
[502] *Ibid.*

into the administrative arrangements that later formed the concept for the Fifth and Sixth Schedules of independent India's Constitution.[503]

The Government of India Act of 1870 strengthened this special approach by allowing separate legislation for "difficult" or "backward" areas. From 1874, the Scheduled Districts Act required the government to specify which laws would apply in these districts. The Government of India Act of 1919 kept similar provisions in place and added only a narrow form of self-governance. Laws passed by legislatures did not automatically extend to tribal areas unless the executive chose to apply them.[504]

The erstwhile 'Excluded Areas' and 'Partially Excluded Areas' created under the Government of India Act, 1935 evolved into 'Scheduled Areas' in the Fifth and the Sixth Schedules of the Constitution.[505] Article 244 stipulates that the Fifth Schedule governs the administration and control of the Scheduled Areas in most States, while the Sixth Schedule applies specifically to the Scheduled Areas of Assam, Meghalaya, Tripura, and Mizoram.[506] Additionally, Article 244A, introduced by the Constitutional (Twenty-Second Amendment) Act, 1969,[507] empowers the Parliament to form an autonomous State within Assam made up of all or some of the tribal areas mentioned in Part 1 of the table in paragraph 20 of the Sixth Schedule and to create Legislatures or Councils of Ministers for such autonomous State.[508]

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[503] Abhay Xaxa and Ganesh N Devy, Being Adivasi (Penguin Random House India 2021) 52.

[504] Id at p. no. 59.

[505] Nandini Sundar, *The Making of the 5th and 6th Schedule*, Talk delivered at 5th Annual History for Peace Conference, The Idea of the Indian Constitution (Jul. 2019) *available at:* https://www.historyforpeace.pw/post/the-making-of-the-5th-and-6th-schedule (last visited on Sep. 29, 2025)

[506] The Constitution of India, 1950, art. 244: "*Administration of Scheduled Areas and Tribal Areas.—(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram. (2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.*"

[507] The Constitutional (Twenty-Second Amendment) Act, 1969, s. 2.

[508] The Constitution of India, 1950, art. 244A: "*Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefor.—(1) Notwithstanding anything in this Constitution, Parliament may, by law, form within the State of Assam an autonomous State comprising (whether wholly or in part) all or any of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule and create therefor— (a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the autonomous State, or (b) a Council of Ministers, or both with such constitution, powers and functions, in each case, as may be specified in the law. (2) Any such law as is referred to in clause (1) may, in particular,—(a) specify the matters enumerated in the State List or the Concurrent List with respect to which the Legislature of the autonomous State shall have power to make laws for the whole or any part thereof, whether to the exclusion of the Legislature of the State of Assam or otherwise; (b) define the matters with respect to which the executive power of the autonomous State shall extend; (c) provide that any tax levied by the State of Assam shall be assigned to the autonomous State in so far as the proceeds thereof are attributable to the autonomous State; (d) provide that any reference to a State in any article of this Constitution shall be construed as including a reference to the autonomous State; and (e) make such supplemental, incidental and consequential provisions as may be deemed necessary. (3) An amendment of any such law as aforesaid in so far as such amendment relates to any of the matters specified in sub-clause (a) or sub-clause (b) of clause (2) shall have no effect unless the amendment is passed in each House of*

The Fifth Schedule provides for the establishment of Tribal Advisory Councils in each State having Scheduled Areas.[509] The Governor of such States holds a special constitutional responsibility to submit annual reports to the President regarding the Scheduled Areas.[510] The President also has the power to declare, alter, or redefine the Scheduled Areas through orders and to make incidental provisions necessary for their administration.[511] In contrast, the Sixth Schedule establishes a system of autonomous District and Regional Councils, which are vested with legislative, judicial, and executive powers in matters relating to land, forest management, inheritance, social customs, and local governance in the Scheduled Areas of Assam, Meghalaya, Tripura, and Mizoram.[512]

Parliament by not less than two-thirds of the members present and voting. (4) Any such law as is referred to in this article shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution."

[509] The Constitution of India, sch. V, part B: "*4. Tribes Advisory Council.—(1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State: Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes. (2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor. (3) The Governor may make rules prescribing or regulating, as the case may be,— (a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof; (b) the conduct of its meetings and its procedure in general; and (c) all other incidental matters.*"

[510] The Constitution of India, sch. V, part A: "*3. Report by the Governor to the President regarding the administration of Scheduled Areas.—The Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas*."

[511] The Constitution of India, sch. V, part C: "*6. Scheduled Areas.—(1) In this Constitution, the expression "Scheduled Areas" means such areas as the President may by order declare to be Scheduled Areas. (2) The President may at any time by order —(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area; (aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State; (b) alter, but only by way of rectification of boundaries, any Scheduled Area; (c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area; (d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas; and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.*"

[512] The Constitution of India, sch. VI, part D: "*3. Powers of the District Councils and Regional Councils to make laws.—(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—(a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town: Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or*

The Supreme Court, through a three-judge Bench, in the case of *Lingappa Pochanna Appelwar v. State of Maharashtra*,[513] observed that "*under the scheme of the Constitution, the Scheduled Tribes as a class require special protection against exploitation*",[514] noting that Scheduled Tribes, whose culture and way of life are based on agriculture and are inextricably linked with ownership of land, require the prevention of "an *invasion upon their land*".[515] The Supreme Court opined that Articles 244 and 244-A, which make special provisions for the administration and control of the Scheduled Areas through the Fifth and the Sixth Schedules, "*emphasize the particular care and duty required of all the organs of the State to take positive and stern measures for the survival, the protection and the preservation of the integrity and the dignity of the tribals*".[516]

Article 339 empowers the Union Government to administer the Scheduled Areas and secure the welfare of the Scheduled Tribes.[517] For this purpose, the President is mandated to appoint a commission to report on such affairs in the States, and is authorised to define its composition, powers and procedures.[518] Further, Article 339 extends the executive power of the Union Government to issuing directions to State Governments regarding the formulation and implementation of schemes considered essential for the well-being of Scheduled Tribes.[519]

In the landmark judgement in the case of *S.R. Bommai v. Union of India*,[520] a nine-judge bench of the

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unoccupied, for public purposes by the Government of the State concerned in accordance with the law for the time being in force authorising such acquisition; (b) the management of any forest not being a reserved forest; (c) the use of any canal or water-course for the purpose of agriculture; (d) the regulation of the practice of jhum or other forms of shifting cultivation; (e) the establishment of village or town committees or councils and their powers; (f) any other matter relating to village or town administration, including village or town police and public health and sanitation; (g) the appointment or succession of Chiefs or Headmen; (h) the inheritance of property; (i) marriage and divorce; (j) social customs. (2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question. (3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect."

513 *Lingappa Pochanna Appelwar v. State of Maharashtra* (1985) 1 SCC 479.

514 *Id*. at para. 14.

515 *Ibid*.

516 *Ibid*.

517 The Constitution of India, 1950, art. 339: "*Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes."*

518 The Constitution of India, 1950, art. 339: "*Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes.—(1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States. The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable."*

519 The Constitution of India, 1950, art. 339: "*Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes.—(2) The executive power of the Union shall extend to the giving of directions to a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State."*

520 *S.R. Bommai v. Union of India* (1994) 3 SCC 1.

Supreme Court, in relation to the instances wherein the President is required to be satisfied that the governance of a State cannot be carried on in accordance with the Constitution, indicated that if, for example, a State fails to comply with the directions issued by the Union Government under Article 339(2), "*it would be a failure of the constitutional machinery to elongate the constitutional purpose of securing socio-economic justice to the tribals envisaged in the directive principles*".[521]

3. Constitutional Safeguards

3.1. Equality and Non-Discrimination

The Constitution, through its fundamental rights framework, guarantees equality to *all* and proscribes discrimination, while simultaneously providing for protective measures in favour of historically disadvantaged groups, including Scheduled Tribes. The judiciary also plays a crucial role in interpreting and enforcing these safeguards to ensure that Scheduled Tribes enjoy substantive equality.

3.1.1. Constitutional Foundations

Article 14 enshrines the right to equality before the law and the equal protection of the laws.[522] Article 15 prohibits discrimination against any citizen only on grounds of religion, race, caste, sex, or place of birth,[523] in particular, with regard to their access to shops, public restaurants, hotels and places of public entertainment, and the use of wells, tanks, bathing *ghats*, roads, and public resorts maintained wholly or partly out of State funds.[524] Likewise, Article 16 secures equality of opportunity to all citizens in public employment,[525] as well as prohibits discrimination in public employment on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them.[526] To remedy the oppressive treatment meted out to certain marginalised communities historically, Article 17 abolishes the practice of

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[521] *Id*. at para. 221.

[522] The Constitution of India, 1950, art. 14: "*Equality before law.-The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*"

[523] The Constitution of India, 1950, art. 15(1): "*The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.*"

[524] The Constitution of India, 1950, art. 15(2): "*No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—(a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.*"

[525] The Constitution of India, 1950, art. 16: "*Equality of opportunity in matters of public employment.-(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.*"

[526] The Constitution of India, 1950, art. 16: "*Equality of opportunity in matters of public employment.-(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.*"

untouchability,[527] while Articles 23 and 24, respectively, forbid trafficking in human beings, begar, and other forms of forced labour,[528] and outlaws the employment of children below the age of fourteen in factories, mines, or other hazardous occupations.[529]

Article 39 directs State policy towards ensuring adequate means of livelihood for all citizens, equal pay for equal work, prevention of wealth concentration, and protection of the health and strength of workers, men, women, and children against exploitation.[530] Further, Article 39A, introduced by the Forty-second Amendment,[531] directs the State to ensure that the operation of the legal system promotes justice on the basis of equal opportunity. It mandates the provisions of free legal aid, by suitable legislation or schemes, to ensure that no citizen is denied the ability to secure justice due to economic or other disabilities.[532] Further, Article 41 obliges the State to make effective provisions for securing the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disability.[533] Article 43 calls upon the State to secure living wages and humane conditions of work for all

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[527] The Constitution of India, 1950, art. 17: "*Abolition of Untouchability.—"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.*"

[528] The Constitution of India, 1950, art. 23: "*Prohibition of traffic in human beings and forced labour.—(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them*."

[529] The Constitution of India, 1950, art. 24: "*Prohibition of employment of children in factories, etc.- No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."*

[530] The Constitution of India, 1950, art. 39: "*Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—(a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (d) that there is equal pay for equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or Strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.*"

[531] The Constitution (Forty-second Amendment) Act, 1976, s. 7.

[532] The Constitution of India, 1950, art. 39A: "*Equal justice and free legal aid.—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.*"

[533] The Constitution of India, 1950, art. 41: "*Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.*"

labourers and to promote cottage industries on an individual or cooperative basis in rural areas.[534]

3.1.2. Judicial Interpretations

The foregoing constitutional guarantees, although not specifically protecting Scheduled Tribes, have been judicially interpreted so as to ensure that these rights are not reduced to mere formalities, but are enforced in letter and spirit for the benefit of Scheduled Tribes as well, along with other marginalised groups. The Supreme Court, *re* the ambit of Articles 14, 15 and 16, in its landmark seven-judge bench judgment in the case of *State of Kerala v. N.M. Thomas,*[535] noted that the Constitution envisions equality of status and opportunity for all citizens, including those who are socially, economically and educationally backwards.[536] Justice A.N. Ray, in his separate opinion, stated: "*[if] members of Scheduled…[T]ribes, who are said by this Court to be Backward Classes, can maintain minimum necessary requirement of administrative efficiency, not only representation but also preference may be given to them to enforce equality and to eliminate inequality…..Preferential treatment for members of Backward Classes with due regard to administrative efficiency alone can mean equality of opportunity for all citizens.*"[537]

Further, the Supreme Court, in its two-judge bench judgement in the case of *State of Karnataka v. Appa Balu Ingale*,[538] referring to Article 17, affirmed: "*Judges are summoned to the duty of shaping the progress of the law to consolidate society and grant access to the Dalits and Tribes to public means or places dedicated to public use or places of amenities open to public etc.…By judicial review, the glorious contents and the trite realisation in the constitutional words of width must be made vocal and audible giving them continuity of life, expression and force when they might otherwise be forgotten or ignored…..*"[539] The Supreme Court further noted: "*the judges, therefore, should respond to the human situations to meet the felt necessities of the time and social needs; make meaningful the right to life and give effect to the Constitution and the will of the legislature…in the light thus shed to annihilate untouchability; to accord to the Dalits and the Tribes right to equality; give social integration a fruition and make fraternity a reality.*"[540]

Recognising the historical discrimination, the Supreme Court in *Nandini Sundar v. State of*

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[534] The Constitution of India, 1950, art. 43: "*Living wage, etc., for workers.—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.*"

[535] *State of Kerala v. N.M. Thomas* (1976) 2 SCC 310.

[536] *Id*. at para. 44.

[537] *Ibid*.

[538] *State of Karnataka v. Appa Balu Ingale,* 1995 Supp (4) SCC 469.

[539] *Id*. at para. 34.

[540] *Id*. at para. 35.

Chhattisgarh,[541] in relation to the policy of recruiting tribal youth as Special Police Officers to assist in counter-insurgency operations, the Supreme Court found that the exploitative nature of such employment violates Articles 14 and 21 as it "*..subjects such youngsters to the same levels of dangers as members of regular force...*" and "...because of their low levels of educational achievements, they will also not be in a position to benefit from an appropriately designed training program, that is commensurate with the kinds of duties, liabilities, disciplinary code and dangers that they face, to their lives and health..."[542] The Supreme Court also noted that the temporary and precarious nature of their appointments, coupled with the lack of post-service protection, revealed an "..inhuman attitude, that places little to no value on the lives of such youngsters..."[543]

3.2. Reservation in Education and Public Employment

Reservations in education and public employment are core mechanisms through which the Constitution seeks to achieve substantive equality,[544] for marginalised groups including Scheduled Tribes, through ensuring their adequate representation in educational institutions and public services.

3.2.1. Constitutional Foundations

Article 15(4), inserted vide the First Amendment,[545] together with Article 15(5) introduced via the Ninety-Third Amendment[546] authorise the making of special provisions for the advancement of Scheduled Tribes, including by reserving seats for their admission in public and private educational institutions, whether aided or unaided by government funding.[547] Article 16(4) allows for reservations in appointments to posts in public service in favour of "*any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State*".[548] Article 16(4A),

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[541] *Nandini Sundar v. State of Chhattisgarh* (2011) 7 SCC 547.

[542] *Id*. at paras. 74-75.

[543] *Id*. at paras. 78-80.

[544] *Food Corporation of India v. Jagdish Balaram Bahira* (2017) 8 SCC 670, para. 56.

[545] The Constitution (First Amendment) Act, 1951, s. 2.

[546] The Constitution (Ninety-third Amendment) Act, 2005, s. 2.

[547] The Constitution of India, 1950, art. 15(4): "*Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.*"
15(5): "*Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.*"

[548] The Constitution of India, 1950, art. 16. "*Equality of opportunity in matters of public employment.-(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.*"

introduced vide the Seventy-seventh Amendment,[549] extended the reservations in favour of Scheduled Tribes to "*matters of promotion, with consequential seniority, to any class or classes of posts*" in public services, if they are not adequately represented.[550] Article 16(4B) inserted vide the Eighty-first Amendment,[551] clarifies that if reserved vacancies in a given year remain unfilled, they can be carried forward and filled in later years; these vacancies are treated as a separate category and not counted towards the fifty per cent ceiling of total reservations in the year.[552] Though not a fundamental right, Article 335 stipulates that the claims of Scheduled Tribes shall be taken into consideration in appointments to central or state government services, provided they are not inconsistent with the maintenance of efficiency of administration.[553] Vide the Eighty-Second Amendment, a proviso was added to Article 335,[554] allowing relaxation of qualifying marks and standards of evaluation in matters of promotion for Scheduled Tribes.[555]

Together, the foregoing provisions reflect the Constitution's dual approach, enshrining formal equality as a universal right, while simultaneously advancing substantive equality through affirmative action as an essential tool of social justice for Scheduled Tribes. The Directive Principles of State Policy also reinforce this vision. Article 38 requires the State to promote the welfare of the people by securing social order based on justice, social, economic and political, and to minimise inequalities in income, status,

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[549] The Constitution (Seventy-seventh Amendment) Act, 1995, s. 2, and amended by The Constitution (Eighty-fifth Amendment) Act, 2001, s. 2 to grant consequential seniority in promotions.

[550] The Constitution of India, 1950, art. 16. "*Equality of opportunity in matters of public employment.-(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.*"

[551] Constitution (Eighty-first Amendment) Act, 2000, s. 2.

[552] The Constitution of India, 1950, art. 16. "*Equality of opportunity in matters of public employment.-(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.*"

[553] The Constitution of India, 1950, art. 335: "*Claims of Scheduled Castes and Scheduled Tribes to services and posts.—The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State: Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters or promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State*."

[554] The Constitution (Eighty-second Amendment) Act, 2000, s. 2.

[555] The Constitution of India, 1950, art. 16: "*Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State*."

and opportunities.[556] Article 46 directs the State to promote the educational and economic interests of Scheduled Tribes.[557]

3.2.2. Judicial Interpretations

Judicial interpretation has been central to defining the scope of affirmative action under the Constitution. A seven-judge bench of the Supreme Court examined whether the Kerala State and Subordinate Rules, 1988, are in line with the Constitution, in the case of *State of Kerala v. N.M. Thomas.*[558] The Supreme Court held that reservations and relaxations in favour of backward classes are not exceptions to equality, but intrinsic to its meaning under Article 14. Justice Krishna Iyer, in this judgment, famously remarked that "*equal opportunity is a hope, not a menace*",[559] embedding reservations within the broader constitutional vision.

This approach was crystallised in the landmark judgement of *Indra Sawhney v. Union of India.*[560] The case, also known as the Mandal Commission case, dealt with the validity of the Office Memorandum issued by the Central Government, providing 27 per cent vacancies for the Socially and Educationally Backward Classes to be filled by direct recruitment, in pursuance of the recommendations of the Second Backward Classes Committee. A nine-judge bench, in this judgment, upheld 27 per cent reservations for Other Backward Classes under Article 16(4). The Court, however, introduced three significant limitations: (i) the principle that total reservations cannot ordinarily exceed 50 per cent, (ii) the exclusion of the 'creamy layer' from availing reservation benefits, and (iii) the bar on reservations in promotions with existing promotion-based reservations to continue for five years.[561]

In response, Parliament introduced into the Constitution, Articles 16(4A) and (4B) vide the Seventy-Seventh and Eighty-First Amendments, respectively.[562] These amendments were scrutinised in the case

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[556] The Constitution of India, 1950, art. 38: "*State to secure a social order for the promotion of welfare of the people.—1 (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. (2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations*."

[557] The Constitution of India, 1950, art. 46: "*Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.*"

[558] *State of Kerala v. N.M. Thomas* (1976) 2 SCC 310.

[559] *Id*. at para. 142.

[560] *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217.

[561] *Id*. at para. 860.

[562] The Constitution (Seventy-seventh Amendment) Act, 1995, s. 2; The Constitution (Eighty-first Amendment) Act, 2000, s. 2; Article 16(4A) was further amended vide The Constitution (Eighty-fifth Amendment) Act, 2002, s. 2.

of *M. Nagaraj v. Union of India*,[563] in light of the width and amplitude of the right to equal opportunity in public employment. A five-judge bench upheld their validity but imposed constitutional limitations. The Court held that while enabling provisions for reservation in promotions were permissible, States must establish three conditions before granting such benefits: (i) backwardness of the group, (ii) inadequacy of representation in services, and (iii) maintenance of administrative efficiency under Article 335. The Court emphasised that the equality code under Articles 14, 15, and 16 constitutes part of the basic structure, thereby limiting excessive or unchecked policy.[564]

This position was revisited in *Jarnail Singh v. Lachhmi Narain Gupta*,[565] where the Supreme Court considered the question of whether the *M. Nagaraj* verdict must be referred to a seven-judge bench. A five-judge bench held that the requirement to collect quantifiable data on the 'backwardness' of Scheduled Castes and Scheduled Tribes before granting reservations in promotions was unnecessary, since these groups are presumed to be backward. However, the requirements of demonstrating inadequacy of representation and maintaining efficiency in administration continue to apply.[566]

In the case of *Chebrolu Leela Prasad Rao v. State of Andhra Pradesh,*[567] the validity of the Government Office issued by the erstwhile State of Andhra Pradesh providing 100 per cent reservation to the Scheduled Tribe candidates, out of whom 33.⅓ per cent were to be women for the post of teachers in the schools in the scheduled areas in the State was under challenge. The Court, through its five-judge bench, struck down 100 per cent reservations, holding that excessive reservation violates the concept of and the 50 per cent ceiling principle envisaged in the *Indra Sawhney* verdict.[568] However, the judgment has been criticised for overlooking tribal concerns and for employing language that has been viewed as insensitive.[569] It has been argued that with observations like these, the Court went beyond the immediate question of law and made several remarks undermining the foundational rationale of reservations. It has also been pointed out there is a lack of empirical basis in the Court's claims regarding the distribution of reservations benefits.[570]

In the case of *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College,*[571] the Court addressed the question of whether a person belonging to a Scheduled Tribe in one state could claim the same status

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[563] *M. Nagaraj v. Union of India* (2006) 8 SCC 212.

[564] *Id*. at para. 121.

[565] *Jarnail Singh v. Lachhmi Narain Gupta* (2018) 10 SCC 396.

[566] *Id*. at paras. 31-35.

[567] *Chebrolu Leela Prasad Rao v. State of Andhra Pradesh* (2020) SCC OnLine SC 383.

[568] *Id*. at 168.

[569] Anurag Bhaskar, "When It Comes to Dalit and Tribal Rights, the Judiciary in India Just Does Not Get It" *The Wire,* May 3, 2020.

[570] *Id.*

[571] *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College* (1990) 3 SCC 130.

after migrating to another. It was held that the benefits of reservation cannot be automatically extended across states. It was observed: "*reservations should and must be adopted to advance the prospects of weaker sections of the society, but while doing so care should be taken not to exclude the legitimate expectations of the other segments of the community.*"[572]

Relying on this, in the case of the *Action Committee on Issue of Caste Certificate to SCs and STs in the State of Maharashtra v. Union of India,*[573] a five-judge bench considered the issue of whether a person belonging to a Scheduled Caste or Scheduled Tribe in one state who migrates to another, where a caste or tribe with the same nomenclature is specified as a Scheduled Caste or Scheduled Tribe, will be entitled to claim the same benefits available in the latter state. It was observed that to specify a particular caste or tribe for the inclusion in the list of Scheduled Castes or Scheduled Tribes in a given state would depend on the "*nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be total non est in another State to which persons belonging thereto may migrate*".[574] Thus, it was held that merely because one caste/tribe is specified in one state as a Scheduled Caste or Scheduled Tribe does not necessarily mean that if there be another caste bearing the same nomenclature in another state, the person belonging to the former would be entitled to the rights and benefits admissible to a member of the Scheduled Caste or Scheduled Tribe of the latter state.[575]

Building on this, in the case of *Anjan Kumar v. Union of India,*[576] the Court had dealt with the question of whether an offshoot of the wedlock between the tribal woman and a non-tribal man could claim the status of a Scheduled Tribe and get the Scheduled Tribe certificate. A two-judge bench reiterated that a caste or tribe certificate is not a "*bounty to be distributed*"; instead, to sustain such a claim, one has to show that they "*suffered disabilities, socially, economically, and educationally*." It was held that those who do not suffer such disadvantages cannot claim Scheduled Tribe status, and that issuing or procuring false certificates undermines the equality mandate under Articles 14 and 21.[577]

More recently, a three-judge bench of the Supreme Court in the case of *Food Corporation of India v. Jagdish Balaram Bahira*,[578] dealt with a batch of cases involving individuals who sought public employment on the basis of a claim to belong to a beneficiary group, which, upon investigation, was found to be invalid. The Court traced a large body of precedents. This included cases like *Kumari*

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[572] *Id*. at para. 20.

[573] *Action Committee on Issue of Caste Certificate to SCs and STs in the State of Maharashtra v. Union of India* (1994) 5 SCC 244.

[574] *Id*. at para. 16.

[575] *Ibid*.

[576] *Anjan Kumar v. Union of India* (2006) 3 SCC 257.

[577] *Id*. at paras. 14-15.

[578] *Food Corporation of India v. Jagdish Balaram Bahira* (2017) 8 SCC 670.

Madhuri Patil v. Additional Commissioner, Tribal development,[579] wherein, the Court had formulated guidelines for scrutinising claims of the candidates to belong to a Scheduled Caste or Tribe, designated for reservations. It included (a) the issuance of caste certificates; (b) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government; (c) the procedure for the conduct of investigation into the authenticity of the claim; (d) Cancellation and confiscation of the caste certificate where the claim is found to be false or not genuine; (e) Withdrawal of benefits in terms of the termination of an appointment, cancellation of an admission to an educational institution or disqualification from an electoral office obtained on the basis that the candidate belongs to a reserved category; and (f) Prosecution for a criminal offence.[580] These guidelines acted as the broad principles for the codification of the Maharashtra Act XXIII of 2001, which was further contested. The Bench also discussed the judgment in *State of Maharashtra v. Milind*,[581] wherein, the Court observed that allowing the benefits of Presidential Orders issued under Article 341 and 342 to be usurped by an imposter would negate the purpose of the reservation.

Finally, the bench, while holding that "*withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise*".[582] The Court, while underscoring dangers of depriving a genuine beneficiary of the benefits of a welfare measure, observed: "*When a person who does not belong to a caste, tribe or class for whom reservation is meant, seeks to pass off as its members, such stratagem constitutes a fraud on the Constitution.*"[583] Thus, the guidelines in the judgement of *Kumari Madhuri Patil v. Additional Commissioner, Tribal Development*[584] and the Maharashtra Act XXIII of 2001 were held to hold the field.

Thus, the Indian model of equality reflects a constitutional philosophy that combines universal rights with targeted affirmative measures and recognises entrenched inequalities of castes and tribes. However, at the same time, it ensures that these provisions are not misused or abused. Thus, these reservations and protective discrimination are not exceptions but instruments to realise the goal of substantive justice for all.

3.3. Political Representation and Self-Governance

The Constitution of India provides for a detailed framework to ensure political representation and self-

[579] *Kumari Madhuri Patil v. Additional Commissioner, Tribal Development* (1994) 6 SCC 241.
[580] *Food Corporation of India v. Jagdish Balaram Bahira* (2017) 8 SCC 670, para. 69.2
[581] *State of Maharashtra v. Milind* (2001) 1 SCC 4.
[582] *Food Corporation of India v. Jagdish Balaram Bahira* (2017) 8 SCC 670, para. 69.7.
[583] *Id*. at para. 2.
[584] *Kumari Madhuri Patil v. Additional Commissioner, Tribal Development* (1994) 6 SCC 241.

governance for the Scheduled Tribes, recognising their historical marginalisation and thus, the need for structural safeguards. Part XVI of the Constitution specifically provides provisions relating to certain classes. For instance, Articles 330 to 334 mandate the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the Lok Sabha and the State Legislative Assemblies.

3.3.1. Constitutional Foundations

Article 330 specifically relates to the Lok Sabha, while Article 332 extends the same to State Assemblies. Article 330 specifies that in every state or Union Territory, the number of seats reserved in the Lok Sabha for the Scheduled Castes or the Scheduled Tribes must correspond proportionately to their share in the total population of that state or Union Territory, relative to the total seats allotted to that state or Union Territory.[585] Similarly, Article 332 provides for the reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the state in the same manner as under Article 330.[586]

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[585] The Constitution of India, 1950, art. 330: "*Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.—(1) Seats shall be reserved in the House of the People for — (a) the Scheduled Castes; (b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and (c) the Scheduled Tribes in the autonomous districts of Assam. (2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory. (3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State. Explanation.—In this article and in article 332, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published: Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed as a reference to the 2001 census.*"

[586] The Constitution of India, 1950, art. 332: "*Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.—(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the autonomous districts of Assam, in the Legislative Assembly of every State. (2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam. (3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State. (3A) Notwithstanding anything contained in clause (3), until the taking effect, under article 170, of the re-adjustment, on the basis of the first census after the year 2026, of the number of seats in the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly of any such State shall be,—(a) if all the seats in the Legislative Assembly of such State in existence on the date of coming into force of the Constitution (Fiftyseventh Amendment) Act, 1987 (hereafter in this clause referred to as the existing Assembly) are held by members of the Scheduled Tribes, all the seats except one; (b) in any other case, such number of seats as bears to the total number of seats, a proportion not less than the number (as on the said date) of members belonging to the Scheduled Tribes in the existing Assembly bears to the total number of seats in the existing Assembly. (3B) Notwithstanding anything contained in clause (3), until the re-adjustment, under article 170,*

Further, Article 330A also provides for the reservation of seats for women in the House of People, specifying that one-third of the total number of seats reserved under Article 330 shall be reserved for women belonging to the Scheduled Castes or Scheduled Tribes.[587] Similarly, Article 332A provides for the reservation of seats for women in the Legislative Assemblies of the State in the same manner as Article 330A.[588] Article 334 also provides for time limits on these reservations.[589] Initially, the limit was set to ten years.[590] However, successive constitutional amendments, including the 45th, 79th, 95th and 104th, have extended the duration to eighty years, acknowledging the continuing socio-economic disadvantage faced by the communities.

Further, the Seventy-Third and Seventy-Fourth Amendments to the Constitution introduced parts IX

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takes effect on the basis of the first census after the year 2026, of the number of seats in the Legislative Assembly of the State of Tripura, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly shall be, such number of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitution (Seventy-second Amendment) Act, 1992, of members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the said date bears to the total number of seats in that Assembly. (4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State. (5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district. (6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district. Provided that for elections to the Legislative Assembly of the State of Assam, the representation of the Scheduled Tribes and non-Scheduled Tribes in the constituencies included in the Bodoland Territorial Areas District, so notified, and existing prior to the constitution of Bodoland Territorial Areas District, shall be maintained."

[587] The Constitution of India, 1950, art. 330A: "*Reservation of seats for women in the House of the People.- (1) Seats shall be reserved for women in the House of the People. (2) As nearly as may be, one-third of the total number of seats reserved under clause (2) of article 330 shall be reserved for women belonging to the Scheduled Castes or the Scheduled Tribes. (3) As nearly as may be, one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election to the House of the People shall be reserved for women.*"

[588] The Constitution of India, 1950, art. 332A: "*Reservation of seats for women in the Legislative Assemblies of the States.— (1) Seats shall be reserved for women in the Legislative Assembly of every State. (2) As nearly as may be, one-third of the total number of seats reserved under clause (3) of article 332 shall be reserved for women belonging to the Scheduled Castes or the Scheduled Tribes. (3) As nearly as may be , one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in the Legislative Assembly of every State shall be reserved for women.*"

[589] The Constitution of India, 1950, art. 334: "*Reservation of seats and special representation to cease after certain period.— Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to—(a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and (b) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by Nomination, shall cease to have effect on the expiration of a period of eighty years in respect of clause (a) and seventy years in respect of clause (b) from the commencement of this Constitution: Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.*"

[590] *Ibid*.

and IXA, which constitutionalised the Panchayati Raj and Municipal systems.[591] These amendments, through Articles 243D and 243T, provide for the reservation of seats for Scheduled Tribes in proportion to their population in Panchayats and Municipalities. This ensured that tribal communities participate not just in national and state legislatures but also in grassroots governance, thereby decentralising power and enabling direct involvement in decision-making.

Article 243D mandates reservation in Panchayats to ensure representation of marginalised groups.[592] It provides that seats must be reserved for Scheduled Castes and Scheduled Tribes in proportion to their population in the Panchayat area, with such seats allotted by rotation. It also provides that at least one-third of the Panchayat seats reserved as mentioned before must be reserved for women from Scheduled Castes and Scheduled Tribes. The offices of Chairpersons at all Panchayat levels are also reserved for Scheduled Castes, Scheduled Tribes and women, proportionate to their population, within the minimum one-third reserved for women. Similarly, Article 243T provides for similar provisions for reservation of seats in municipalities as Article 243D provides in Panchayats.[593]

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[591] The Constitution (Seventy-third Amendment) Act, 1992; The Constitution (Seventy-fourth Amendment) Act, 1992.

[592] The Constitution of India, 1950, art. 243D: "*Reservation of seats.—(1) Seats shall be reserved for—(a) the Scheduled Castes; and (b) the Scheduled Tribes, in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat. (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat. (4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide: Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State: Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women: Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level. (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334. (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of the backward class of citizens.*"

[593] The Constitution of India, 1950, art. 243T: "*Reservation of seats.—(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality. (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case*

Complementing this, Article 275 provides for financial assistance from the Union to States to promote the welfare of Scheduled Tribes and improve the administration of Scheduled Areas.[594] The Parliament is empowered to make grants-in-aid from the Consolidated Fund of India to support development schemes undertaken by States for tribal welfare and to ensure parity in administrative standards between scheduled and non-scheduled areas. These grants, both capital and recurring, thus aim to bridge developmental disparities and strengthen institutional capacity in tribal regions.

In addition, the proviso to Article 164(1) mandates the appointment of a minister in charge of tribal

may be, the Scheduled Tribes. (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality. (4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide. (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334. (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of the backward class of citizens."

[594] The Constitution of India, 1950, art. 275: "*Grants from the Union to certain States.—(1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States: Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable ththe the at State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State: Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to—(a) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule; and (b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State. (1A) On and from the formation of the autonomous State under article 244A,— (i) any sums payable under clause (a) of the second proviso to clause (1) shall, if the autonomous State comprises all the tribal areas referred to therein, be paid to the autonomous State, and, if the autonomous State comprises only some of those tribal areas, be apportioned between the State of Assam and the autonomous State as the President may, by order, specify; (ii) there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the autonomous State sums, capital and recurring, equivalent to the costs of such schemes of development as may be undertaken by the autonomous State with the approval of the Government of India for the purpose of raising the level of administration of that State to that of the administration of the rest of the State of Assam. (2) Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament: Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission.*"

welfare in the states of Chhattisgarh, Jharkhand,[595] Madhya Pradesh, and Odisha.[596] This minister may also handle responsibilities relating to the welfare of Scheduled Castes and backward classes. The inclusion of this provision underscores the constitutional intent to ensure political representation and administrative accountability for tribal welfare at the state executive level.

The Constitution also carves out special protections in tribal-majority regions through the Fifth and Sixth Schedules. The Fifth Schedule, applicable to Scheduled Areas in several states, creates a Tribes Advisory Council to advise on welfare measures and empowers Governors to regulate land transfers and allotments so as to protect tribal ownership. It also allows the Governor to direct the application of any particular Act of the Parliament or of the legislature to a scheduled area with exceptions and modifications.

The Sixth Schedule, specific to the Northeastern States of Assam, Meghalaya, Tripura, and Mizoram, establishes Autonomous District and Regional Councils, granting them legislative, judicial, and financial powers in specified areas. This scheme constitutionally recognises the distinct cultural and political identity of tribal peoples and grants them significant autonomy in governance. In addition, Articles such as 371A for Nagaland and 371G for Mizoram preserve customary laws, practices, and institutions, further strengthening the autonomy of tribal-majority states.

3.3.2. Judicial Interpretations

The judiciary has played a very important role in shaping the meaning of the constitutional guarantees of political representation and governance. In the case of *Samatha v. State of Andhra Pradesh,*[597] the Supreme Court heard a matter relating to the grant of mining leases of governmental and tribal areas to non-tribal private companies in Andhra Pradesh. A two-judge bench held that transfer of tribal lands in Scheduled Areas to non-tribals, including corporations, violated the Fifth Schedule, stressing that land is central to tribal autonomy.[598] While giving way to purposive interpretation and ensuring distributive justice among the tribals, the Court observed: "*Any other interpretation would sow the seed beds to disintegrate the tribal autonomy, their tribal culture and frustrate empowerment of them, socially,*

[595] The Constitution (Ninety-fourth Amendment) Act, 2006, s. 2.

[596] The Constitution of India, 1950, art. 164: "*Other provisions as to Ministers.—(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor: Provided that in the States of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.*"

[597] *Samatha v. State of Andhra Pradesh* (1997) 8 SCC 191.

[598] *Id*. at para. 94.

economically and politically, to live a life of equality, dignity of person and equality of status."[599]

Earlier, in the case of *Union of India v. Rakesh Kumar,*[600] while dealing with questions pertaining to reservations in scheduled areas and certain related provisions of the Jharkhand Panchayat Raj Act, 2001, a three-judge bench upheld the validity of such reservations in Panchayats. The Court, while emphasising the importance of 'substantive equality',[601] observed that the legislative intent behind the impugned provisions of the Jharkhand Panchayat Raj Act, 2001, is primarily that of safeguarding the interests of persons belonging to the Scheduled Tribe category. Hence, the total reservations exceeding 50 per cent of the seats in Panchayats located in Scheduled Areas are permissible on account of the exceptional treatment mandated under Article 243-M(4)(b).[602]

Although the courts have had a liberal approach, caution has been put in place to not overstep the limits. For instance, as discussed above, in the case of *Chebrolu Leela Prasad Rao,*[603] the Court struck down 100 per cent reservation of seats in Scheduled Areas for Scheduled Tribes in Panchayats as unconstitutional under Article 14, though it reaffirmed that adequate representation of Scheduled Tribes in Panchayati Raj Institutions is mandated by Article 243D.[604]

Other cases have also addressed related dimensions of representation and self-governance. For instance, in the case of *State of Nagaland v. Ratan Singh*,[605] the Supreme Court traced the long history of special legal arrangements in the Naga Hills and other tribal areas, highlighting how self-governance and differentiated systems of justice for tribal communities had developed under colonial and postcolonial law. The Court, through its five-judge bench, held that the Rules for the Administration of Justice and Police in the Naga Hills District, 1937, were validly enacted and continued to remain in force despite the repeal of the Scheduled Districts Act, 1874, and lawfully governed trials in the backward tracts where the Code of Criminal Procedure was not applicable.[606] It was noted that ordinary laws like the Criminal Procedure Code were consciously withheld from these 'backward tracts', and instead, rules such as those framed provided a simplified procedure, closer to customary practices and accessible to local populations. It rejected arguments of excessive delegation or violation of Articles 14 and 21, observing that different legal frameworks for backward tracts were justified given their unique conditions and gradual integration into the mainstream legal system.[607] Hence, the special constitutional status of

[599] *Id*. at para. 86.
[600] *Union of India v. Rakesh Kumar* (2010) 4 SCC 50.
[601] *Id*. at para. 37.
[602] *Id*. at para. 58.
[603] *Chebrolu Leela Prasad Rao v. State of Andhra Pradesh* (2020) SCC OnLine SC 383.
[604] *Id*. at para. 122.
[605] *State of Nagaland v. Ratan Singh* (1966) SCC OnLine SC 114.
[606] *Id*. at para. 28.
[607] *Id*. at paras. 30-36.

Nagaland under Article 371A was upheld, affirming the autonomy of customary tribal institutions.

Taken together, these provisions and judicial interpretations illustrate a balance. On one hand, the Constitution guarantees Scheduled Tribes structural safeguards of representation and autonomy, both through reservations in representative bodies and through self-governance in Scheduled Areas. On the other hand, the courts have insisted that such measures must remain within the larger constitutional framework of equality and democracy, ensuring that tribal rights are protected without undermining the constitutional principles.

3.4. Autonomy over Land and Resources

An important dimension of the rights of the tribal people under the Constitution is autonomy and control over natural resources. The Constitution recognises the distinct relationship that tribal communities share with their land and natural resources, granting them special protections. These provisions were designed to preserve the autonomy of tribal populations over the resources that form the basis of their cultural identity, livelihood, and self-governance.

3.4.1. Constitutional Foundations

This finds expression primarily in the Fifth and Sixth Schedules read with Articles 244 and 244A, which provide a unique constitutional framework for the governance of Scheduled Areas and Tribal Areas. As already discussed, the Fifth Schedule governs the administration and control of Scheduled Areas and Scheduled Tribes across most states, vesting the Governor with special powers to restrict or modify the application of laws and to ensure that tribal interests in land and resources are not undermined. The Sixth Schedule, on the other hand, applies specifically to the tribal areas of Assam, Meghalaya, Tripura, and Mizoram, creating autonomous districts and regional councils with legislative, executive, and judicial powers over matters such as land, forests, water, and local governance. Together, these provisions constitutionally entrench the principle of safeguarding tribal autonomy and insulating their resources from unchecked state and private exploitation.

3.4.2. Judicial Interpretations

Judicial interpretation has been pivotal in strengthening these protections. As discussed, in the verdict of *Samatha,*[608] the Supreme Court held that government land, forest land, and tribal land in Scheduled Areas cannot be leased out to private mining companies for exploitation, as such a transfer would violate the protective framework of the Fifth Schedule. The Court observed that protective measures adopted through legislation for the preservation of tribal life, for the prevention of exploitation of tribals by non-

[608] *Samatha v. State of Andhra Pradesh* (1997) 8 SCC 191.

tribals and money-lenders and to seal infiltration of non-tribals in the Agency tracts or Scheduled Areas rested on three main planks: (a) Prohibition of transfer of land by a tribal to a non-tribal with the stipulation that such transfer will be null and void. (b) Prohibiting the government from allotting land vested in it to non-tribals. (c) Power of government to evict a non-tribal from the tribal's land coming into his possession through a void sale deed and restoring the same to the tribal or his heirs.[609] This judgment, thus, underscores the principle that tribal autonomy over resources is constitutionally safeguarded against commercial exploitation.

Similarly, a two-judge bench of the Supreme Court, in the case of *S. Jagannath v. Union of India,*[610] established a balance between intensive shrimp farming along the fragile coastal ecosystems and the rights of the fisherfolk inhabiting those coasts. Thus, the Court addressed the environmental degradation caused by commercial aquaculture.[611] The Court stressed that exploitation of natural resources without regard for the livelihood and rights of local communities violates the right to life under Article 21.[612] Thus, further broadening the understanding of autonomy over resources by linking it to the constitutional guarantee of the right to life, which encompasses the right to a clean and healthy environment.

In 2013, the Supreme Court was faced with a writ of certiorari filed by the Orissa Mining Corporation to quash the order passed by the Ministry of Environment and Forests rejecting the forest clearance for diversion of 660.749 hectares of forest land for mining of bauxite ore. The Supreme Court, in the verdict in *Orissa Mining Corporation Ltd v. Ministry of Environment and Forest,*[613] popularly known as the *Niyamgiri* judgment, held that the question of whether Scheduled Tribes and other Traditional Forest Dwellers (OTFDs) have any religious rights over the Niyamgiri hills has to be considered by the Gram Sabha. Thus, the three-judge bench held that the Gram Sabha has the final authority to decide on matters affecting the religious and cultural rights of Scheduled Tribes, particularly in relation to mining projects.[614] This recognition of the Gram Sabha's primacy reaffirmed that community consent is integral to resource governance in Scheduled Areas.

Taken together, the Fifth and Sixth Schedules, Articles 244 and 244A, and judicial pronouncements such as *Samatha*, *Niyamgiri*, and *S. Jagannath* weave a constitutional and judicial shield around tribal peoples' rights. They not only secure their autonomy over land and resources but also ensure that any interference, whether by the state or private actors, must conform to constitutional guarantees of

[609] *Id*. at para. 165.
[610] *S. Jagannath v. Union of India* (1997) 2 SCC 87.
[611] *Id*. at para. 31.
[612] *Id*. at paras. 49-50.
[613] *Orissa Mining Corporation Limited v. Ministry of Environment and Forest* (2013) 6 SCC 476.
[614] *Id*. at paras. 64-67.

equality, dignity, and cultural survival. This framework thus affirms that tribal autonomy over resources is central to both self-governance and the protection of fundamental rights.

3.5. Cultural and Religious Freedoms

The cultural and religious identity of tribal peoples in India is inseparable from their lands, forests, and community life. Unlike mainstream religions, tribal faiths are rooted in nature worship, ancestral ritualism and customary practices, often tied to specific hills, rivers or forests that hold sacred meaning. Protecting these practices is not just a matter of safeguarding religious freedom but also of ensuring the survival of tribal cultures that form an essential part of India's pluralistic heritage.

3.5.1. Constitutional Foundations

The Constitution places emphasis on the protection of the cultural and religious rights of all persons. Articles 25 to 29 of the Constitution discuss the provisions of freedom of religion.

Article 25 of the Constitution guarantees the fundamental right to freedom of conscience and the right freely to profess, practise, and propagate religion, subject to public order, morality, and health.[615] Article 26 also provides for freedom for every religious denomination or section to manage their own religious affairs, as well as to acquire movable and immovable property.[616] Article 27 prohibits the State from imposing taxes to raise funds for the promotion or maintenance of any specific religion.[617] While these Articles do not specifically mention Scheduled Tribes, they collectively uphold the secular and pluralistic ethos of the Constitution, protecting the religious identity of 'all persons' and 'every religious denomination'.

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[615] The Constitution of India, 1950, art. 25: "*Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.*"

[616] The Constitution of India, 1950, art. 26: "*Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right— (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law.*"

[617] The Constitution of India, 1950, art. 27: "*Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.*"

Article 28 pertains to the freedom of religion in educational institutions. It safeguards the rights of individuals, religious groups, and attendance at religious ceremonies. While ensuring that public educational institutions funded by the government remain secular and do not impart religious teachings, it also allows the educational institutions administered by the state but established under any endowment or trust to impart religious instructions.[618] Article 29 further protects cultural rights.[619] It safeguards the rights of "*any section of the citizens*", which, as evident from the Constitutional Assembly Debates on Article 29 (Draft Article 23(1)(2)), is reflective of the intent to cover the minorities which are "*not minorities in the technical sense, but which are nonetheless minorities in the cultural and linguistic sense*".[620] Thereby, including tribal communities, to conserve their distinct language, script, or culture.

In continuation of these safeguards, Article 350 provides that every person shall be entitled to a representation for redress of grievances to any officer or authority of the Union or a State in any of the languages used in the Union or in the State.[621] Further, Article 350A mandates that every state and local authority shall endeavour to provide adequate facilities for instruction in the mother tongue at the primary stage of education for children belonging to linguistic minority groups.[622] These articles were introduced by the Seventh Amendment,[623] thus ensuring linguistic inclusivity in governance and access to justice, as well as preserving tribal languages and ensuring that education remains a means of cultural continuity, which holds special significance for tribal communities.

Special constitutional protections reinforce these guarantees. The Fifth Schedule applies to tribal areas and entrusts Governors with special responsibilities for ensuring that laws made by Parliament or the State Legislature do not adversely affect tribal customs, traditions, and land rights. Additionally, the Sixth Schedule empowers Autonomous District Councils in certain North-Eastern states to preserve

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[618] The Constitution of India, 1950, art. 28: "*Freedom as to attendance at religious instruction or religious worship in certain educational institutions.—(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds. (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.*"

[619] The Constitution of India, 1950, art. 29: "*Protection of interests of minorities.—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.*"

[620] Constituent Assembly Debates on December 08, 1948, *available at*: https://www.constitutionofindia.net/debates/08-dec-1948/#138056 (last visited on Nov. 3, 2025); Anurag Bhaskar, "Education" *SSRNeLibrary* 13 (Jul. 2022), *available at*: https://ssrn.com/abstract=4164728 (last visited on Nov. 3, 2025).

[621] The Constitution of India, 1950, art. 350.

[622] The Constitution of India, 1950, art. 350A.

[623] The Constitution (Seventh Amendment) Act, 1955, s. 21.

customary laws, social practices, and institutions. Likewise, Article 371A for Nagaland[624] and Article 371G for Mizoram[625] grant the state legislatures exclusive authority over matters relating to customary law, ownership of land and its resources, and religious and social practices.

These provisions ensure that governance does not override the unique cultural and spiritual fabric of tribal life. Thus, ensuring that the customary laws receive the protection they merit from external interferences.

3.5.2. Judicial Interpretations

Judicial interpretation has consistently affirmed these protections. As already discussed, in the *Niyamgiri case*,[626] the Supreme Court held that the religious and cultural rights of the Dongria Kondh tribe, who considered the Niyamgiri Hills sacred, could not be violated by bauxite mining projects. The Court recognised that the Gram Sabha was the appropriate authority to determine the validity of tribal claims rooted in faith and culture, thereby operationalising constitutional guarantees under Articles 25 and 26 in conjunction with statutory protections like the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The Court observed: "*religious freedom guaranteed to Scheduled Tribes and the Traditional Forest Dwellers under Articles 25 and 26 of the Constitution is intended to be a guide to a community of life and social demands.*"[627] These articles guarantee the right to practice and propagate not only matters of faith or belief but also all those rituals and observations which are regarded as an integral part of their religion. Hence, their right to worship the deity *Niyam-Raja* has to be protected and preserved.

Other judgments have also indirectly reinforced cultural protections. In *T.N. Godavarman Thirumulkpad v. Union of India,*[628] although principally relating to environmental protection, the Court noted the need to account for tribals who are a part of the social forestry programme and may

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[624] The Constitution of India, 1950, art. 371A(1): *"Special provision with respect to the State of Nagaland.—(1) Notwithstanding anything in this Constitution,—(a) no Act of Parliament in respect of—(i) religious or social practices of the Nagas; (ii) Naga customary law and procedure; (iii) administration of civil and criminal justice involving decisions according to Naga customary law; (iv) ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides."*

[625] The Constitution of India, 1950, art. 371G: "*Special provision with respect to the State of Mizoram.—Notwithstanding anything in this Constitution,—(a) no Act of Parliament in respect of—(i) religious or social practices of the Mizos; (ii) Mizo customary law and procedure; (iii) administration of civil and criminal justice involving decisions according to Mizo customary law; (iv) ownership and transfer of land; shall apply to the State of Mizoram unless the Legislative Assembly of the State of Mizoram by a resolution so decides: Provided that nothing in this clause shall apply to any Central Act in force in the Union territory of Mizoram immediately before the commencement of the Constitution (Fifty-third Amendment) Act, 1986; (b) the Legislative Assembly of the State of Mizoram shall consist of not less than forty members.*"

[626] *Orissa Mining Corporation v. Ministry of Environment and Forests* (2013) 6 SCC 476.

[627] *Id*. at para. 63.

[628] *T.N. Godavarman Thirumulkpad v. Union of India* (1997) 2 SCC 267.

continue to grow and cut according to the government scheme. Thus, the courts have balanced the forest-dwelling communities' traditional and cultural practices with ecological preservation.

Taken together, these provisions and cases reveal a layered constitutional scheme, with the fundamental rights forming the baseline, while special provisions like the Sixth Schedule and Articles 371A and 371G secure context-specific protections for tribal communities. With the judiciary, through cases as mentioned before, underscoring that cultural and religious freedom for tribal people extends beyond abstract belief and encompasses the preservation of their sacred landscapes, traditional rituals, and collective heritage.

4. Legislative Protections

The Indian legal framework for safeguarding the rights of Scheduled Tribes comprises a wide network of legislations which seek to combat discrimination, prevent the exploitation of their lands and resources, and promote socio-economic development while also protecting their cultural autonomy.

4.1. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (PoA Act, 1989), was enacted to prevent and punish atrocities against members of the Scheduled Caste and Scheduled Tribe communities. The PoA Act, 1989, recognises the historical oppression and social exclusion faced by Scheduled Caste and Scheduled Tribe communities and seeks to uphold their dignity by criminalising specific acts committed against them on account of their caste or tribal identity. The PoA Act, 1989, provides for special courts for the trial of such offences, as well as for the relief and rehabilitation of the victims. It ensures protection, relocation, expenses, and rehabilitation during trial and allows courts to conceal identities, prevent harassment, and pass protective orders. First Information Reports (FIR) must be promptly recorded, and copies must be provided free of cost. All proceedings are to be video recorded, and the states must frame schemes to provide relief, medical aid, shelter, allowances, legal aid, and updates on case status. Victims and dependents may also seek assistance from non-governmental organisations, social workers, or advocates at all stages.

Section 3 of the PoA Act, 1989, lists a wide range of offences deemed to be atrocities against the members of Scheduled Caste or Scheduled Tribe communities.[629] These include:

- Forcing a member to eat/drink inedible or obnoxious substances;
- Dumping excreta, sewage, carcasses or other obnoxious substances in/near their premises;
- Garlanding with footwear, parading naked/semi-naked, or similar acts derogatory to dignity;

[629] The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, s. 3.

- Wrongfully occupying/dispossessing them from their land or interfering with their forest or water rights;
- Forcing into *begar*, bonded labour, manual scavenging or carcass disposal;
- Dedicating Scheduled Caste or Scheduled Tribe women as *devadasi* or to any similar practice;
- Preventing or forcing voting rights, nominations, or performance of Panchayat/Municipality duties;
- Threatening, forcing, or preventing any member of a Scheduled Caste or Scheduled Tribe from exercising electoral rights, including voting, filing or supporting nominations;
- Obstructing or intimidating them from performing their duties as members or chairpersons of Panchayats/Municipalities;
- Assaulting, boycotting or depriving them of public services after elections;
- Instituting false or malicious legal proceedings against them;
- Giving false information to public servants and thereby causing injury or annoyance to a member of a Scheduled Caste or Scheduled Tribe;
- Intentionally insulting, humiliating, or abusing them by caste name in public view;
- Defiling/damaging objects held sacred by Scheduled Caste or Scheduled Tribe communities;
- Promoting enmity or hatred against the Scheduled Castes or the Scheduled Tribes, including disrespecting their revered leaders;
- Sexual harassment or assault of Scheduled Caste or Scheduled Tribe women (touching, words, acts or gestures of a sexual nature, without the recipient's consent);
- Corrupting or fouling water sources ordinarily used by the Scheduled Castes or the Scheduled Tribes;
- Denying access to public spaces, places of worship, education, health centres, shops or public utilities;
- Obstructing customary rights such as use of burial grounds, wedding processions, wearing footwear/clothes in public, or practising professions;
- Forcing displacement from houses, villages, or other places of residence;
- Alleging practising witchcraft or being a witch, thus causing harm or mental agony;
- Imposing or threatening a social/economic boycott.

While dealing with a challenge to the constitutional validity of certain provisions of the PoA Act, 1989, the Supreme Court in the case of *State of Madhya Pradesh v. Ram Krishna Balothia*[630] held that the offences under the PoA Act, 1989, "*constitute a separate class and cannot be compared with other offences under the Penal Code*". The Supreme Court noted that these offences are committed to humiliate and subjugate members of the Scheduled Castes and Scheduled Tribes with a view to keeping them in a state

[630] *State of Madhya Pradesh v. Ram Krishna Balothia* (1995) 3 SCC 221.

of servitude.[631]

In the case of *Patan Jamal Vali v. State of Andhra Pradesh,*[632] the Supreme Court clarified that the statutory language uses the phrase 'on the ground' and not 'only on the ground' under Section 3(2) of the PoA Act, 1989. Thus, to insert the word 'only' would unduly restrict the scope of protection intended by the legislature. An intersectional approach, the Supreme Court observed, requires the recognition that oppression is often the product of multiple, overlapping identities, such as caste, gender, and disability, rather than a single, isolated ground, thereby ensuring that the protective intent of the legislation is not diluted and the experiences of the most marginalised are not rendered invisible.[633] This reasoning is equally relevant in the context of Scheduled Tribes, where discrimination and violence may stem not merely from tribal identity alone, but from its intersection with factors such as landlessness, displacement, or gender. Hence, acknowledging this intersectionality ensures that the lived realities of tribal communities shaped by both social exclusion and structural inequities are meaningfully addressed.

In prosecutions under the PoA Act, 1989, Section 8 shifts the burden of proof to the accused. Further, the Special Courts shall presume abetment if the accused provided financial assistance in relation to an atrocity committed, presume common intention if the offence was committed by a group, and presume knowledge of caste/tribal identity if the accused personally knew the victim or the victim's family, unless the contrary is proved.[634] Section 8 thus recognises and tackles the historical difficulty of proving intent or knowledge in caste/tribe-based atrocities through the means of rebuttable presumptions.

For ensuring speedy trials, Section 14 provides for the establishment of Special Courts and Exclusive Special Courts for one or more districts. Section 14 also provides that any trial relating to offences under the PoA Act, 1989, shall be completed within a period of two months from the date of filing of the

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631 *Id*. at para. 10.

632 *Patan Jamal Vali v. State of Andhra Pradesh* (2021) SCC OnLine 343.

633 *Id*. at paras. 54-59.

634 The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, s. 8: "*Presumption as to offences.—In a prosecution for an offence under this Chapter, if it is proved that— (a) the accused rendered any financial assistance in relation to the offences committed by a person accused of, or reasonably suspected of, committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence; (b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object; (c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved.*"

chargesheet.[635]

Section 15A establishes the state's duty to protect victims, their dependents, and witnesses from intimidation, coercion or violence. It is specified that the victims must be treated with fairness and dignity and kept informed of all proceedings, including bail, parole, conviction, or sentencing. They have the right to participate in proceedings, summon evidence, and file written submissions. The importance of this section and the hurdles faced by the Scheduled Castes and Scheduled Tribes were highlighted by the Supreme Court in the case of *Hariram Bhambhi v. Satyanarayan*.[636] The Court underscored the systemic problems faced by the members of the Scheduled Caste and Scheduled Tribe communities in accessing justice under the PoA Act, 1989. The Supreme Court noted that victims often hesitate to file complaints due to fear of retaliation, ignorance, or police apathy. Even when complaints are lodged, they may be inaccurately recorded. Further, investigations and prosecutions are frequently negligent, leading to low conviction rates. This leads to a misconception of misuse of the PoA Act, 1989, whereas in reality, many acquittals stem from defective criminal processes.[637] Recognising this, the Supreme Court emphasised that provisions like Section 15A, which guarantee victims the right to be heard at various stages of the proceedings, are vital in securing meaningful access to justice.[638]

Sections 18 and 18A bar the grant of anticipatory bail under Section 438 of the Code of Criminal Procedure in respect of the offences under the PoA Act, 1989.[639] Sections 18 and 18A further clarify that no preliminary inquiry is required to register an FIR and that investigating officers do not need prior approval to arrest an accused. Sections 18 and 18A also override any contrary judicial directions,

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[635] The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, s. 14: "*Special Court and Exclusive Special Court.—(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts: Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act: Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act. (2) It shall be the duty of the State Government to establish an adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible. (3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing: Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet.*"

[636] *Hariram Bhambhi v. Satyanarayan*, 2021 INSC 701.

[637] *Id*. at para. 12.

[638] *Id*. at para. 13.

[639] The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, s. 18: "*Section 438 of the Code not to apply to persons committing an offence under the Act.— Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of hav,ing committed an offence under this Act.*"

ensuring swift registration and investigation of cases.[640] These sections have been in contention, and the Supreme Court has clarified its stance through a series of cases. The Supreme Court in the case of *Subhash Kashinath Mahajan v. The State of Maharashtra,*[641] expressed concern that the working of the PoA Act, 1989, should not result in perpetuating casteism, which can have an adverse impact on the integration of society and constitutional values.[642] It held that there is no absolute bar against the grant of an anticipatory bail in cases where no *prima facie* case is made out or where, on judicial scrutiny, the complaint is found to be *prima facie mala fide*.[643] The Supreme Court also directed that to avoid any false implication of an innocent, a preliminary enquiry may be conducted by the Deputy Superintendent of Police concerned to find whether the allegations are made out.[644]

After these directions were passed, the Parliament amended the PoA Act, 1989 in order to undo the effect of these guidelines. These amendments were unsuccessfully challenged in the case of *Prathvi Raj Chauhan v. Union of India*,[645] wherein the Supreme Court noted: "*unless provisions of the Act are enforced in their true letter and spirit, with utmost earnestness and dispatch, the dream and ideal of a casteless society will remain only a dream, a mirage. The marginalisation of SC/ST communities is an enduring exclusion and is based almost solely on caste identities.*"[646]

The directions in *Subhash Mahajan* had already been recalled in the review petition in the case of *Union of India v. State of Maharashtra.*[647] The Supreme Court was of the view that the Scheduled Castes and Scheduled Tribes are "*still making the struggle for equality and for exercising civil rights in various areas of the country*".[648] The Supreme Court further noted there is no presumption that the members of the Scheduled Caste and Scheduled Tribe communities may misuse the provisions of the PoA Act, 1989; instead, due to their backwardness, they hardly muster the courage to lodge even an FIR, much less a false one. Accordingly, the Supreme Court concluded that treating the Scheduled Castes and Scheduled Tribes as prone to lodge false reports for taking revenge or any other form of gain contradicts the

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[640] The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, s. 18A: "*No enquiry or approval required.—(1) For the purposes of this Act,— (a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or (b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply. (2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.*"

[641] *Subhash Kashinath Mahajan v. The State of Maharashtra* (2018) 6 SCC 454.

[642] *Id*. at para. 38.

[643] *Id*. at para. 79.2.

[644] *Id*. at para. 79.4.

[645] *Prathvi Raj Chauhan v. Union of India* (2020) 4 SCC 727.

[646] *Id*. at para. 34.

[647] *Union of India v. State of Maharashtra* (2020) 4 SCC 761.

[648] *Id*. at para. 44.

fundamental principles of human equality.[649]

Moreover, Section 21 obligates the government to ensure the effective implementation of the PoA Act, 1989. State governments must take necessary measures, such as providing legal aid, travel, and maintenance expenses for victims and witnesses; economic and social rehabilitation of atrocity victims; appointing officers to oversee prosecutions; setting up committees; conducting periodic surveys; and identifying vulnerable areas to ensure the safety of Scheduled Caste and Scheduled Tribe communities. The Central Government is further tasked with coordinating these efforts and must annually present a report to the Parliament on measures taken by both the Centre and the States.[650]

The courts have also emphasised the duty of the government in the implementation of the PoA Act, 1989. In the case of the *National Campaign on Dalit Human Rights v. Union of India*,[651] the Supreme Court dealt with a writ petition aggrieved by the non-implementation of the PoA Act, 1989. The Court showed deep concerns about the non-implementation of the Act and noted that "*there has been a failure on the part of the authorities concerned in complying with the provisions*"[652] of the PoA Act, 1989, thus, also noting the indifferent attitude of the authorities and finally directing the State and the Union governments to strictly do their role in implementing the PoA Act.

4.2. The Panchayats (Extension to the Scheduled Areas) Act, 1996

The provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA Act, 1996), were enacted for the extension of the provisions of Part IX of the Constitution and its applicability to Fifth Schedule Areas as per Article 243M of the Constitution. The Bhuria Committee recommendations paved the way for the enactment of the PESA Act, 1996, while the Bhuria Commission focused on a wide range of issues from the Fifth Schedule to tribal land and forests, health and education, the working of Panchayats and the status of tribal women.[653]

As per the 2023-2024 Annual Report of the Ministry of Tribal Affairs, at present, Fifth Schedule Areas exist in 10 states, viz., Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya

[649] *Id*. at paras. 52-54.

[650] The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, s. 21.

[651] *National Campaign on Dalit Human Rights v. Union of India* (2017) 2 SCC 432.

[652] *Id*. at para. 18.

[653] Ministry of Tribal Affairs, *Report of the High Level Committee on Socioeconomic, Health and Educational Status of Tribal Communities of India* (May 2014), *available at*: https://ruralindiaonline.org/en/library/resource/report-of-the-high-level-committee-on-socio-economic-health-and-educational-status-of-the-tribals-of-india/ (last visited on Nov. 12. 2025)

Pradesh, Maharashtra, Odisha, Rajasthan and Telangana.[654] Thus, the PESA Act, 1996, operationalises the principles of self-governance for the Scheduled Tribes by empowering Gram Sabhas and Panchayats in Scheduled Areas with extensive authority over natural resources, development planning and socio-cultural matters.

Section 4 of the PESA Act, 1996, sets out the modifications to Part IX of the Constitution. Section 4(a) states that the state laws on Panchayats in Scheduled Areas must respect customary laws, social and religious practices, and traditional management of community resources.[655] A 'village' is defined as a habitation or group of habitations managing affairs in accordance with customs under section 4(b)[656] and every village has a Gram Sabha of all voters, as per section 4(c).[657]

Under section 4(d), Gram Sabhas are entrusted with safeguarding traditions, cultural identity, community resources and dispute resolution practices.[658] The Supreme Court, in the case of *Orissa Mining Corporation Limited v. Ministry of Environment and Forest,* noted that the PESA Act, 1996 extends the provisions of Part IX of the Constitution to the Scheduled Areas, with Section 4(d) specifically empowering every Gram Sabha. Accordingly, a Gram Sabha functioning under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, read with the PESA Act, 1996, carries a duty to protect these rights.[659]

Sections 4(e) and 4(f) also specify that the Gram Sabhas must approve development plans and identify beneficiaries under welfare schemes and certify utilisation of funds by panchayats.[660] Section 4(g) further

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[654] Government of India, "Annual Report 2023-24" (Ministry of Tribal Affairs, 2024); Ministry of Panchayat Raj, *State wise details of notified Fifth Schedule Areas*, *available at:* https://panchayat.gov.in/en/state-wise-details-of-notified-fifth-schedule-areas/ (last visited on Oct. 15, 2025).

[655] The Panchayats (Extension to the Scheduled Areas) Act, 1996, s. 4: "*(a) a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources.*"

[656] The Panchayats (Extension to the Scheduled Areas) Act, 1996, s. 4: "*(b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.*"

[657] The Panchayats (Extension to the Scheduled Areas) Act, 1996, s. 4: "*(c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.*"

[658] The Panchayats (Extension to the Scheduled Areas) Act, 1996, s. 4: "*(d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.*"

[659] *Orissa Mining Corporation Limited v. Ministry of Environment and Forest* (2013) 6 SCC 476, para. 57.

[660] The Panchayats (Extension to the Scheduled Areas) Act, 1996, s. 4: "*(e) every Gram Sabha shall— (i) approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level; (ii) be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes*."

mandates reservation of seats in the Scheduled Areas in proportion to the tribal population, with at least one-half reserved for Scheduled Tribes and with all chairperson posts at all levels reserved for Scheduled Tribes.[661] With respect to Panchayats in Scheduled Areas, Article 243M(4)(b) provides flexibility that enabled the enactment of the PESA Act, 1996, which ordinarily follows the norm of proportional representation but consciously departs from it to secure the interests of Scheduled Tribes.

This departure was upheld by the Supreme Court in *Union of India v. Rakesh Kumar,*[662] where the Court recognised that even in areas where Scheduled Tribes form a majority, they often remain under-represented in governance and susceptible to domination by non-tribal populations. The Court noted that structural disadvantages such as land alienation, displacement due to development projects, and exploitation of natural resources necessitate enhanced safeguards. Hence, the legislature's choice to prioritise Scheduled Tribes over proportional representation was found to have a rational basis, aimed at ensuring substantive empowerment rather than formal inclusion.

Further, Section 4(m)(ii), a critical provision that recognises tribal rights, states that Gram Sabhas are explicitly vested with ownership over minor forest produce. Thus, section 4(m)(i) to (vii) explains that Gram Sabhas and Panchayats are given powers to regulate intoxicants, prevent land alienation, manage village markets, control money-lending to tribals, and oversee local plans and social sector institutions.[663] State legislatures must also ensure higher-level Panchayats do not assume the power of lower Panchayats or Gram Sabhas as per Section 4(n),[664] with Section 4(o) directing the legislature to model administrative

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The Panchayats (Extension to the Scheduled Areas) Act, 1996, s. 4: "*(f) every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects referred to in clause(e).*"

[661] The Panchayats (Extension to the Scheduled Areas) Act, 1996, s.4: "*(g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution: Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats: Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes*."

[662] *Union of India v. Rakesh Kumar* (2010) 4 SCC 50, paras. 36-37.

[663] The Panchayats (Extension to the Scheduled Areas) Act, 1996, s. 4: "*(m) while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with— (i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant; (ii) the ownership of minor forest produce; (iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe; (iv) the power to manage village markets by whatever name called; (v) the power to exercise control over money lending to the Scheduled Tribes; (vi) the power to exercise control over institutions and functionaries in all social sectors; (vii) the power to control over local plans and resources for such plans including tribal subplans*."

[664] The Panchayats (Extension to the Scheduled Areas) Act, 1996, s. 4: "*(n) the State legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha*."

arrangements on the Sixth Schedule.[665]

4.3. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, also known as the Forest Rights Act, 2006 (FRA, 2006), was enacted to recognise and vest rights in forest-dwelling Scheduled Tribes and other Traditional Forest Dwellers who have been residing in such forests for generations.

The FRA, 2006, defines 'forest dwelling Scheduled Tribes' as "*the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities*".[666] The definition expressly includes Scheduled Tribe pastoralist communities,[667] groups that seasonally manage and graze domesticated animal herds across extensive tracts of land, thereby extending protection not only to settled forest dwellers. The FRA, 2006 thus ensures that diverse patterns of tribal dependence on forests, whether for habitation, cultivation, grazing or pastoral activities, are formally acknowledged within its legal framework.

Alongside forest-dwelling Scheduled Tribes, the FRA, 2006, also defines OTFDs. Under Section 2(o), OTFDs include any member or community who has, for at least three generations, which is a period not less than 75 years, primarily resided in a forest or forest land and depended on it for their *bona fide* livelihood needs.[668] Unlike forest-dwelling Scheduled Tribes, OTFDs do not enjoy an automatic presumption of rights; they must demonstrate continuous residence and forest dependence through prescribed evidence. This distinction ensures that while the FRA, 2006, remains inclusive of long-settled forest-dependent communities, it prevents misuse by transient or recent occupants.

Section 3(1) of the FRA, 2006 recognises and safeguards the following substantive rights of forest-dwelling Scheduled Tribes and OTFDs:[669]

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[665] The Panchayats (Extension to the Scheduled Areas) Act, 1996, s.4: "*(o) the State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas*."

[666] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, s. 2(c).

[667] Centre for Pastoralism, *available at:* https://centreforpastoralism.org/ (last visited on Oct. 7, 2025).

[668] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, s. 2(o).

[669] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, s. 3: "*Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers.–(1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:– (a) right to hold and live in the forest land under the*

- Right to hold and live on forest land for habitation or self-cultivation;
- Community rights such as *nistar* and access to fishing, grazing, and water resources;
- Ownership and disposal of minor forest produce;
- Community tenures of habitat and habitation for primitive groups;
- Right of conversion of leases or *pattas* to titles and forest villages to revenue villages;
- Right to protect, regenerate, conserve, and manage community forest resources;
- Right to intellectual property and traditional knowledge, and access to biodiversity;
- *In situ* rehabilitation in cases of illegal eviction before 13 December 2005.

The Supreme Court, in the case of *T.N. Godavarman Thirumulpad v. Union of India*, while hearing an interlocutory application on the protection of sacred groves/Orans of Rajasthan, recognised that the FRA, 2006, under Section 3, "*explicitly acknowledges community rights over customary forest resources and mandates their conservation*".[670] Section 3(2), however, allows limited diversion of forest land for public facilities like schools and dispensaries, subject to Gram Sabha approval.[671]

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individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers; (b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes; (c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries; (d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities; (e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities; (f) rights in or over disputed lands under any nomenclature in any State where claims are disputed; (g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles; (h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages; (i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use; (j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State; (k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity; (l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal; (m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005."

[670] *In Re: T.N. Godavarman Thirumulpad v. Union of India*, 2024 INSC 997, para. 43.

[671] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, s. 3: "*Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers.–(2) Notwithstanding anything contained in the Forest (Conservation) Act, 1980 (69 of 1980), the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:– (a) schools; (b) dispensary or hospital; (c) anganwadis; (d) fair price shops; (e) electric and telecommunication lines; (f) tanks and other minor water bodies; (g) drinking water supply and water pipelines; (h) water or rain water harvesting structures; (i) minor irrigation canals; (j) non-conventional source of energy; (k) skill upgradation or vocational training centres; (l) roads; and (m) community centres: Provided that such diversion of forest land shall be allowed only if,– (i) the*

Section 4(3)-(4) restricts recognition to occupation prior to 13 December 2005 and makes rights heritable but non-transferable, to be jointly registered in the names of both spouses.[672] Section 4(5) prohibits eviction until recognition and verification are complete.[673] Section 4(6) caps individual rights at four hectares.[674] Section 5 empowers forest rights holders and Gram Sabhas to protect wildlife, forests, biodiversity, and cultural heritage.[675] The Supreme Court, while taking into note Section 5, observed in the case of *T.N. Godavarman Thirumulpad v. Union of India that* granting them the authority to regulate access and prevent harmful activities would preserve their legacy of 'stewardship' and promote sustainable conservation for future generations.[676]

Similarly, in *Orissa Mining Corporation Limited v. Ministry of Environment and Forest*, the Supreme Court emphasised that the authority of the Gram Sabha aligns with the responsibilities outlined in Section 5(d) of the FRA, 2006. Under this provision, the Gram Sabha has the power to regulate access to community forest resources and stop any activity which adversely affects wild animals, forests and biodiversity. The Supreme Court clarified that any activity causing such an adverse impact must be

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forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha."

672 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, s. 4: "*Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.– (3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005. (4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.*"

673 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, s. 4: "*Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.– (5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.*"

674 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, s. 4: "*Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.– (6) Where the forest rights recognised and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.*"

675 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, s. 5: "*Duties of holders of forest rights.–The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to– (a) protect the wild life, forest and biodiversity; (b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected; (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage; (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.*"

676 *In Re: T.N. Godavarman Thirumulpad v. Union of India*, 2024 INSC 997, para. 58(i).

addressed in accordance with the provisions of the relevant Acts.[677]

To safeguard the customary and religious rights of the forest-dwelling Scheduled Tribes and OTFDs under the FRA, 2006, Section 6 confers powers on the Gram Sabha to determine the nature and extent of 'individual' or 'community rights'.[678] It provides a three-tier structure for recognition of rights, including Gram Sabha, then a Sub-Divisional Committee and finally a District Committee, with oversight by a State Monitoring Committee.[679] Section 11 designates the Ministry of Tribal Affairs as the nodal agency.[680] Section 13 clarifies that the FRA, 2006, is in addition to other applicable laws.[681]

Thus, the FRA, 2006, is a landmark in ensuring security of land tenure, livelihood, and community-led forest governance for Scheduled Tribes and OTFDs.

4.4. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act, 2013) was enacted to create a fair, transparent, and participatory process for land acquisition. This is to be done in consultation with local self-government and *Gram Sabhas* so that industrialisation, infrastructure development, and urbanisation cause minimal disruption. It seeks to ensure just compensation, proper rehabilitation, and resettlement of affected families, enabling them to become partners in progress and improving their post-acquisition social and economic conditions. The LARR Act, 2013 has sought to replace the old Land Acquisition Act, 1894.

Under the definition clause of the LARR Act, 2013, 'affected family' specifically includes the Scheduled Tribes and OTFDs who have lost any of their forest rights recognised under the FRA, 2006, due to acquisition of land.[682] The definition clause also explains a 'land owner', wherein any person who is

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[677] *Orissa Mining Corporation Limited v. Ministry of Environment and Forest* (2013) 6 SCC 476, para. 57(iv)(e).

[678] *Id.* at paras. 56, 57(iii)(a).

[679] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, s. 6: "*Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof.*"

[680] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, s. 11: "*Nodal agency.–The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government on this behalf shall be the nodal agency for the implementation of the provisions of this Act.*"

[681] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, s. 13: "*Act not in derogation of any other law.–Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996), the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.*"

[682] The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s. 3: "*Definition.–In this Act, unless the context otherwise requires,— (c) "affected family" includes—(iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land*"

granted forest rights under the FRA, 2006 or under any other law, is also included.[683] The definition clause also explains 'person interested' to include the Scheduled Tribes and OTFDs, who have lost any rights recognised under the FRA, 2006.[684]

Section 4 requires the government to conduct a Social Impact Assessment (SIA) before acquiring land for public purposes. The SIA must be carried out in consultation with the concerned Panchayat, Gram Sabha, Municipality or Municipal Corporation and completed within six months. It assesses whether the acquisition truly serves a public purpose, estimates the number of affected and displaced families, examines the extent of land and properties impacted, and considers alternatives. The SIA must also evaluate the acquisition's effects on livelihoods, community assets, utilities, tribal institutions, burial grounds, and local infrastructure, and prepare a Social Impact Management Plan with specific measures to address these impacts, ensuring protections at least equal to existing Central or State schemes.[685]

This has also been noted in the case of *Indore Development Authority v. Manoharlal*,[686] wherein a five-judge bench of the Supreme Court dealt with the interpretation of Section 24 of the LARR Act, 2013, which provided for deemed lapse of certain land acquisition processes under the Land Acquisition Act, 1894. It was noted that various departures have been made from the old Land Acquisition Act, 1894, especially relating to SIA, Rehabilitation and Resettlement Scheme, etc. This not only ensures that higher compensations are provided, but also defines 'public' and made consent provisions. The LARR Act, 2013, also takes steps to adequately protect the interests of the Scheduled Castes and Scheduled Tribes. While various committees and authorities have been constituted, the definition of 'affected families' has also been widened. Thus, it becomes necessary that the court interprets its provisions to give full and meaningful effect to the legislative intent, keeping in mind the language and tenor of the provisions.[687]

Further, Section 31 of the LARR Act, 2013 expands on the Rehabilitation and Resettlement Award for the affected families by the Collector. It has been specified that the Award shall also include particulars of special provisions for Scheduled Castes and Scheduled Tribes. For displaced tribal families, this

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[683] The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s. 3: "*Definition.– (r) "land owner" includes any person,— (ii) any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) or under any other law for the time being in force*"

[684] The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s. 3: "*Definition.– (x) (ii) the Scheduled Tribes and other traditional forest dwellers, who have lost any forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007)*"

[685] The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s. 4.

[686] *Indore Development Authority v. Manoharlal* (2020) 8 SCC 129.

[687] *Id*. at paras. 93.9-94.

extends to the allocation of house sites and housing, agricultural land, one-time subsistence and transport allowances, and payments for cattle sheds or petty shops. Artisans and small traders among tribal communities are entitled to one-time grants to re-establish their livelihoods. The LARR also guarantees mandatory employment to one member of each affected family, along with annuities and other long-term entitlements. It also provides for the recognition of customary rights such as fishing rights, which hold deep socio-cultural and livelihood significance for tribal groups.[688] These safeguards are designed not merely as compensation but to protect tribal communities, ensuring that their displacement does not erode their cultural and economic foundations.

The Supreme Court has also linked rehabilitation and resettlement to Article 21 while considering land acquisition from tribal groups. In the case of *Narmada Bachao Andolan v. Union of India,*[689] the Supreme Court heard a petition revolving around the construction of the Sardar Sarovar Dam on the Narmada River. It was held that the displacement itself would not result in the violation of fundamental or other rights, provided that those affected are rehabilitated in conditions better than before. This could be with better amenities and opportunities for gradual assimilation into the mainstream of society.[690]

Similarly, in the case of *State of Kerala v. Peoples Union for Civil Liberties,*[691] the Court, while dealing with the Kerala Restriction on Transfer by and Restoration of Lands to the Scheduled Tribes Act, 1999, clarified that Article 21 cannot be read to prohibit acquisition of tribal land altogether but rather requires that displaced tribal communities be provided proper rehabilitation.[692] More recently, in the case of *Estate Officer, Haryana Urban Development Authority v. Nirmala Devi,*[693] a two-judge bench of the Supreme Court noted that "*rehabilitation should only be meant for those persons who have been*

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[688] The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s. 31: "*Rehabilitation and Resettlement Award for affected families by Collector.–(1) The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule. (2) The Rehabilitation and Resettlement Award shall include all of the following, namely:—(a) rehabilitation and resettlement amount payable to the family; (b) bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred; (c) particulars of house site and house to be allotted, in case of displaced families; (d) particulars of land allotted to the displaced families; (e) particulars of one time subsistence allowance and transportation allowance in case of displaced families; (f) particulars of payment for cattle shed and petty shops; (g) particulars of one-time amount to artisans and small traders; (h) details of mandatory employment to be provided to the members of the affected families; (i) particulars of any fishing rights that may be involved; (j) particulars of annuity and other entitlements to be provided; (k) particulars of special provisions for the Scheduled Castes and the Scheduled Tribes to be Provided: Provided that in case any of the matters specified under clauses (a) to (k) are not applicable to any affected family the same shall be indicated as "not applicable": Provided further that the appropriate Government may, by notification increase the rate of rehabilitation and resettlement amount payable to the affected families, taking into account the rise in the price index.*"

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

[690] *Id*. at para. 62.

[691] *State of Kerala v. Peoples Union for Civil Liberties* (2009) 8 SCC 46.

[692] *Id*. at para. 103.

[693] *Haryana Urban Development Authority v. Nirmala Devi* (2025) SCC OnLine SC 1409.

rendered destitute because of loss of residence or livelihood as a consequence of land acquisition". This would mean the ones whose lives and livelihoods are "*intrinsically connected to the land*".[694] Taken together, these judgments establish that while acquisition is permissible, displaced persons, especially tribals, are constitutionally entitled to rehabilitation and resettlement as per the relevant policies.

Sections 41 and 42 of the LARR Act further lay down tailored safeguards for Scheduled Castes/Scheduled Tribes in recognition of their vulnerability to displacement and loss of land. Section 41 directs that, as far as possible, no land acquisition should occur in Scheduled Areas. Where unavoidable, it must be treated as a measure of last resort and carried out only with the prior consent of Gram Sabhas, Panchayats, or Autonomous District Councils, even in cases of urgency.

When acquisition results in the involuntary displacement of Scheduled Caste/Scheduled Tribe families, the LARR Act mandates the preparation of a Development Plan. This plan must ensure settlement of unsettled land rights, restoration of alienated tribal land, and provision for alternative resources such as fuel, fodder, and non-timber forest produce within five years to sustain displaced tribal communities. It has also been prescribed special compensation and resettlement measures. At least one-third of compensation must be paid upfront before possession is taken, and Scheduled Tribe families should be resettled within the same Scheduled Area in compact blocks to preserve their cultural, linguistic, and ethnic identity.[695]

Community land in resettlement areas is to be provided free of cost for social and cultural gatherings. Furthermore, any illegal alienation of tribal land is declared null and void, and original landowners are entitled to rehabilitation and resettlement benefits. Additional livelihood rights are also protected. Displaced Scheduled Tribes, OTFDs, and Scheduled Castes who lose fishing rights due to projects are entitled to fishing rights in the project's reservoirs. Where Scheduled Caste or Scheduled Tribe families are relocated outside their district, they are entitled to 25 per cent additional Rehabilitation and Resettlement benefits along with a one-time grant of Rs. 50,000.[696]

Section 42 ensures continuity of reservation and statutory benefits in resettlement areas. If tribal families are relocated outside the Scheduled or Sixth Schedule areas, all safeguards and entitlements under the LARR Act, 2013 continue to apply in the new settlement. Moreover, community rights recognised under the FRA, 2006 must be monetised and distributed proportionately to displaced individuals.[697]

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[694] *Id*. at para. 95(x).

[695] The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, ss. 41(4)-(6).

[696] *Id*. ss. 41(8)-(11).

[697] *Id*. s. 42.

In the case of *Mahanadi Coal Fields Limited v. Mathias Oram*,[698] the Supreme Court, through its three-judge bench, dealt with a case of tribal lands being acquired for coal mining purposes. It highlighted that the special provisions under the LARR Act, 2013 have been made to minimise the hardships of the Scheduled Tribes and the Scheduled Castes. The Court noted that Section 41 requires minimising harm to Scheduled Tribes and Scheduled Castes communities during land acquisition and mandates development plans while declaring illegal alienation of tribal land as void. Section 42 further ensures that all statutory and reservation benefits available to Scheduled Tribes and Scheduled Castes in the affected area must continue in resettlement areas, even if relocated outside Scheduled Areas.[699] The Court noted that it has to be ensured that the benefits of the displaced persons are not prejudiced by denying them their status as a Scheduled Tribe or a Scheduled Caste. Thus, the displaced Scheduled Tribe or Scheduled Caste families cannot be denied their caste or tribal status due to relocation, and the State has a binding duty to preserve these protections.[700]

Section 45 further mandates that for land acquisitions of 100 acres or more, the government must set up a Rehabilitation and Resettlement Committee headed by the Collector. This body monitors implementation, conducts social audits with Gram Sabhas or municipalities, and includes representatives of women, Scheduled Castes, Scheduled Tribes, local bodies, voluntary organisations, banks, legislators, and the acquiring body, alongside officials.[701]

The Second Schedule to the LARR, 2013 Act also provides that in irrigation projects, affected families who lose agricultural land or are reduced to marginal or landless status due to acquisition are entitled, as far as possible, to at least one acre of land in the project's command area. However, for Scheduled Castes and Scheduled Tribes, land allotment must equal the land acquired or up to 2.5 acres, whichever is less. It has also been provided that, as far as possible, Scheduled Castes and Scheduled Tribes displaced from Scheduled Areas must be resettled in similar ecological zones to safeguard their livelihood, culture, language, and community life.[702]

In addition to the central legislation, several states with significant tribal populations have enacted their own land alienation laws to protect tribal land from transfer to non-tribals. These laws are rooted in the recognition that land forms the basis of socio-economic and cultural survival of tribal communities, and its alienation often leads to exploitation, displacement, and erosion of traditional livelihoods.

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[698] *Mahanadi Coal Fields Limited v. Mathias Oram*, 2022 INSC 1158.

[699] *Id*. at para. 66

[700] *Id*. at para. 67.

[701] The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s. 45(1).

[702] *Id*. sch. II(2), (5).

For instance, the Chhotanagpur Tenancy Act, 1908 and the Santhal Parganas Tenancy Act, 1949, in Jharkhand prohibit the transfer of tribal land to non-tribals without prior approval of competent authorities. Similarly, the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, as amended in 1970, bars the transfer of land from tribals to non-tribals, with transactions in contravention being declared null and void. States like Odisha, Madhya Pradesh, and Chhattisgarh have also framed protective legislation to regulate or prohibit the transfer of tribal land, with mechanisms for restoration in case of unlawful alienation.

4.5. Mines and Minerals (Development and Regulation) Act, 1957

The Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act, 1957), has been enacted to provide for the development and regulation of mines and minerals under the control of the Union. While primarily regulatory in nature, the Act has significant implications for Scheduled Tribes and forest-dwelling communities, as most mineral-rich regions of India overlap with Scheduled Areas and tribal habitations. Under the MMDR Act, 1957, the central government frames policy, while the state governments grant mineral concessions subject to central approval.

The MMDR Act, 1957 establishes a District Mineral Foundation (DMF) under Section 9B through the amendment made in 2015.[703] The DMF acts as a non-profit body established by the state government in any district affected by mining-related operations. The DMF works for the interest and benefit of the persons and areas affected by such operations. It has been specified under the section that while the State Government makes rules for the work of the DMF as well as for the composition and function of the

[703] The Mines and Minerals (Development and Regulation) Acta 1957, s. 9B: "*District Mineral Foundation.——(1) In any district affected by mining related operations, the State Government shall, by notification, establish a trust, as a non-profit body, to be called the District Mineral Foundation. (2) The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government. (3) The composition and functions of the District Mineral Foundation shall be such as may be prescribed by the State Government. (4) The State Government while making rules under sub-sections (2) and (3) shall be guided by the provisions contained in article 244 read with Fifth and Sixth Schedules to the Constitution relating to administration of the Scheduled Areas and Tribal Areas and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996) and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007). (5) The holder of a mining lease or a prospecting licence-cum-mining lease granted on or after the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government. (6) The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount not exceeding the royalty paid in terms of the Second Schedule in such manner and subject to the categorisation of the mining leases and the amounts payable by the various categories of lease holders, as may be prescribed by the Central Government.*"

same, it has to be guided by the provisions contained in Article 244 read with Fifth and Sixth Schedules of the Constitution relating to the administration of the PESA Act, 1996 and the FRA, 2006.

The Supreme Court, in the case of *Federation of Indian Mineral Industries v. Union of India,*[704] through a three-judge bench, dealt with the issues of the working of the DMFs with effect from 12 January 2015. In doing so, the Bench opined that the object of the DMF is to work for the interest and benefit of persons and areas affected by mining-related operations. It noted that the "*purpose of Section 9B of the MMDR Act and the object of the DMF are in furtherance of the cause of social justice for those affected by the mining related operations, including tribals who may be dislocated or displaced from their habitat*". Thus, it was noted that "*to deny them a benefit that is rightfully theirs only because the State Government has been lax in establishing the DMF would be doing injustice to them*".[705]

4.6. Personal Laws

The personal laws in India governing marriage, succession, adoption, and guardianship are primarily codified through the Hindu Marriage Act, 1955 (HMA, 1955); the Hindu Minority and Guardianship Act, 1956 (HMGA, 1956); the Hindu Adoptions and Maintenance Act, 1956 (HAMA, 1956); and the Hindu Succession Act, 1956 (HSA, 1956). These Acts generally apply to Hindus, Buddhists, Jains, and Sikhs. However, under Section 2(2) of HMA, 1955;[706] HAMA, 1956; and HSA, 1956, and under Section 3(2) of the HMGA, 1956,[707] the provisions do not apply to members of any Scheduled Tribe, unless the Central Government, by notification in the Official Gazette, directs otherwise. Accordingly, matters such as marriage, adoption, maintenance, guardianship, and succession among Scheduled Tribes continue to be governed by their customary laws and usages.

In addition to these, the Special Marriage Act, 1954 (SMA, 1954) provides a secular framework for marriage and divorce applicable to all Indian citizens, irrespective of religion or community. Under Section 4 of the SMA, 1954, a marriage may be solemnised between any two persons if the following conditions are fulfilled: neither party has a spouse living at the time of marriage; both parties are of sound mind and capable of giving valid consent; the male has completed twenty-one years and the female eighteen years of age; and the parties are not within the degrees of prohibited relationship. unless

[704] *Federation of Indian Mineral Industries v. Union of India* (2017) 16 SCC 186.

[705] *Id*. at para. 43.

[706] The Hindu Marriage Act, 1955, s. 2: "*Application of Act. — (2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.*"

[707] The Hindu Minority and Guardianship Act, 1956, s. 3: "*Application of Act.— (2) Notwithstanding anything contained in sub-section (1) nothing contained in this Act shall apply to the members of any scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs*."

permitted by their custom.[708] The explanation to Section 4 further clarifies that, in relation to a person belonging to any tribe, community, group, or family, the term 'custom' refers to any rule which the State Government, by notification in the Official Gazette, specifies as applicable to members of that tribe, community, group, or family.[709] Accordingly, members of Scheduled Tribes are not excluded from the operation of this Act and may solemnise their marriages under it.

Additionally, the Indian Succession Act, 1925 (ISA, 1925), consolidates the law relating to intestate and testamentary succession in India. It is a secular law that applies generally to persons not governed by any specific personal law. In the context of Scheduled Tribes, while their customary laws continue to regulate inheritance and property rights within their communities, individuals married under the Special Marriage Act become subject to the provisions of the ISA, 1925, in matters of succession.[710] However, section 3 of the ISA, 1925, empowers the State Government to exempt particular races, sects, or tribes from the operation of certain provisions of the Act.[711] Thus, recognising that the uniform application of succession law may not be feasible for all communities, especially those governed by distinct customary practices.

In matters pertaining to the applicability of personal laws, for instance, inheritance and succession, the Supreme Court has also actively preached for an approach grounded in the concepts of justice, equity and good conscience. For instance, while dealing with the challenge to the provisions of the Chhota Nagpur Tenancy Act, 1908, confining succession to property to the male line, in *Madhu Kishwar v.*

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[708] The Special Marriage Act, 1954, s. 4.

[709] The Special Marriage Act, 1954, s. 4: "*Conditions relating to solemnization of special marriages.—Explanation.—In this section, "custom", in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family: Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied— (i) that such rule has been continuously and uniformly observed for a long time among those members; (ii) that such rule is certain and not unreasonable or opposed to public policy; and (iii) that such rule, if applicable only to a family, has not been discontinued by the family.*"

[710] The Special Marriage Act, 1954, s. 21: "*Succession to property of parties married under Act.—Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (39 of 1925), with respect to its application to members of certain communities, succession to the property or any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act and for the purposes of this Act shall have effect as if Chapter III of Part V (Special Rules for Parsi Intestates) had been omitted therefrom.*"

[711] The Indian Succession Act, 1925, s. 3: "*Power of State Government to exempt any race, sect or tribe in the State from operation of Act.—(1) The State Government may, by notification in the Official Gazette, either retrospectively from the sixteenth day of March, 1865, or prospectively, exempt from the operation of any of the following provisions of this Act, namely, sections 5 to 49 , 58 to 191, 212, 213 and 215 to 369, the members of any race, sect or tribe in the State, or of any part of such race, sect or tribe, to whom the State Government considers it impossible or inexpedient to apply such provisions or any of them mentioned in the order. (2) The State Government may, by a like notification, revoke any such order, but not so that the revocation shall have retrospective effect. (3) Persons exempted under this section or exempted from the operation of any of the provisions of the Indian Succession Act, 1865 (10 of 1865), under section 332 of that Act are in this Act referred to as "exempted persons".*"

State of Bihar,[712] the majority held that HSA, 1956, does not apply to the parties, as they were a notified Scheduled Tribe within the meaning of Article 366(25). However, the dissenting opinion delivered by Justice Ramaswamy took a more progressive and rights-oriented view of the balance between tribal customs and constitutional equality. He noted: "*Rule of law should establish a uniform pattern for harmonious existence in a society where every individual would exercise his rights to his best advantage to achieve excellence, subject to protective discrimination. The best advantage of one person could be the worst disadvantage to another. Law steps in to iron out such creases and ensures equality of protection to individuals as well as group liberties.....I would hold that the provisions of the Hindu Succession Act, 1956 and the Indian Succession Act, 1925 though in terms, would not apply to the Scheduled Tribes, the general principles contained therein being consistent with justice, equity, fairness, justness and good conscience would apply to them.*"[713] Thus, observing that Scheduled Tribe women are entitled to inherit the property of their parents, brothers, or husbands as legal heirs through intestate succession, enjoying equal shares and absolute ownership rights alongside male heirs, in accordance with the general principles of the HSA, 1956, and correspondingly under the ISA, 1925, for tribal Christians.

The Supreme Court has raised a question about bringing tribal women under the ambit of the Hindu personal laws to enable them to claim rights over inherited properties. In the case of *Kamla Neti v. Land Acquisition Officer,*[714] the Supreme Court dealt with the dispute concerning the apportionment of compensation for acquired ancestral land, where a tribal woman claimed a one-fifth share. Her claim was rejected by the courts on the ground that the parties belonged to a Scheduled Tribe, and thus the HSA, 1956, was inapplicable. It was held that under section 2(2) of the HSA, 1956, members of Scheduled Tribes were excluded from its application; thus, the applicant, being a tribal woman, was not entitled to any right of survivorship. However, the Court, while observing that "*female tribal is entitled to parity with male tribal in intestate succession*",[715] directed the Central Government to "*into the matter and if required, to amend the provisions of the Hindu Succession Act by which the Hindu Succession Act is not made applicable to the members of the Scheduled Tribe....taking into consideration the right to equality guaranteed under Articles 14 and 21 of the Constitution of India*".[716]

Thereafter, in the case of *Tirith Kumar v. Daduram,*[717] the Supreme Court dealt with the core issue of the applicability of HSA, 1956, to the parties belonging to a Scheduled Tribe, especially when they had become 'sufficiently Hinduised',[718] having given up their customs as a part of a tribal community. The

[712] *Madhu Kishwar v. State of Bihar* (1996) 5 SCC 125.
[713] *Id*. at paras. 38-56.
[714] *Kamla Neti v. Land Acquisition Officer* (2023) 3 SCC 528.
[715] *Id*. at para. 17.
[716] *Id*. at paras. 17-18.
[717] *Tirith Kumar v. Daduram*, 2024 INSC 1005.
[718] *Id*. at para. 1.

Court upheld the right of the legal heirs of a Scheduled Tribe woman to an equal share in their maternal grandfather's ancestral property. In doing so, it urged the Parliament to look into pathways to secure the right of survivorship to female Tribals by making necessary amendments to the HSA, 1956.

Further, under the Bharatiya Nyaya Sanhita, 2023, bigamy, the act of marrying again during the life of one's husband or wife, has been penalised under Section 82.[719] However, this provision has been differently applied, depending on the personal or customary laws governing the parties. The leading case in support of this stance is the decision of the Supreme Court in the case of *Dr. Surajmani Stella Kujur v. Durga Charan Hansdah.*[720] A two-judge bench of the Supreme Court was faced with assessing whether a marriage between an Oraon and a Santhal could fall under Hindu law and whether the husband could be held liable for bigamy (then section 494 of the Indian Penal Code, 1860 (IPC, 1860)) as he had contracted a second marriage during the subsistence of the first. The Court noted that both parties were tribals, and under Section 2(2) of the HMA, 1955, the provisions of the Act do not apply to Scheduled Tribes unless specifically notified by the Central Government. Since no such notification existed, their marriage was governed solely by customary tribal practices, not by the HMA. It was also observed that *"no custom can create an offence as it essentially deals with the civil rights of the parties and no person can be convicted of any offence except for violation of law in force at the time of commission of the act charged. Custom may be proved for the determination of the civil rights of the parties including their status, the establishment of which may be used for the purposes of proving the ingredients of an offence…"*[721] The Court emphasised that for Section 494, IPC, 1860, to apply, the complainant must establish that the second marriage was void by reason of custom or law and that "*a mere pleading of a custom stressing for monogamy by itself was not sufficient unless it was further pleaded that second marriage was void by reason of its taking place during the life of such husband or wife*".[722]

This judgment reinforces the principle that customary law governs the marital relations of Scheduled

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[719] The Bharatiya Nyaya Sanhita, 2023, s. 82: "*Marrying again during lifetime of husband or wife.— (1) Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Exception.—This sub-section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge. (2) Whoever commits the offence under sub-section (1) having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*"

[720] *Dr. Surajmani Stella Kujur v. Durga Charan Hansdah* (2001) 3 SCC 13.

[721] *Id*. at para. 08.

[722] *Id*. at para. 14.

Tribes unless brought under the purview of codified personal laws by notification. It also underlines that criminal liability cannot be founded on custom alone, thereby preserving the autonomy of tribal customs while maintaining the constitutional requirement that offences must be defined by statutory law.

Therefore, while Scheduled Tribes are generally exempted from the operation of the Hindu personal law statutes, they retain the option to be governed by secular laws, depending on their personal preference and circumstances. These provisions thus maintain the flexibility necessary to accommodate their cultural and legal diversity.

4.7. Labour Laws

Labour legislation in India plays an important role in safeguarding the rights of tribal communities, who are often engaged in unorganised, seasonal or exploitative forms of labour. Many of them face vulnerabilities such as low wages, unsafe working conditions, and bondage due to debt or social hierarchies. The Indian legal system provides for several labour laws offering protections against such exploitative labour practices, including for the Scheduled Tribes.

The Minimum Wages Act, 1948, ensures that everyone receives fair remuneration. Under Section 2(i) of the Act, an 'employee' is defined broadly to include any person employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in any scheduled employment.[723] This wide definition makes it possible to bring tribal workers, even those engaged in seasonal or casual forms of work, under the protective umbrella of the Minimum Wages Act, 1948.

The Bonded Labour System (Abolition) Act, 1976, addresses the issue of debt bondage, a practice historically prevalent in tribal areas wherein people work to repay the debts contracted or advances received, even though the value of the work they carry out exceeds the amount of their debts.[724] The Act criminalises any form of bonded labour and further mandates the rehabilitation of freed labourers. The vigilance committee formed under the Bonded Labour System (Abolition) Act, 1976, also provides for

[723] The Minimum Wages Act, 1948, s. 2: "*Interpretations.- (i) "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union*."

[724] United Nations Human Rights Office of the High Commissioner, *Debt bondage remains the most prevalent form of forced labour worldwide* (Sep. 15, 2016), *available at*: https://www.ohchr.org/en/press-releases/2016/09/debt-bondage-remains-most-prevalent-form-forced-labour-worldwide-new-un (last visited on Nov. 12, 2025).

the nomination of three persons belonging to the Scheduled Tribe/Scheduled Caste communities in order to ensure fair supervision over the implementation of the provisions of the Act.[725] Similarly, the Child Labour (Prohibition and Regulation) Act, 1986, prohibits the engagement of children in hazardous occupations, including child prostitution or bonded labour in industries like carpet weaving, brick kilns, and *bidi*, matches and firework production.[726] It also regulates their working conditions in other sectors such as agriculture and plantation work.[727] Children from Scheduled Tribe communities are often found working in these sectors due to poverty, migration, and lack of educational access. The Act thus seeks to safeguard their right to education, health, and childhood by preventing their employment in such unsafe and exploitative environments.

Tribals working in industries like plantations, construction, and mining are also protected under sector-specific legislation such as the Plantations Labour Act, 1951, the Mines Act, 1952, and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, which provide for their safety, welfare, housing, and social security measures.

5. Institutional Initiatives

In order to address the diverse needs of these communities, a range of schemes, programmes, and institutional mechanisms have been created under the aegis of various ministries and allied agencies. These initiatives focus on areas including education, health, livelihood promotion, financial inclusion, skill development and preservation of cultural heritage. Alongside these measures, specialised organisations have also been set up to ensure effective implementation. Together, they aim to promote inclusive growth, justice and sustainable development for tribal communities across the country.

5.1. Key Welfare Schemes

5.1.1. Development Action Plan for Scheduled Tribes, 1974

The Development Action Plan for Scheduled Tribes (DAPST)[728] was initiated in 1974-75 during the Fifth Five-Year Plan to accelerate tribal development. Its primary aim is to channel funds and benefits from all sectors of development, specifically to the Scheduled Tribe population. DAPST provides a dedicated source of funding, with 42 Central Ministries and Departments earmarking between 4.3 per cent and 17.5 per cent of their scheme allocations for tribal welfare.

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[725] The Bonded Labour System (Abolition) Act, 1976, s. 13(2)(b).

[726] Child Labour (Prohibition and Regulation) Act, 1986, s. 3, sch. part. B.

[727] Abdul Latheef Naha, "Tribal Children Engaged in Plantation Labour" *The Hindu,* Jul. 22, 2023.

[728] Ministry of Tribal Affairs, *Development Action Plan for Scheduled Tribes, Scheduled Tribe Component (STC) Monitoring System*, *available at:* https://stcmis.gov.in/ (last visited on Sep. 30, 2025).

The Ministry of Tribal Affairs oversees DAPST implementation and monitoring through an online system, which tracks fund utilisation, project locations, beneficiaries, and outcomes, using data from the Public Financial Management System (PFMS). The fund earmarking is guided by criteria recommended by the 2010 Task Force and subsequent revisions by the Ministry of Finance and NITI Aayog, with new ministries such as Skill Development, Development of North-Eastern Region, Animal Husbandry, Power, and Food Processing included under DAPST.

5.1.2. National Forest Policy, 1988

The National Forest Policy, 1988[729] marked a shift in the Indian approach to forest governance. The policy explicitly protects the rights and concessions of the tribals and forest-dwelling communities as a key priority. A key feature of the policy includes its emphasis on the relationship between local and tribal communities and forests. The policy seeks to meet the basic livelihood needs of rural and tribal populations, including fuelwood, fodder, Minor Forest Produce (MFP), and small timber, while ensuring that ecological priorities are not compromised. It stresses massive afforestation and social forestry programmes, especially on degraded lands, and aims to transform forest conservation into a people's movement, with special emphasis on the involvement of women. Importantly, it also laid the foundation for later legal developments such as the PESA Act, 1996 and the FRA, 2006, both of which operationalised its vision of tribal participation and forest-based self-governance.

5.1.3. Pradhan Mantri Adi Adarsh Gram Yojana, 1997

The Pradhan Mantri Adi Adarsh Gram Yojana (PMAAGY)[730] evolved from the earlier Special Central Assistance to Tribal Sub-Scheme, which was initiated in 1977-78 and renamed in 2017 after the merger of Plan and Non-Plan expenditures. The Scheme provided financial support to States with notified Scheduled Tribe populations to address development gaps in sectors such as education, health, agriculture, skill development, and employment, supplementing Central and State programmes.

In 2019-20, a gap analysis using Census 2011 and Mission Antyodaya[731] data identified around 145,000 tribal villages with 25 per cent or more Scheduled Tribe population lacking basic infrastructure and services. To address this, the scheme was restructured into PMAAGY, which focuses on integrated

[729] Ministry of Environment, Forest and Climate Change, *Aim and Objectives under Forest Policy, 1988* (Jan. 19, 2020), *available at:* https://www.pib.gov.in/newsite/erelcontent.aspx?relid=57051 (last visited on Oct. 7, 2025).

[730] Ministry of Social Justice and Empowerment, *Pradhan Mantri Adi Adarsh Gram Yojana*, *available at:* https://pmagy.gov.in/ (last visited on Oct. 12, 2025).

[731] Mission Antyodaya was launched by the Ministry of Rural Development with the goal to realise the vision of poverty-free India by 2022-23. Ministry of Rural Development, *Mission Antyodaya*, *available at:* https://missionantyodaya.dord.gov.in/ (last visited on Oct. 11, 2025).

socio-economic development of tribal-dominated villages.[732] Between 2021-22 and 2025-26, 36,428 villages with at least 50 per cent Scheduled Tribe population and 500 Scheduled Tribe residents have been targeted.

PMAAGY emphasises preparing Village Development Plans reflecting local needs and aspirations, maximising coverage of individual and family benefit schemes, and improving infrastructure in critical sectors such as roads, telecom, schools, *anganwadis*, health centres, drinking water, drainage, and solid waste management. A provision of Rs. 2.20 crores per village has been made for gap-filling activities, with states being encouraged to converge resources from Scheduled Tribe Component funds and other available financial sources.

5.1.4. Eklavya Model Residential Schools, 1997

The Eklavya Model Residential School (EMRS)[733] scheme was revamped in 2018-19 to ensure quality education for tribal children in their own environment. EMRSs are being established in every block with more than 50 per cent Scheduled Tribe population and at least 20,000 tribal persons. The schools are designed on the lines of Navodaya Vidyalayas, with special focus on sports, skill development, and holistic education. The Report of the Ministry of Tribal Affairs for 2023-2024 shows that initially, 288 schools were sanctioned, but the revamped scheme approved 452 new schools, taking the total target to 740 schools by 2025.[734]

Each EMRS is to accommodate 480 students, with modern classrooms, labs, libraries, hostels, staff quarters, and sports facilities. 15 Centres of Excellence for sports are also being set up. The capital cost per school has been revised to Rs. 37.8 crores in plain areas and Rs. 48 crores in hilly/North-Eastern/left-wing extremism-affected regions, while recurring costs have been enhanced to Rs. 1.09 lakhs per student annually.

As of 31 March 2024, 699 EMRSs have been sanctioned, and 404 are functional. States are responsible for providing 15 acres of encumbrance-free land and completing construction within two years, or alternatively running schools from suitable rented buildings until construction is completed. The implementation is overseen by the National Education Society for Tribal Students (NESTS).

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[732] Ministry of Tribal Affairs, *Pradhan Mantri Adi Adrash Gram Yojana aims at transforming villages with significant tribal populations into model village*, *available at:* https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1882862 (last visited on Sep. 23, 2025)

[733] Ministry of Tribal Affairs, *Eklavya Model Residential Schools*, *available at:* https://tribal.nic.in/EMRS.aspx (last visited on Oct. 4, 2025).

[734] Government of India, "Annual Report 2023-24" (Ministry of Tribal Affairs, 2024), p. no. 77.

5.1.5. Development of Particularly Vulnerable Tribal Groups, 1998

The Scheme for Development of Particularly Vulnerable Tribal Groups (PVTGs)[735] covers 75 identified groups across 18 states and the Union Territory of Andaman and Nicobar Islands, focusing on the socio-economic upliftment of the most vulnerable tribal communities. The scheme is flexible, allowing states to design Conservation-cum-Development (CCD) Plans tailored to the local needs in sectors such as education, health, sanitation, nutrition, livelihoods, conservation of culture and heritage, and habitat rights.

These plans are prepared through micro-level planning, with emphasis on gender equity, requiring that at least one-third of beneficiaries be women or girls. Funds are released annually based on approved CCD plans, with states being required to submit gender-disaggregated beneficiary data at the appraisal stage.

5.1.6. Post-Matric Scholarships for Scheduled Tribe Students, 2006

The Post-Matric Scholarship Scheme[736] provides financial assistance to Scheduled Tribe students for pursuing senior-secondary and higher education anywhere in India. It is open to Scheduled Tribe students with parental income not exceeding Rs. 2.5 lakhs per annum and domiciled in the respective state or union territory. The scheme is implemented through state governments and union territory administrations, which are responsible for identification, verification, and timely disbursement of scholarships. The funding ratio is 75:25 between the Centre and the States, 90:10 for the Northeastern and hilly States, and 100 per cent Central funding for Union Territories without legislatures. The scheme fully covers tuition fees as fixed by the State Fee Regulatory Committees, with ceilings of Rs. 2.5 lakhs annually for engineering courses, Rs. 6 lakhs for MBBS/MS/MD courses, and Rs. 1 lakh for other courses. In addition, maintenance allowances are provided annually depending on the course. Scheduled Tribe students with disabilities also receive additional grants of Rs. 600 per month for day scholars and Rs. 800 per month for hostellers.

5.1.7. National Scholarship (Top-Class) Scheme, 2007

The National Scholarship (Top Class) Scheme[737] was introduced in 2007-08 with the aim of encouraging meritorious Scheduled Tribe students from families with an annual income not exceeding

[735] Ministry of Tribal Affairs, *Welfare of particularly vulnerable Tribal groups*, *available at:* https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1577166 (last visited on Oct. 7, 2025).

[736] Ministry of Minority Affairs, *Post-Matric Scholarship Scheme*, *available at:* https://www.minorityaffairs.gov.in/ (last visited on Oct. 8, 2025).

[737] Ministry of Tribal Affairs, *Pre-Matric Scholarship Scheme*, *available at:* https://tribal.nic.in/ScholarshiP.aspx (last visited on Sep. 8, 2025).

Rs. 6 lakhs to pursue graduate and postgraduate studies in 265 notified institutions. Fully funded by the Ministry of Tribal Affairs, the scheme covers tuition and non-refundable fees in government or government-funded institutions, with a ceiling of Rs. 2.5 lakhs annually for private institutions. In addition, Scheduled Tribe students receive financial support in the form of a stipend of Rs. 36,000 per annum, Rs. 5,000 for books and stationery, and a one-time grant of Rs. 45,000 for a computer and accessories. Funds for stipend and computer grants are transferred directly to the beneficiaries' bank accounts. In 2023-24, Rs. 230 crores were fully utilised under the Scheme, covering both fresh and renewal applications submitted through the National Scholarship Portal.[738] To ensure transparency and efficiency, the Ministry has also integrated the Scheme with the PFMS Expenditure Advance Transfer module,[739] which allows the Program Implementing Agencies to manage and report expenditure filing, transferring funds, advances, and its settlement within government schemes, thereby strengthening fund monitoring and implementation.

5.1.8. Pre-Matric Scholarships for Scheduled Tribe Students, 2012

The Pre-Matric Scholarship Scheme for Scheduled Tribe students[740] studying in Classes IX and X aims to reduce dropout rates during the transition from elementary to secondary education and to improve their chances of progressing to post-matric levels. It is a centrally sponsored scheme implemented through state governments and union territories, with funding shared in the ratio of 75:25 between the centre and the state, except in the northeastern and hilly states, where it is 90:10, and 100 per cent central share for union territories without legislatures. The scheme is open to Scheduled Tribe students whose parents' income does not exceed Rs. 2.5 lakhs per annum, provided they are regular full-time students in government or government-recognised schools and are not availing any other Central pre-matric scholarship.

Under this scheme, day scholars receive Rs. 225 per month and hostellers receive Rs. 525 per month for a period of 10 months, along with book and ad hoc grants of Rs. 750 and 1000, respectively. In addition, students with disabilities are entitled to a further grant of Rs. 600 per month for day scholars and Rs. 800 per month for hostellers. The scheme offers a continuous monthly scholarship, subject to good conduct and regular attendance.

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738 Government of India, "Annual Report 2023-24" (Ministry of Tribal Affairs, 2024), p. no. 102.

739 Ministry of Finance, *Public Financial Management System*, *available at:* https://pfms.nic.in/Home.aspx (last visited on Oct. 2, 2025).

740 Ministry of Tribal Affairs, *Pre-Matric Scholarship Scheme*, *available at:* https://dbttribal.gov.in/ (last visited on Sept. 8, 2025).

5.1.9. National Overseas Scholarship for Scheduled Tribe Students, 2014

The National Overseas Scholarship Scheme[741] is a Government of India initiative designed to support Scheduled Tribe students in pursuing higher studies abroad at the Master's, Ph.D., and post-doctoral levels. Annually, 17 Scheduled Tribe candidates and 3 candidates from PVTGs are selected. Eligibility requires a family income not exceeding Rs. 6.00 lakhs per annum, a minimum of 55 per cent marks in the qualifying examination, and adherence to upper age limits of 32 years for Master's, 35 years for Ph.D., and 38 years for Post-Doctoral courses. Grants are disbursed through Indian Missions/Embassies abroad.

The scholarship covers extensive benefits, including an annual maintenance allowance (USD 15,400 in the United States, £9,900 in the United Kingdom), contingency and equipment allowance (USD 1,532 in the United States, £1,116 in the United Kingdom), tuition fees, medical insurance, visa fees, incidental journey expenses, air passage, and local travel costs. Applications are invited via the dedicated portal, and to ease access, the Scheme has also been integrated with the UMANG App,[742] enabling students to apply and track applications digitally.

5.1.10. National Fellowship for Scheduled Tribe Students, 2015

The National Fellowship for Scheduled Tribe Students[743] is a Central Sector Scheme fully funded by the Government of India, aimed at providing financial assistance to Scheduled Tribe students pursuing higher studies such as M.Phil. and Ph.D. from recognised universities, institutions, and colleges covered under the University Grants Commission (UGC) Act, 1956, deemed universities receiving UGC aid, government-funded institutions, and institutes of national importance. The Fellowship covers up to two years for M.Phil. and five years for Ph.D. students, with revised rates aligned with UGC norms. For M.Phil. scholars, the fellowship is Rs. 37,000 per month, with annual contingency support of Rs. 10,000 (for Humanities/Social Sciences) and Rs. 12,000 (for Science/Engineering/Technology). For Ph.D. scholars, the fellowship is Rs. 37,000 per month for the first two years and Rs. 42,000 for the remaining three years, with contingency support of Rs. 20,500 (for Humanities/Social Sciences) and Rs. 25,000 (for Science/Engineering/Technology). In addition, scholars receive House Rent Allowance at UGC rates and scholars with disabilities are entitled to an escort allowance (financial assistance to

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[741] Ministry of Tribal Affairs, *About the National Overseas Scholarship for Scheduled Tribe Students and Portal*, *available at:* https://overseas.tribal.gov.in/ (last visited on Oct. 8, 2025).

[742] UMANG provides a single platform for all Indian Citizens to access pan India e-Gov services ranging from Central to Local Government bodies. Ministry of Electronics and Information Technology, *UMANG*, *available at:* https://web.umang.gov.in/landing/ (last visited on Oct. 12, 2025).

[743] Ministry of Tribal Affairs, *About the National Fellowship Scheme and Portal*, *available at:* https://fellowship.tribal.gov.in/ (last visited on Oct. 8, 2025).

cover travel expenses of an attendant for persons with disabilities) of Rs. 2000 per month.

5.1.11. Support to Tribal Research Institutes, 2017

The Tribal Research Institutes (TRIs)[744] are state-supported institutions engaged in research, evaluation studies, and data collection to identify challenges in tribal socio-economic development, while also preserving tribal culture, traditions, and knowledge systems. They function as knowledge hubs for evidence-based policy, legislative inputs, and capacity building. To strengthen these institutes, the Ministry of Tribal Affairs implements the Centrally Sponsored Scheme 'Support to TRIs', providing 100 per cent grant-in-aid for infrastructure, research, documentation, training, and cultural promotion.

Under this scheme, TRIs undertake activities such as setting up tribal museums, libraries, and digital repositories, documenting tribal languages, customs, and medicinal practices, as well as conducting monitoring and evaluation of government interventions. TRIs also focus on capacity-building programmes for both tribals and persons/institutions associated with tribal affairs, pertaining to the legislations affecting tribals (such as FRA, 2006; PESA Act, 1996; PoA Act, 1989 and LARR Act, 2013), training artisans in traditional crafts, organising tribal festivals, facilitating cultural exchanges, and initiating action research projects directly beneficial to tribal communities. There are 28 TRIs across the country, along with the National Tribal Research Institute (NTRI) established in Delhi. The funding is based on annual action plans submitted by TRIs and approved by the Project Approval Committee chaired by the Secretary, Ministry of Tribal Affairs.[745]

5.1.12. Van Dhan Yojna, 2018

The Van Dhan Yojana[746] is a tribal livelihood initiative that establishes Van Dhan Self-Help Groups (VDSHGs) at the village level, each comprising up to 20 forest dwellers engaged in gathering, processing, and value addition of MFP, agricultural products, and medicinal plants. 15 VDSHGs are grouped into a Van Dhan Vikas Kendra (VDVK), bringing together up to 300 members to benefit from economies of scale in training, raw material aggregation, branding, packaging, and marketing. The scheme leverages tribal knowledge and skills to create community-based enterprises, providing sustainable income and entrepreneurship opportunities.

The Tribal Cooperative Marketing Development Federation of India supports VDVKs with training, toolkits, raw materials, and market access, while state governments provide land or buildings for the centres. The training programmes under the scheme also integrate value addition, packaging, branding,

[744] Ministry of Tribal Affairs, *Tribal Research Institute*, *available at:* https://tritribal.gov.in/ (last visited on Oct. 9, 2025).

[745] Government of India, "Annual Report 2023-24" (Ministry of Tribal Affairs, 2024), p. no. 20.

[746] Ministry of Tribal Affairs, *Pradhan Mantri Van Dhan Yojana*, *available at:* https://trifed.tribal.gov.in/hi/pmvdy (last visited on Nov. 5, 2025).

and marketing to strengthen tribal entrepreneurship. State-level advocacy and coordination with nodal departments ensure effective implementation, including marketing of MFP under the Minimum Support Price mechanism and operationalisation of all sanctioned VDVKs.

5.1.13. Pradhan Mantri Janjati Adivasi Nyaya Maha Abhiyan, 2023

The Government of India launched thePradhan Mantri Janjati Adivasi Nyaya Maha Abhiyan (PM-JANMAN)[747] on 15 November 2023, with an outlay of about Rs. 24,000 crores, to improve the socio-economic conditions of PVTGs. The mission focuses on 11 critical interventions across nine ministries/departments, aiming to provide PVTG households and habitations with basic facilities such as housing, clean drinking water, sanitation, education, health and nutrition, road and telecom connectivity, and sustainable livelihood opportunities. To monitor progress, a PM-JANMAN portal has been developed by the Ministry of Tribal Affairs for real-time reporting by block-level officers, who upload details of information, education, and communication campaigns, camps, beneficiaries, and outcomes.

5.1.14. Pradhan Mantri Jan Jatiya Vikas Mission, 2023

The Pradhan Mantri Jan Jatiya Vikas Mission (PMJVM)[748] has been launched by the Ministry of Tribal Affairs through the merger of two existing livelihood schemes, namely, the 'Mechanism for Marketing of MFP through Minimum Support Price (MSP) and Development of Value Chain for MFP' and the 'Institutional Support for Development and Marketing of Tribal Products/Produce.' The guidelines for the scheme were notified on 27 March 2023.

The scheme provides for the fixation and declaration of MSP for selected MFPs. Procurement and marketing operations at the notified MSP are undertaken by designated State Agencies whenever the prevailing market price falls below the stipulated MSP. Alongside immediate procurement measures, the Scheme also addresses long-term concerns, such as sustainable collection practices, value addition, infrastructure development, capacity building, and the creation of a robust knowledge and market intelligence base for tribal produce.

Under PMJVM, the Ministry of Tribal Affairs has notified MSPs for 87 MFPs/commodities. A Minor Forest Produce Pricing Cell was constituted on 29 February 2024 to recommend MSP fixation or revision, and the addition or deletion of items in the MSP list. Revolving funds, which are 100 per cent

[747] Ministry of Tribal Affairs, *Pradhan Mantri Janjati Adivasi Nyaya Maha Abhiyan*, *available at:* https://tribal.nic.in/PM-JANMAN.aspx (last visited on Oct. 3, 2025).

[748] Ministry of Tribal Affairs, Pradhan Mantri Janjatiya Vikas Mission, *available at:* https://trifed.tribal.gov.in/sites/default/files/2023-06/PMJVM%20Guidelines%2027.03.2023.pdf (last visited on Oct. 9, 2025).

centrally funded, are provided for procurement as per the plan submitted by State Implementing Agencies or Nodal Departments. Any loss incurred in procurement operations is shared between the Centre and States in the ratio of 75:25.

5.1.15. Dharti Aabha Janjatiya Gram Utkarsh Abhiyan, 2025

The *Dharti Aabha Janjatiya Gram Utkarsh Abhiyan*[749] is an initiative aimed at bridging the persistent development gaps in tribal regions. It adopts a comprehensive approach by focusing on critical areas such as infrastructure, healthcare, education, and livelihood generation. It emphasises the convergence of various government schemes, ensuring that benefits reach the grassroots without duplication or exclusion. The initiative aligns with the SDGs to drive holistic tribal development through targeted interventions. These include:

- *pucca* housing, piped water, electricity, Liquid Petroleum Gas, and health security for tribal families.
- all-weather roads, internet access, and improved health, nutrition, and education facilities at the village level.
- skill development, entrepreneurship, and professional courses through Skill India.[750]
- strengthening of livelihoods via tourist home-stays and support for agriculture, animal husbandry, and fisheries, ensuring sustainable self-reliance.
- expansion of access and quality of education through *Samagra Shiksha Abhiyan*, with improved infrastructure (including hostels to ensure continuity from school to higher education), digital access, and culturally relevant education.
- strengthening healthcare, via Mobile Medical Units, and targeted interventions for sickle cell disease, with a special focus on achieving national standards in infant mortality rate, maternal mortality rate, and immunisation, thus ensuring healthy lives and dignified ageing.

5.1.16. Tribal Research Information, Education, Communication and Events

The Tribal Research Information, Education, Communication and Events (TRI-ECE)[751] is a Central Sector Scheme aimed at promoting research, documentation, and dissemination of information on

[749] Ministry of Tribal Affairs, *Launch of Dharti Aabha Janjatiya Gram Utkarsh Abhiyan*, *available at:* https://www.pib.gov.in/PressReleasePage.aspx?PRID=2130598 (last visited on Oct. 7, 2025).

[750] Skill India Digital Hub is a platform to skill, reskill and upskill Indian individuals through an online training platform, API-based trusted skill credentials, payment and discovery layers for jobs and entrepreneurial opportunities. Ministry of Skill Development & Entrepreneurship, *About, Skill India Digital Hub*, *available at:* https://www.skillindiadigital.gov.in/about-us (last visited on Oct. 2, 2025).

[751] Ministry of Tribal Affairs, *Tribal Research, Information, Education, Communication and Events*, *available at:* https://www.pib.gov.in/PressReleasePage.aspx?PRID=2159087 (last visited on Oct. 10, 2025).

tribal issues, culture, and traditions. Under this scheme, reputed research institutes, universities, and organisations are supported in conducting studies, publishing books, creating audio-visual content, and documenting tribal traditions, languages, agricultural practices, art forms, and folklores. The scheme also facilitates cultural exchange programmes, literary festivals, competitions, and capacity-building initiatives for tribal individuals and institutions.

Projects submitted online or physically are evaluated by the TRI Division and approved by the Project Approval Committee, chaired by the Secretary, Tribal Affairs. The key objectives of the scheme include promoting action-oriented research on tribal life and livelihoods, formulating innovative strategies for sustainable development, supporting ecological conservation, spreading awareness about government interventions, evaluating development programmes, and organising events, trainings, seminars, and exposure visits to enhance understanding of tribal culture and associated policy measures.

The Ministry of Tribal Affairs also provides grants of up to Rs. 30,000 per project to eminent authors, scholars, or institutions for writing or translating works on tribal culture, including oral folklore. Financial support under the scheme also extends to state governments, academic and research institutions, government and non-government organisations, public-private partnerships, and Centres of Excellence in research and development.

5.2. Government Bodies

5.2.1. Tribal Cooperative Marketing Development Federation of India Limited

The Tribal Cooperative Marketing Development Federation of India Limited (TRIFED)[752] is a multi-state cooperative society established in 1987 under the Multi-State Cooperative Societies Act, 1984. It functions both as a service provider and a market developer for tribal products. Through its retail network under the brand "TRIBES INDIA", TRIFED markets tribal produce across the country. In addition, it serves as a capacity builder by imparting training to Scheduled Tribe artisans and MFP gatherers.

TRIFED operates through a network of 14 regional offices and markets tribal products via 118 TRIBES INDIA outlets across the country. These include 99 own sales outlets, 11 consignment sales outlets, and 8 franchisee outlets, in addition to periodic exhibitions. To expand outreach, TRIFED also promotes tribal products through e-commerce platforms. To ensure sustainable livelihood opportunities for tribal artisans, TRIFED is actively engaged in building an institutional framework for marketing systems. It has empanelled 3,069 tribal suppliers, which include individual tribal artists, Self Help Groups

[752] Ministry of Tribal Affairs, *Tribal Cooperative Marketing Development Federation of India Limited, available at:* https://trifed.tribal.gov.in/home (last visited on Sep. 27, 2025).

(SHGs),[753] cooperative societies, and state government organisations. By connecting these suppliers with structured markets, TRIFED aims to enhance income generation, promote entrepreneurship, and preserve traditional tribal crafts.

5.2.2. National Scheduled Tribes Finance and Development Corporation

The National Scheduled Tribes Finance and Development Corporation (NSTFDC),[754] set up on 10 April 2001, is an apex organisation under the Ministry of Tribal Affairs dedicated to the economic development of Scheduled Tribes. Incorporated as a government company under Section 8 of the Companies Act, 2013, it is managed by a Board of Directors comprising representatives from the Central Government, State Channelising Agencies (SCAs),[755] National Bank for Agricultural and Rural Development, the Industrial Development Bank of India, TRIFED, and eminent tribal representatives. The NSTFDC provides concessional financial assistance to promote self-employment, skill development, and income generation among Scheduled Tribe communities.

The objectives of NSTFDC include identifying viable economic activities for Scheduled Tribes, providing institutional and on-the-job training to enhance skills, strengthening SCAs and other agencies, assisting in project formulation and implementation, and monitoring the outcomes of funded schemes. The eligibility for assistance covers individual Scheduled Tribe members and SHGs with an annual family income of up to Rs. 3 lakh (rural and urban), as well as cooperative societies with at least 80 per cent Scheduled Tribe membership meeting the same income criteria.

NSTFDC runs several schemes, including the Term Loans for viable income-generating projects in sectors like industry, agriculture and service, up to Rs. 50 lakh per unit with up to 90 per cent financial support; loans up to Rs. 2 lakh to Scheduled Tribe women under the Adivasi Mahila Sashaktikaran Yojana, a concessional scheme for the economic development of eligible Scheduled Tribe women; Micro Credit Scheme to meet small loan requirements of the Scheduled Tribe members providing up to Rs. 50,000 per Scheduled Tribe member or Rs. 5 lakh per SHG; Adivasi Shiksha Rrinn Yojana for education loans up to Rs. 10 lakh for Scheduled Tribe students pursuing professional/technical studies, with

[753] Self Help Groups (SHGs) are profit-making groups whose members all belong to Scheduled Tribes and have annual family incomes below twice the poverty line. These groups can receive micro-credit financial assistance through State Channelizing Agencies, provided they maintain eligibility throughout the loan period and include only Scheduled Tribe members from the state or union territory where their tribe is officially recognized.

[754] Ministry of Tribal Affairs, *National Scheduled Tribes Finance and Development Corporation*, *available at:* https://nstfdc.tribal.gov.in (last visited on Oct. 4, 2025).

[755] State Channelizing Agencies are bodies nominated by state governments that act as intermediaries to implement schemes by national-level financial institutions ensuring funds and assistance reach individual beneficiaries for economic development and skill enhancement. Ministry of Social Justice and Empowerment, *Channel Partners*, *available at:* https://nsfdc.nic.in/channel-patrners/scas (last visited on Sep. 24, 2025).

interest subsidy support from the Ministry of Education.

5.2.3. National Commission for Scheduled Tribes

The National Commission for Scheduled Tribes (NCST)[756] was set up on 19 February 2004 vide the Constitution (Eighty-ninth Amendment) Act, 2003, which inserted a new Article 338A[757] in the Constitution. It is the apex constitutional body responsible for safeguarding the rights of the Scheduled Tribes in India. The NCST consists of a Chairperson, a Vice-Chairperson, and three Members (including one woman). The main duties of the Commission are to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes and to evaluate the working of such safeguards, and to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes.

The functions of the NCST, as laid down in Article 338A(5), include investigating and monitoring all matters relating to constitutional and legal safeguards provided for Scheduled Tribes and evaluating their implementation. The NCST is empowered to inquire into specific complaints regarding the deprivation of rights of the Scheduled Tribe. It also advises and participates in the planning process of socio-economic development and evaluates the progress of such initiatives at both the Union and State levels. In addition, it submits annual and special reports to the President of India on these safeguards and makes recommendations for their effective implementation.

For the discharge of these responsibilities, the NCST enjoys the powers of a civil court under Article 338A(8). These include summoning and examining witnesses, requiring the discovery and production of documents, receiving evidence on affidavits, requisitioning public records, and issuing commissions for the examination of witnesses and documents. Furthermore, under Article 338A(9), both the Union and State Governments are constitutionally mandated to consult the NCST on all major policy matters affecting Scheduled Tribes.

The NCST also performs additional functions. These include measures to secure ownership rights for tribals over MFP, safeguard their rights over mineral and water resources, and develop viable livelihood strategies. The NCST also plays a vital role in ensuring effective relief and rehabilitation of tribal groups displaced by development projects, preventing land alienation, and rehabilitating those already affected. It works to enhance tribal participation in forest protection and social afforestation, ensure full implementation of the PESA Act, 1996, and reduce dependence on shifting cultivation practices that

[756] The National Commission for Scheduled Tribes, *available at:* https://ncst.nic.in/ (last visited on Sep. 17, 2025).

[757] The Constitution of India, 1950, art. 338A: "*National Commission for Scheduled Tribes - (1) There shall be a Commission for the Scheduled Tribes to be known as the National Commission for the Scheduled Tribes.....*"

often lead to land degradation and economic disempowerment.

5.2.4. National Education Society for Tribal Students

The National Education Society for Tribal Students (NESTS)[758] is an autonomous organisation under the Ministry of Tribal Affairs, Government of India. It was registered as a society under the Societies Registration Act, 1860, in 2019, with the primary mandate of implementing the scheme of EMRSs. The society is headed by the Commissioner, NESTS, an officer of the rank of Joint Secretary to the Government of India. NESTS has been established with the objective of imparting quality education to the Scheduled Tribe children through the establishment of EMRS.

Thus, to streamline its operations and ensure the effective functioning of EMRSs across the country, several initiatives have been taken by NESTS. These include programmes focused on sports, culture, value education, computer skills, personality development, and exposure visits. Partnerships with institutions like the Indian Space Research Organisation under the 'JAYAKAR Space Education Programme'[759] and the Dakshana Foundation for scholarship training aim to expand learning opportunities.[760] NESTS has also introduced Smart Classrooms, Skill Labs under Skill Acquisition and Knowledge Awareness for Livelihood Promotion,[761] and Academic Talent and Learning Support centres to enhance academic and technical learning. Further, activities such as National Sports Meets, cultural and literary fests, bridge courses for Class VI students, and adventure programmes through institutes like Atal Bihari Vajpayee Institute of Mountaineering and Allied Sports promote confidence, teamwork, and exposure among tribal students.[762]

NESTS aims to establish schools that provide quality modern education to talented tribal children from rural areas, regardless of their socio-economic background. These schools focus on value-based learning, environmental awareness, sports, and cultural preservation, while promoting national integration through a common curriculum, inter-regional exchange, and excellence in academics, sports, and vocational skills. As per records, NESTS currently has 728 sanctioned EMRS and 495 functional

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[758] National Education Society for Tribal Students, *Tribal Transformation Through Education*, *available at:* https://nests.tribal.gov.in/ (last visited on Oct. 5, 2025).

[759] National Education Society for Tribal Students, *JAYAKAR (Jan Jatiya Yuva Antriksha Karyakram) is a space education programme undertaken for selected EMRS students in collaboration with ISRO*, *available at*: https://nests.tribal.gov.in/show_content.php?lang=1&level=1&ls_id=709&lid=370 (last visited on Nov. 5, 2025).

[760] Dakshana Foundation, a non-government organisation, works towards reducing poverty through education by identifying talented yet underprivileged students and offering them rigorous 1-2 years' coaching to prepare for IIT and medical entrance examinations.

[761] Ministry of Skill Development and Entrepreneurship, *SANKALP*, *available at:* https://www.sankalp.msde.gov.in/#/web/web-home (last visited on Oct. 9, 2025).

[762] Atal Bihari Vajpayee Institute of Mountaineering and Allied Sports, *available at:* https://abvimas.org/ (last visited on Oct. 9, 2025).

EMRS, with 147,609 students.[763] The Department of Expenditure has approved the creation of 38,480 posts for 740 EMRS, out of which the recruitment process for 10,391 teaching and non-teaching staff has already been initiated in the first phase.

5.2.5. National Tribal Research Institute

The National Tribal Research Institute (NTRI)[764] was inaugurated on 7 June 2022 at the Indian Institute of Public Administration, New Delhi. It serves as a national-level hub for tribal research and policy support. It mentors State TRIs to ensure quality and uniformity in research, evaluation studies, training, and awareness initiatives. The institute focuses on evidence-based research, capacity building, and showcasing tribal heritage, including languages, habitats, and culture. Currently mentored by the TRI of Uttarakhand, the NTRI has already begun organising impactful programmes and events to strengthen coordination and management of tribal research nationwide.

[763] National Education Society for Tribal Students, *Tribal Transformation Through Education*, *available at:* https://nests.tribal.gov.in/ (last visited on Oct. 5, 2025).

[764] Ministry of Tribal Affairs, *National Tribal Research Portal*, *available at:* https://tritribal.gov.in/ (last visited on Oct. 3, 2025); Indian Institute of Public Administration, *National Tribal Research Institute*, *available at:* https://www.iipa.org.in/cms/public/page/ntri (last visited on Oct. 3, 2025).

CHAPTER IV: COMPARATIVE CONSTITUTIONAL, LEGISLATIVE, AND INSTITUTIONAL MEASURES

This chapter offers a summary of the varied constitutional, legislative and policy approaches adopted by select jurisdictions in the Nordic, Oceania, North American, and South American regions of the world towards the protection of the (inherent and other) rights of indigenous peoples present within their domestic territories, spanning the following themes: express recognition as indigenous peoples; self-determination, self-governance, participation, and consultation; ownership and/or use of land, forest, and natural resources; preservation of culture, tradition, religion, and language; customary laws and legal systems; and non-discrimination and affirmative action.

1. Nordic countries

1.1. Norway

1.1.1. Historical Treatment

The *Sámi* people are indigenous to the *Sápmi* belt, an area stretching across the northern parts of Norway, Sweden and Finland, and the Russian Kola Peninsula.[765] Despite being divided by national boundaries, the *Sámi* exist as one people, with a common identity and shared historical, cultural and linguistic bonds.[766] Through the years, the *Sámi* people have followed a semi-nomadic lifestyle, traditionally relying on hunting, fishing, farming, reindeer herding, and handicrafts.[767] The *Sámi* people are collectively organised according to the *siida* system, which plays a crucial role in dispute resolution, the distribution of land, water and resources among *Sámi* individuals, and the management of reindeer herds, hunting and fishing.[768]

The rights and obligations of the *Sámi* people have been codified since 1751 in the Lapp Kodicill, an amendment annexed to the border agreement between Norway and Sweden, which the *Sámi* people assert has the legal status of a binding treaty under international law.[769] The Lapp Kodicill guaranteed

[765] International Work Group for Indigenous Affairs, *The Indigenous World 2025* (39th edn., 2025), p. no. 499.

[766] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 3.

[767] *Id*. at para. 5; International Work Group for Indigenous Affairs, *The Indigenous World 2025* (39th edn., 2025), p. no. 499.

[768] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 6.

[769] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. nos. 32, 51, 59.

to the *Sámi* people free passage, in acknowledgement of their pre-existing right of access to lands on either side of the national territorial line.[770] However, in the late 19th century, under the Taxed Lapp Land System, Norway, Sweden and Finland expropriated *Sámi* ancestral lands and vested the property titles therein solely in the Crown, thus revoking the ownership rights of the *Sámi* people.[771] Until the mid-20th century, Norway, Sweden and Finland continued to deal with the *Sámi* people in a manner that assimilated them with the majority communities in the Nordic region.[772]

The *Sámi* Council, established in 1956 as a coalition of *Sámi* national organisations in various countries, was the first pan-*Sámi* institution, which was the principal representative body for the *Sámi* people in the *Sápmi* belt.[773] The *Sámi* Parliamentary Council was later established in 2000, composed of the *Sámi* Parliaments of Norway, Sweden and Finland, towards voicing cross-border concerns of the *Sámi* people on issues of language, education, research, and economic development.[774] Although the *Sámi* people attempted to develop a Nordic *Sámi* Convention, a regional treaty recognising the *Sámi* people as the only indigenous people of Norway, Sweden and Finland, and securing their rights to self-determination, self-governance, land and natural resources, culture and language preservation, education and livelihood, and non-discrimination,[775] it is yet to be ratified.[776]

1.1.2. Constitutional Recognition

The *Sámi* have, nevertheless, been acknowledged as the indigenous people of Norway by the Norwegian government on the occasion of its endorsement of the UNDRIP.[777] Further, following a recent amendment to the Constitution, the *Sámi* are now expressly recognised as an indigenous people in Norway. Article 108 (originally adopted as Article 110a in 1988) mandates the protection of the *Sámi*

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[770] *Ibid*.

[771] *Id*. at 30, 57, 60.

[772] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 7.

[773] *Id*. at para. 9.

[774] *Id*. at para. 10; International Work Group for Indigenous Affairs, *The Indigenous World 2025* (39th edn., 2025), p. no. 499.

[775] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), paras. 11, 12.

[776] Hester Swift, "Rights of Indigenous Peoples in Europe: Introduction and Starting Points for Research", *Institute of Advanced Legal Studies* (Jan. 6, 2025).

[777] United Nations Department of Public Information, *General Assembly Adopts Declaration on Rights of Indigenous Peoples: 'Major Step Forward' Towards Human Rights for All, Says President* (Sep. 13, 2007), *available at*: https://press.un.org/en/2007/ga10612.doc.htm (last visited on Nov. 11, 2025).

people, their culture and traditional livelihoods:[778] "*It is the responsibility of the State to create conditions enabling the Sámi people to preserve and develop its language, culture and way of life.*"[779] In 2023, Article 108 was amended to modify "*Sámi people*" to "*Sámi people, as an Indigenous People*", thereby explicitly accepting their indigenous identity.[780]

1.1.3. Protection of Culture and Traditions

Norway has incorporated the ICCPR into its domestic legal framework vide the Human Rights Act, 1999, which has precedence over other domestic laws in the event of conflict.[781] Article 27 thereof offers similar protections, akin to Article 108 of the Constitution, to the cultural practices of minorities:[782] "*...ethnic, religious or linguistic minorities...shall not be denied the right...to enjoy their own culture, to profess and practise their own religion, or to use their own language.*" The rights of indigenous peoples to herd reindeer, fish and hunt are therefore protected under Article 27 if they are an "*essential element of the culture*".[783] This was recently affirmed by the Supreme Court of Norway in the context of the *Sámi* people in the *Fosen Windmill Park* case.[784] In relation to the licence granted for the construction of wind power plants in an area that the *Sámi* people use for winter grazing of reindeer, thus impinging upon their culture and traditional livelihood, the Supreme Court held that any interference which has a "*substantive, negative impact on the possibility of cultural enjoyment*" violates Article 27.[785] The Supreme Court further ruled that the protection of indigenous cultural rights under Norwegian domestic law as well as international law was absolute; and resultantly, the right of the *Sámi* people to

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[778] UN Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 14; Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. nos. 54, 55.

[779] The Constitution of the Kingdom of Norway, 1814, art. 108.

[780] Elin Hofverberg, "Norway Parliament Includes Indigenous People Designation in Constitution", *Law Library of Congress* (Jun. 8, 2023), *available at:* https://www.loc.gov/item/global-legal-monitor/2023-06-07/norway-parliament-includes-indigenous-people-designation-in-constitution/ (last visited on Sep. 22, 2025).

[781] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 20; Norwegian Human Rights Institution, "Chapter 7: Protection of Indigenous Rights under the ICCPR" in *Canary in the Coal Mine*, *available at:* https://www.nhri.no/en/report/canary-in-the-coal-mine/7-protection-of-indigenous-rights-under-the-iccpr/ (last visited on Sep. 22, 2025).

[782] *The Sara Case,* HR-2017-2428-A (2017), para. 53.

[783] Norwegian Human Rights Institution, "Chapter 7: Protection of Indigenous Rights under the ICCPR" in *Canary in the Coal Mine*, *available at:* https://www.nhri.no/en/report/canary-in-the-coal-mine/7-protection-of-indigenous-rights-under-the-iccpr/ (last visited on Sep. 22, 2025); Human Rights Council, *General Comment No. 23* (CCPR/C/21/Rev.1/Add.5), para. 9.3; Human Rights Council, *Kitok v. Sweden* (CCPR/C/33/D/197/1985), paras. 9.6, 9.8; Human Rights Council, *Poma Poma v. Peru* (CCPR/C/95/D/1457/2006) paras. 7.2-7.4; Human Rights Council, *Aapirana Mahuika et. al. v. New Zealand* (CCPR/C/70/D/547/1993), para. 9.3.

[784] *The Fosen Case*, HR-2021-1975-S (2021).

[785] *Id*. at para. 135.

reindeer husbandry cannot be overridden by climate interests:[786] "*the protection of the minority population would be ineffective, if the majority population were able to limit it based on its legitimate needs*".[787]

However, if Article 27 conflicted with other fundamental rights (such as the right to a clean and healthy environment), the rights ought to be "*balanced against each other and harmonised*" pursuant to a proportionality analysis.[788] Accordingly, the recent Transparency Act, 2022 mandates businesses to carry out due diligence, including assessments in line with Article 27, when planning a development in *Sámi* areas, and refrain from proceeding with the implementation of projects that are determined to have a substantive negative impact on *Sámi* cultural practices and livelihoods.[789]

1.1.4. Customary Laws and Legal Systems

The Supreme Court of Norway, in the *Femund sijte* case,[790] held that Article 108, which is based on Article 27 of the ICCPR,[791] constitutes "*an independent legal basis where other sources of law give no answer*",[792] and has since reiterated, on numerous occasions, its significance in the interpretation of legal rules and the application of customary norms.[793] Yet, *Sámi* customary law and *Sámi* customary rights to land and water are themselves not recognised by Norway.[794] These are largely undocumented, but are traditionally within the shared knowledge of the *Sámi* people.[795] Nevertheless, in 2004, Norway established a special district court for the *Sámi* areas, composed of judges who are well-versed in the

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786 *Id*. at para. 127.

787 *Id*. at para. 129.

788 *Id*. at para. 130.

789 Norwegian Human Rights Institution, "Chapter 10: Business responsibilities to respect Sami rights in the context of climate change", in *Canary in the Coal Mine*, *available at:* https://www.nhri.no/en/report/canary-in-the-coal-mine/10-business-responsibility-to-respect-sami-rights-in-the-context-of-climate-change/ (last visited on Sep. 22, 2025); The Transparency Act, 2022, s. 4(b).

790 *The Femund Sijte*, HR-2018-872-A (2018), para. 39.

791 *The Fosen Case,* HR-2021-1975-S (2021), para. 35.

792 *The Femund Sijte,* HR-2018-872-A (2018), para. 39.

793 Norwegian Human Rights Institution, "Chapter 2: International conventions and their status in Norwegian Law" in *Canary in the Coal Mine*, *available at:* https://www.nhri.no/en/report/human-rights-protection-against-interference-in-traditional-sami-areas/2-international-conventions-and-their-status-in-norwegian-law/ (last visited on Sep. 22, 2025); Norwegian Human Rights Institution, "Chapter 4: Human Rights Protection Against Interference—The supreme Court" in *Canary in the Coal Mine*, *available at:* https://www.nhri.no/en/report/human-rights-protection-against-interference-in-traditional-sami-areas/4-human-rights-protection-against-interference-the-supreme-court/ (last visited on Sep. 22, 2025).

794 Asbjorn Eide, "Legal and Normative Bases for Saami Claims to Land in the Nordic" 8 *International Journal on Minority and Group Rights* 135 (2001).

795 Terje Brantenberg, "Indigenous Rights and Norwegian Law: The Problem of Sami Customary Law and Pastoral Rights in Norway", *5th Common Property Conference of the International Association for the Study of Common Property* (May 1995).

Sámi language and culture, for the purpose of protecting *Sámi* customary law.[796]

1.1.5. Self-Determination, Self-Governance, Participation, and Consultation

The *Sámi* Act, 1987, safeguards the right of *Sámi* people to be consulted on issues that directly and distinctly concern them—legislative, regulatory and administrative measures that may specifically impact *Sámi* interests must be subject to early consultations in good faith.[797] For this purpose, the *Sámi* Parliament of Norway has been established[798] as a representative, consultative and advisory body,[799] and serves as the principal conduit for *Sámi* sovereignty, self-determination and self-governance.[800] The *Sámi* Parliament functions as a political body comprising 39 members elected every four years by the *Sámi* people,[801] while also carrying out duties delegated to it by relevant Norwegian authorities, and offering recommendations on issues that may affect the *Sámi* people.[802] Though it has no legislative powers or administrative jurisdiction over *Sámi* territories,[803] the *Sámi* Parliament allows the *Sámi* people to have a direct say in decision-making.[804]

The *Sámi* Parliament and the Norwegian government have also entered into an agreement on consultation procedures relating to legislative and administrative measures, which stipulates that Norwegian authorities are required to provide "*full information concerning relevant matters that may directly affect the Sámi, and concerning relevant concerns at all stages of dealing with such matters*".[805] The agreement, the provisions of which are in line with the ILO Convention No. 169,[806] also

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[796] Øyvind Ravna, "The Legal Protection of the Rights and Culture of Indigenous Sami People in Norway" 11(6) *Journal of Siberian Federal University* 1578 (2013).

[797] The Sámi Act, 1987, s. 4.

[798] *Id*. ss. 1.2, 2.

[799] Hester Swift, "Rights of Indigenous Peoples in Europe: Introduction and Starting Points for Research", *Institute of Advanced Legal Studies* (Jan. 6, 2025).

[800] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 37.

[801] The Sámi Act, 1987, ss. 2.3, 2.4.

[802] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 16.

[803] Hester Swift, "Rights of Indigenous Peoples in Europe: Introduction and Starting Points for Research", *Institute of Advanced Legal Studies* (Jan. 6, 2025).

[804] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 51.

[805] The Procedures for Consultations between the State Authorities and The Sami Parliament of Norway (May 11, 2005), s. 3.

[806] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 16.

recommends that consultations not be discontinued for as long as the *Sámi* Parliament and the Norwegian authorities consider a consensus attainable.[807] Norway has also put in place co-management arrangements to ensure that the decision-making with regard to natural resources and protected areas adequately accounts for *Sámi* perspectives and traditional knowledge.[808] However, in the *Sara* case, the Supreme Court of Norway found that 'effective participation' does not necessarily require that the participation of indigenous peoples actually influence the decision-making.[809]

1.1.6. Usage of Territories, Forests, and Natural Resources

The Reindeer Husbandry Act, 1978, as amended in 2007, recognises the exclusive usufruct right of the *Sámi* people to herd reindeer within pasture areas (regardless of the ownership of such lands), provided the *Sámi* individuals have the requisite familial linkage to a reindeer-herding family.[810] The amendments brought into force in 2007 also bridged the gap between domestic law and traditional *Sámi* land management customs by re-establishing the *siida* as an important management tool for reindeer husbandry.[811] The Forestry Act, 2005, enacted with the objective of promoting the sustainable management of forest resources and securing biological diversity, states that its provisions may "*not be applied in contravention of the rights of Sami reindeer herders to timber and fuel*".[812] The Marine Resources Act, 2010, also takes into consideration *Sámi* culture in the regulation of fishing practices.[813] Nevertheless, Norway and Finland regrettably entered into the Deatnu/Tana Agreement in 2017, which severely restricted traditional *Sámi* fishing methods, in particular net-fishing, despite strong opposition from the *Sámi* Parliaments of Norway and Finland.[814]

1.1.7. Title to Ancestral Lands

The Norwegian government, in cooperation with the municipalities, was originally responsible for the

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[807] The Procedures for Consultations between the State Authorities and The Sami Parliament of Norway (May 11, 2005), s. 6.

[808] Ole Kristian Fauchald and Lars H. Gulbrandsen, "The Norwegian reform of protected areas management: A grand experiment with delegation of authority?" 17(2) *Local Environment* 204 (2012).

[809] *The Sara Case,* HR-2017-2428-A (2017).

[810] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 19.

[811] *Ibid.*

[812] The Forestry Act, 2005, preamble, s. 2.

[813] The Marine Resources Act, 2010, s. 7(g).

[814] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 33.

management of land and resources.[815] The collective rights of the *Sámi* people in this regard were not recognised until the enactment of the Finnmark Act, 2005, stemming from the cooperative efforts of the *Sámi* Parliament and the Norwegian Parliament.[816] The Finnmark Act, 2005 stipulates that the *Sámi* people (as well as certain ethnic minorities in Norway), through their customary use of land and water, have acquired rights over it,[817] thereby transferring the administration, but not title,[818] of most of the lands and natural resources in Finnmark county under state ownership to the Finnmark Estate,[819] an autonomous legal entity governed by a board of six individuals of whom three are elected by the *Sámi* Parliament.[820] Accordingly, the *Sámi* people and other ethnic minorities have the right to fish, harvest timber, fell certain trees, hunt, forage and pursue reindeer husbandry.[821] The Finnmark Act, 2005 also requires that the *Sámi* people be consulted in the decision-making regarding the management of land and natural resources within the Finnmark Estate.[822]

Pertinently, the Finnmark Act, 2005 set up the Finnmark Commission, tasked with investigating and documenting the *Sámi* customary title to lands within Finnmark county,[823] and laid down the legal framework for settling land claims before the Uncultivated Land Tribunal for Finnmark.[824] However, a recent decision of the Supreme Court of Norway in the *Karasjok* case ruled that the property title to the common lands in the Karasjok municipality was vested in the Finnmark Estate, but not the *Sámi* people or the general population of the municipality as a whole.[825]

1.1.8. Preservation of Language

The *Sámi* Act, 1987 recognises both Norwegian and *Sámi* languages as official languages: "*Sámi and*

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[815] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 18.

[816] *Id*. at para. 44

[817] The Finnmark Act, 2005, s. 5.

[818] Ministry of Justice and the Police and the Ministry of Local Government and Regional Development, "The Finnmark Act – A Guide", Publication No. G-0381 B+S.

[819] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 50; John Bernhard Henriksen, "The Continuous Process of Recognition and Implementation of the Sami People's Right to Self-Determination" 21(1) *Cambridge Review of International Affairs* 32-33 (2008).

[820] The Finnmark Act, 2005, ss. 6, 7.

[821] *Id*. s. 23.

[822] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 54; The Finnmark Act, 2005, s. 28.

[823] The Finnmark Act, 2005, s. 29.

[824] *Id*. ss. 36-43

[825] *The Finnmark Estate v. Karasjok Sami Association,* HR-2024-982-S (2024), para. 208.

Norwegian are languages of equal worth."[826] The *Sami* Language Act, 1992, further authorises the use of the *Sámi* language (classified as endangered by the UNESCO)[827] in areas having a substantial *Sámi* population, thus entitling the *Sámi* people to communicate with Norwegian authorities in their native tongue.[828] The Primary and Secondary Education and Training Act, 1999 safeguards the right of *Sámi* children to study in the *Sámi* language in primary and lower secondary schools within *Sámi* districts.[829] Outside *Sámi* districts too, 10 or more *Sámi* students collectively are entitled to demand that they be taught in the *Sámi* language.[830]

1.1.9. Non-Discrimination and Affirmative Action

Although Norway has not adopted specific statutes enshrining affirmative action vis-à-vis the *Sámi* people,[831] they benefit from the Anti-Discrimination Act, 2006, enacted with the objective of promoting equality, ensuring equal rights and opportunities, and prohibiting discrimination.[832] The Anti-Discrimination Act, 2006 mandates public authorities, public employers, private employers (having over 50 employees), and employer/employee organisations to systematically, actively, and in a targeted manner, work towards fulfilling the legislative intent in matters relating to pay, working conditions, promotion, development opportunities and protections against harassment.[833] The Anti-Discrimination Act, 2006 also permits employers to take positive steps for employment equity.[834] Norway has also instituted measures for the reservation of seats for *Sámi* students in educational institutions, especially in the medical sector.[835]

In 2018, Norway established a Joint Truth Commission, comprising 12 experts appointed by the Norwegian Parliament, for the *Sámi* peoples, the Kvens, and the Forest Finns (two minority communities in Norway), with the objectives of investigating the historic and continuing effects of the

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[826] The Sámi Act, 1987, s. 1.5.

[827] United Nations Educational, Scientific and Cultural Organisation, *Atlas of the World's Languages in Danger* (2010), p. no. 35.

[828] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 52; Kelly Gallagher-Mackay, "Affirmative Action and Aboriginal Government: The Case for Legal Education in Nunavut" 14(2) *Canadian Journal of Law and Society* 21- 75 (1999).

[829] The Primary and Secondary Education and Training Act, 1999, s. 6.2.

[830] *Ibid.*

[831] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 55.

[832] The Anti-Discrimination Act, 2006, s.1.

[833] The Norwegian Ministry of Children and Equality, *Action Plan to Promote Equality and Prevent Ethnic Discrimination* (2009), p. no. 58.

[834] The Anti-Discrimination Act, 2006, s. 8.

[835] M. Gaski, B. Abelsen and T. Hasvold, "Forty years of allocated seats for Sami medical students – has preferential admission worked?" 8(2) *Rural and Remote Health* 1 (2008).

Norwegianization Policy, addressing the harms the *Sámi* people were subjected to, and drawing attention to the adverse experiences of the *Sámi* people (collectively and individually) resulting from such a harsh assimilation policy.[836]

1.2. Sweden

1.2.1. Constitutional and Legal Recognition

The *Sámi* were acknowledged as an indigenous people for the first time in 1977 by the Swedish Parliament.[837] Pursuant to an amendment to the Constitution in 2011, the *Sámi* people are now constitutionally recognised as an indigenous people (distinct from other minorities) in Sweden, entitled to the protection of their traditional way of life.[838] Article 2 states: "*The opportunities of the Sami people and ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own shall be promoted.*"[839] The *Sámi* people also simultaneously have the status of a national ethnic minority under the National Minorities in Sweden Government Act, 1998.[840]

1.2.2. Self-Determination, Self-Governance, Participation, and Consultation

The *Sámi* Parliament Act, 1992 established the *Sámi* Parliament of Sweden, with a dual role as an administrative agency to the Swedish government, and an elected body comprising 31 representatives chosen by the *Sámi* people every four years.[841] The primary function of the *Sámi* Parliament is "*monitoring issues concerning the Sámi culture in Sweden*"[842] through allocating state funds for *Sámi* organisations and activities, preserving and promoting the *Sámi* language, participating in community development, including in relation to reindeer herding and use of land and water, and reporting on *Sámi*

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836 International Work Group for Indigenous Affairs, *The Indigenous World 2023* (37th edn., 2023), p. no. 467.

837 Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 62; Implementation of the International Covenant on Economic, Social and Cultural Rights, *Fifth periodic reports submitted by States parties under Article 16 and 17 of the Covenant: Finland*, UN Doc E/C.12/FIN/5 (Jan. 16, 2008).

838 United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 21.

839 The Constitution of Sweden, art. 2.

840 Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 62.

841 The Sámi Parliament Act, 1992, ch. 2, s. 2, ch. 3, s. 1; United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 42.

842 The Sámi Parliament Act, 1992, ch. 1, s. 1; United Nation Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), paras. 23, 42.

conditions of life.[843] The *Sámi* Parliament is, however, placed under the authority of and is controlled by the Swedish government and the Swedish Parliament, vide laws, ordinances, guidelines, and decisions.[844] The *Sámi* Parliament is hence bound by the directives issued by the Swedish government in relation to *Sámi* governance and to implement the policies formulated by the Swedish Parliament in this regard.[845]

Therefore, the *Sámi* Parliament, although a consultative mechanism having an advisory role, lacks real influence on the ground—the Swedish authorities are not legally obligated to consult with the *Sámi* Parliament, and *Sámi* Parliamentary hearings are not followed by mandatory actions.[846] The *Sámi* Parliament is also not entitled to participate in decision-making or legislative affairs, has no right to veto administrative decisions, and does not have the status of 'compulsory referral body' in matters of *Sami* interests.[847] Sweden nevertheless accepts that indigenous peoples have the right to self-determination in accordance with Article 1 of the ICCPR and the ICESCR, but subject to the territorial integrity and political unity of Sweden.[848]

1.2.3. Usage of Territories, Forest and Natural Resources, and Title to Ancestral Lands

With the adoption of the Reindeer Grazing Act, 1886, the earlier recognised rights of the *Sámi* people to their traditional territories, waters and natural resources had been abolished, and the property title therein was vested exclusively in the Swedish Crown.[849] However, the Supreme Court of Sweden, in its landmark decision in the *Taxed Mountains* case, ruled that the *Sámi* people not only had usufructuary rights to land for reindeer husbandry, but could also claim title to such lands by demonstrating their use for traditional *Sámi* economic activities (maxim of immemorial prescription).[850]

Although the Swedish government subsequently apologised to the *Sámi* people for their forced

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[843] The Sámi Parliament Act, 1992, ch. 2, s. 1; United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 24.

[844] *Ibid*.; Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 58.

[845] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 42.

[846] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 61.

[847] Ombudsman against Ethnic Discrimination, *Discrimination of the Sami – the rights of the Sami from a discrimination perspective*, DO: s rapportserie 2008. 1 eng, p. no. 23.

[848] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 63.

[849] *Id*. at 57.

[850] *Taxed Mountains*, NJA 1981 s. 1 (1981).

dislocation from their ancestral lands, Sweden is yet to enact legislation to expressly grant them land rights.[851] Nonetheless, the Supreme Court of Sweden, in the *Nordmaling* decision, conferred on the *Sámi* reindeer herders the customary law rights to graze their reindeer on their ancestral lands even if they do not hold the legal title to such lands and laid down guidelines in this regard.[852] The Forestry Act, 1993 also recommends that the *Sámi* people ought to be given annual access to adequate grazing areas with an ample amount of vegetation when planning and implementing forest management measures.[853]

1.2.4. Protection of Culture and Traditions

The Reindeer Husbandry Act, 1971 created the notion of *Sámi* villages called *samebys*, an economic and administrative unit for *Sámi* self-governance in a given geographical area, the members of which have the sole right, within their own *samebys*, to herd reindeer, hunt and fish as their traditional livelihood, as well as to use land and water for themselves and for their reindeer.[854] However, neither the *samebys* nor their members are authorised to lease hunting and fishing rights to others; this is within the domain of county administrative boards.[855] Nevertheless, in the *Girjas* decision, relying on the ILO Convention No. 169 (which Sweden has not ratified), the Supreme Court of Sweden held that the Girjas community had the exclusive right (to the detriment of the Swedish government), based on their traditional use and occupation of the lands since time immemorial, to hunt and fish in the Girjas *sameby*, including the right to grant small-gaming and fishing rights to others without the consent of the Swedish government.[856] The *samebys* thus play a crucial role in advancing the rights of the *Sámi* peoples, especially those pertaining to land use and hunting, through the Swedish courts.[857]

1.2.5. Preservation of Language

The Right to Use the *Sami* Language in Dealings with Public Authorities and Courts Act, 1999 (now replaced by the National Minorities and National Minority Languages Act, 2009) formally grants the

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[851] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 57.

[852] *Nordmaling,* T 4028-07 (2011), p. no. 12; Anett Sasvari and Hugh Beach, "The 2011 Swedish Supreme Court Ruling: A Turning Point for Saami Rights" 15(2) *Nomadic Peoples* 132 (2011).

[853] The Forestry Act, 1993, s. 31; United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), p. no. 19.

[854] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. nos. 58-60.

[855] The Reindeer Husbandry Act, 1971, s. 26; International Work Group for Indigenous Affairs, *The Indigenous World 2021* (35th edn., 2021), p. no. 514.

[856] *The Girjas Case,* T 853-18 (2020); International Work Group for Indigenous Affairs, *The Indigenous World 2021* (35th edn., 2021), p. no. 514.

[857] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 58.

Sámi language the status of an official minority language in Sweden.[858] Accordingly, the *Sámi* people have the right, within the *Sámi* administrative areas, to communicate (orally and in writing) with Swedish administrative and judicial authorities in the *Sámi* language in all proceedings, as well as access preschool education and elderly care through the medium of the *Sámi* language.[859] Outside the *Sámi* administrative areas too, the *Sámi* people are entitled to deal with select Swedish institutions in the *Sámi* language.[860] Nonetheless, Swedish is still the "*principal*" language in Sweden, as proclaimed by the Language Act, 2009.[861]

1.2.6. Non-Discrimination and Affirmative Action

Although Sweden is yet to enact legislation or policies for affirmative action vis-à-vis the *Sámi* people, the Discrimination Act, 2008, nevertheless, protects them against discrimination on grounds of ethnic origin in work opportunities and pay.[862]

In 2021, Sweden, in consultation with the *Sámi* Parliament and *Sámi* organisations, established a Truth Commission (comprising 12 commissioners) to investigate the systemic injustices suffered by the *Sámi* people at the hands of the Swedish government and assess how Swedish policies, including the forced relocation of *Sámi* herders from their ancestral lands, the setting up of 'nomad' schools, the subjecting of the *Sámi* people to 'racial biology' studies, the industrialisation of *Sámi* territories, and the proscription of speaking the *Sámi* language or practising their religion, impacted them individually and collectively.[863] The Truth Commission is responsible for receiving testimonies from the *Sámi* people, raising awareness regarding their experiences, and proposing measures for reparations and reconciliation.[864]

1.3. Finland

1.3.1. Constitutional and Legal Recognition

The Constitution of Finland recognises the *Sámi* as an indigenous people, as well as guarantees their rights to linguistic and cultural self-government. Section 17 stipulates: "*The Sami, as an indigenous*

[858] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 60.

[859] The National Minorities and National Minority Languages Act, 2009, ss. 1, 8, 13-18.

[860] *Id*. s. 9.

[861] The Language Act, 2009, s. 4.

[862] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples: Indigenous Peoples Index Evidence 2021", *Queen's University* (2021), p. no. 63.

[863] International Work Group for Indigenous Affairs, *The Indigenous World 2023* (37th edn., 2023), p. no. 468; International Work Group for Indigenous Affairs, *The Indigenous World 2022* (36th edn., 2022), p. no. 502.

[864] International Work Group for Indigenous Affairs, *The Indigenous World 2023* (37th edn., 2023), p. no. 468.

people…have the right to maintain and develop their own language and culture."[865] Along these lines, the *Sámi* Parliament Act, 1995, provides that "*the Sámi as an indigenous people shall…be ensured cultural autonomy within their homeland in matters concerning their language and culture, as well as to take care of matters relating to their status as an indigenous people*".[866] Further, the *Sámi* Parliament Act, 1995 defines the areas constituting the *Sámi* homeland,[867] and prescribes the criteria for determining whether a person is *Sámi*, largely based on self-identification and *Sámi* lineage.[868]

1.3.2. Self-Determination, Self-Governance, Participation, and Consultation

The *Sámi* Parliament Act, 1995 also established the *Sámi* Parliament of Finland, replacing the previous *Sámi* Parliament that had operated from 1972 to 1995 (the first elected *Sámi* entity in the Nordic region).[869] The *Sámi* Parliament, a representative body of the *Sámi* people, is composed of 21 members and four vice-members elected by the *Sámi* people every four years.[870] The *Sámi* Parliament is tasked, within the *Sámi* homeland, to make proposals and initiatives, issue statements to Finnish authorities, and negotiate with them on "*all far-reaching and important measures that directly or indirectly may affect the Sámi's status as an indigenous people*", in particular, language, culture, and the management, use, leasing and assignment of lands.[871]

The *Sámi* Parliament, however, is only an advisory organ, without authority to administer the affairs of the *Sámi* people in exercise of the powers of executive governance.[872] The *Sámi* Parliament is also not entitled to the right of veto before the Finnish Parliament.[873] Moreover, the *Sámi* Parliament is placed under the authority of the Finnish government (but does not form part of the Finnish administrative

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[865] The Constitution of Finland, 1999, s. 17, para. 3.

[866] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 28.

[867] The Sami Parliament Act, 1995, ch. 1, s. 4.

[868] *Id*. ch.1, s. 3; Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 34.

[869] The Sami Parliament Act, 1995, ch. 1, s. 1; United Nation Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 27.

[870] The Sami Parliament Act, 1995, ch. 3, s. 10 and United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 27.

[871] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 28.

[872] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 31.

[873] *Ibid.*

machinery), thus effectively limiting its independence, autonomy, and decision-making powers in matters concerning the *Sámi* people.[874] Nonetheless, per the Finnish Rules of Procedure of the Parliament, the *Sámi* can be directly heard by the Finnish Parliament in limited circumstances.[875] In practice, the Finnish government also negotiates with the *Sámi* Parliament in the formulation of statutes, policies, and strategies that may affect the *Sámi* people.[876] Finland has also constituted an Advisory Board on *Sámi* Affairs, comprising 12 members (six nominated by the *Sámi* Parliament and six nominated by the Finnish government), to monitor the development of the *Sámi* people's legal, economic, social, cultural and employment conditions.[877]

The *Sámi* right to self-government has also been threatened by a string of decisions of the Supreme Administrative Court of Finland, which directed the addition of individuals who self-identified as *Sámi*, but were not recognised as such by the *Sámi* community and the *Sámi* Parliament, to the electoral roll, thereby granting them the right to vote in the *Sámi* Parliament elections.[878] These rulings raised concerns that the *Sámi* Parliament may lose its character as a representative body for the *Sámi* people.[879] The *Sámi* Parliament Act, 1995 has also been similarly criticised for not defining '*Sámi*' in a manner that takes into consideration the views of the *Sámi* people on matters relating to their own membership and political participation.[880]

1.3.3. Usage of Territories, Forest and Natural Resources, and Title to Ancestral Lands

Finland also does not grant the *Sámi* people any right of ownership to their ancestral lands, nor does it widely recognise *Sámi* customary law.[881] The Reindeer Husbandry Act, 1990, unlike similar legislation in Norway and Sweden, does not grant an exclusive right to the *Sámi* people to use land and water to practice traditional livelihoods such as reindeer herding, hunting or fishing, within or outside their

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[874] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 37.

[875] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 33.

[876] *Id*. at 34.

[877] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 11.

[878] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 31.

[879] United Nations Human Rights Committee, *Views adopted by the Committee under Article 5 (4) of the Optional Protocol*, CCPR/C/124/D/2950/2017 (Dec. 18, 2019), para. 3.2.

[880] *Id*. at para. 11.

[881] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 33; Mattias Ahren, "Indigenous People's Culture, Customs, and Tradition and Customary Law– The Saami People's Perspective" 21(1) *Arizona Journal of International and Comparative Law* 63-112 (2004).

homelands; anyone permanently resident in the *Sámi* homeland has the right to pursue reindeer husbandry, hunt or fish in such area.[882] The Reindeer Husbandry Act, 1990, merely mandates the Finnish authorities to consult representatives of *Sámi* reindeer herding cooperatives when adopting land-related measures that will have a substantial effect on reindeer herding.[883] The Forest Act, 1996 similarly requires the Finnish government to consult the *Sámi* Parliament when issuing regulations for forest management.[884] However, further eroding *Sámi* land rights, the Supreme Administrative Court of Finland ruled that *Sámi* reindeer herders, *Sámi* reindeer herding cooperatives and the *Sámi* Parliament are not entitled, under the Mining Act, 2011, to the right of appeal against mining reservations in their homelands.[885] Consequently, the Child Rights Committee called on Finland to incorporate FPIC into its domestic legislation, so as to guarantee the consent of the *Sámi* people to projects and activities that affect the *Sámi* homeland.[886] Likewise, the CESCR instructed Finland to legally recognise indigenous land rights, including collective ownership, take measures to ensure the enjoyment of traditional territories and natural resources by the *Sámi* people, and acknowledge the *siida* as an interested party in legal matters affecting their ancestral lands.[887]

1.3.4. Preservation of Language

The *Sámi* Language Act, 2003 guarantees the right of the *Sámi* people to use the *Sámi* language in all their communications and dealings with public authorities and courts.[888] Under the Act on the Financing of Education and Culture, 2009, the *Sámi* people are also entitled to be educated through

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[882] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University*, (2021), p. nos. 32, 33; United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), paras. 29, 30; Yle Sampi, "Fishers rejoice over court decision in Finland: The court has now declared that we Sámi have rights to our culture" *The Barents Observer* (Mar. 7, 2019).

[883] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 30.

[884] The Forest Act, 1996, s. 12(1).

[885] Thomas Nilsen, "Miners hunting for metals to battery cars threaten Sami reindeer herders' homeland" *The Barents Observer* (2020); Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 30; United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 30.

[886] International Work Group for Indigenous Affairs, *The Indigenous World 2022* (36th edn., 2022), p. nos. 776, 777.

[887] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 41.

[888] The Sami Language Act (1086/2003), ch. 2; United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 66.

the *Sámi* language medium within the *Sámi* homeland, for which subsidies are granted.[889] The Finnish government is therefore duty-bound to promote and enforce these linguistic rights of the *Sámi* people.[890]

1.3.5. Non-Discrimination and Affirmative Action

Finland is yet to enact legislation or policies for affirmative action vis-à-vis the *Sámi* people.[891] In 2021, however, in close cooperation with the *Sámi* Parliament and the Skolt *Sámi Siida* Council (the traditional representative body of the Skolt *Sámi* minority), Finland created the Truth and Reconciliation Commission, comprising five commissioners of whom two are appointed by the *Sámi* Parliament, one by the Skolt *Sámi Siida* Council, and two by the Finnish government.[892] The Truth and Reconciliation Commission is tasked with identifying and documenting the historic and current discrimination faced by the *Sámi* people, and promoting awareness regarding *Sámi* culture and experiences.[893]

2. Oceania

2.1. Aotearoa (New Zealand)

2.1.1. Historical Treatment and Legal Recognition

Māori, the indigenous people of Aotearoa New Zealand, are recognised in the Treaty of Waitangi, New Zealand's founding document, concluded between *Māori* Chiefs and the British Crown in 1840.[894] The Treaty of Waitangi was executed in both English and *Māori,* but the provisions of the English and *Māori* versions differ in their meanings, leading to contrary readings by the state authorities on one hand and the *Māori* on the other.[895] Article 2 (*Māori* version) guarantees to the *Māori* "*the unqualified exercise of their chieftainship over their lands, villages and all their treasures*",[896] although the right to govern (but short of sovereignty over) indigenous territories is conferred on the Queen vide Article 1 (*Māori* version).[897] However, per Article 1 (English version), the Queen has sovereignty (and not merely

[889] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of the Sami People in the Sápmi region of Norway, Sweden and Finland*, UN Doc A/HRC/18/35/Add.2 (2011), para. 70.

[890] The Sami Language Act, 2003, s. 1.

[891] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 35.

[892] International Work Group for Indigenous Affairs, *The Indigenous World 2023* (37th edn., 2023), p. no. 468.

[893] International Work Group for Indigenous Affairs, *The Indigenous World 2022* (36th edn., 2022), p. no. 503.

[894] International Work Group for Indigenous Affairs, *The Indigenous World 2021* (35th edn., 2021), p. no. 581.

[895] *Ibid.*

[896] Te Tiriti o Waitangi, 1840, art. 2.

[897] *Id*. art. 1.

the right of governance) over indigenous territories;[898] and Article 2 (English version) grants to the *Māori*, "*the full exclusive and undisturbed possession of their lands and estates, forests, fisheries, and other properties, which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession*".[899] Article 3 (English and *Māori* versions) assures the *Māori* the protection of the Queen and all rights granted to British subjects.[900]

The Treaty of Waitangi, deemed to be part of New Zealand's unwritten Constitution,[901] nevertheless, has no binding legal effect unless it is incorporated into the domestic law of New Zealand through legislative action or enforced by domestic courts.[902] The fundamental principles underlying the Treaty of Waitangi have now been legally endorsed in a number of legislative acts and judicial decisions.[903] The Supreme Court of New Zealand has also held that the fundamental principles enshrined in the Treaty of Waitangi "*must be given a broad and generous construction*".[904] With the passing of the Treaty of Waitangi Act, 1975, the *Māori* are now recognised as the indigenous peoples of New Zealand with retrospective effect, acknowledging that the *Māori* existence predates the conclusion of the Treaty of Waitangi.[905]

2.1.2. Self-Determination, Self-Governance, Participation, and Consultation

According to the *Māori* interpretation of Article 2 of the Treaty of Waitangi, while the Queen retains the right of governance over the *Māori*, the *Māori* are nevertheless entitled to autonomy over their lands, resources and other treasures.[906] The Waitangi Tribunal, a permanent commission of inquiry set up under the Treaty of Waitangi Act, 1975 with the objective of assessing the conduct of the Crown vis-à-vis the Treaty of Waitangi and making non-binding recommendations on *Māori* claims relating to the implementation and enforcement (or breaches) of the Crown's obligations thereunder, found that the *Māori* had not ceded their sovereignty to the Queen under the Treaty of Waitangi.[907] This finding

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[898] The Treaty of Waitangi, 1840, art. 1.

[899] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 42.

[900] Te Tiriti o Waitangi and The Treaty of Waitangi, 1840, art. 3.

[901] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of Maori People in New Zealand,* UN Doc A/HRC/18/35/Add.4 (2011), para. 7.

[902] Ministry of Justice, New Zealand, *Te Tiriti o Waitangi - Treaty of Waitangi*, *available at*: https://www.justice.govt.nz/about/learn-about-the-justice-system/how-the-justice-system-works/the-basis-for-all-law/treaty-of-waitangi/ (last visited on Nov. 11, 2025).

[903] International Work Group for Indigenous Affairs, *The Indigenous World 2025* (39th edn., 2025), p. no. 539.

[904] *Trans-Tasman Resources Limited v. The Taranaki-Whanganui Conservation Board*, NZSC 127 (2021), para. 151.

[905] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 48.

[906] Te Tiriti o Waitangi, 1840, art. 2.

[907] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 43.

was not accepted by New Zealand, although it supports the *Māori* right of self-determination.[908] Nonetheless, New Zealand has established the Office of Treaty Settlement under the Ministry of Justice with the objective of negotiating and settling historical claims stemming from the Treaty of Waitangi.[909]

New Zealand has also enacted the *Māori* Social and Economic Advancement Act, 1945, which grants a limited right of self-governance to the *Māori* who are organised into communities.[910] Further, the Resource Management Act, 1991 permits local councils to transfer their authority and functions to organised *Māori* communities.[911] Ngāti Tūwharetoa is the first *Māori* authority to take on water quality monitoring for Lake Taupō from the Waikato Regional Council, indicative of enhanced power-sharing between the federal government and the *Māori*.[912]

Since the 19th century, the *Māori* have also been granted reserved *Māori* seats in the New Zealand Parliament vide the *Māori* Representation Act, 1867,[913] representatives are elected by *Māori* voters (registered on a separate *Māori* electoral roll), thus ensuring their political representation separate from the general electorate.[914] Although it is not required that such representatives themselves be *Māori*, in practice, a non-*Māori* has never been elected to the *Māori* seats despite such candidates contesting in the elections for these seats.[915] The number of *Māori* seats reserved in the New Zealand Parliament is not fixed but flexible, depending on the strength of the *Māori* electoral population.[916] Currently, the *Māori* electorate is entitled to seven reserved seats in the New Zealand Parliament.[917]

The principle of 'participation' enshrined in the Treaty of Waitangi, envisaging a mutually respectful, cooperative and constructive relationship between the Crown and the *Māori*, grants to the *Māori* the right to be consulted.[918] The Crown is accordingly obligated to take informed decisions in good faith,

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908 *Ibid.*

909 *Id*. at 43, 44.

910 *Id*. at 43; The Maori Social and Economic Advancement Act, 1945, s. 12(iv).

911 The Resource Management Act, 1991, s. 33.

912 Tūwharetoa Māori Trust Board, *Section 33 Transfer with Waikato Regional Council*, *available at:* https://www.tuwharetoa.co.nz/ngati-tuwharetoa-set-to-become-first-iwi-to-utilise-a-section-33-transfer-with-waikato-regional-council/ (last visited Nov. 11, 2025).

913 The Māori Representation Act, 1867, s. 5.

914 Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 47.

915 *Id*. at 43, 44.

916 United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of Maori People in New Zealand,* UN Doc A/HRC/18/35/Add.4 (2011), para. 12.

917 New Zealand Parliament, *MPs and Electorates*, *available at*: https://www3.parliament.nz/en/mps-and-electorates/ (last visited on Nov. 11, 2025)

918 *New Zealand Maori Council v. Attorney General*, NZLR 641 (1987), p. no. 33.

after giving the *Māori* adequate opportunity to present their views.[919] The Māori Welfare Act, 1962 established a National *Māori* Council to provide advice to the government on policy issues affecting the *Māori*.[920] The Local Government Act, 2002 mandates consultation with the *Māori* on issues (potentially) affecting their rights and interests, such as resource management, conservation of cultural heritage, and protection of land rights.[921] New Zealand also established the Ministry for *Māori* Development in 1992 under the Ministry of *Maori* Development Act, 1991, for the purpose of monitoring policies related to the *Māori and* offering advice on *Māori* issues to the government.[922] The Ministry for *Māori* Development formulated the *Māori* Potential Approach scheme with the objective of facilitating the *Māori* to augment and leverage their collective resources, knowledge and skills.[923] In the case of *Trans-Tasman Resources Limited v. The Taranaki-Whanganui Conservation Board,* the Supreme Court of New Zealand confirmed the decision to revoke the approval of Trans-Tasman Resources Limited's application for permission to mine iron sands on the grounds that the approval failed to adequately consider the effect of the project on the *Māori* and their guardianship obligations in relation to the marine environment.[924] In 2023, the Crown and the *Māori* agreed on a collective redress package for implementing a co-governance arrangement to manage the national park where the mountains of Taranaki are located, which has been given effect to vide the recent Taranaki Maunga Collective Redress Act, 2025.[925]

2.1.3. Title to Ancestral Lands

Article 2 of the Treaty (*Māori* version) grants ownership of indigenous territories to the *Māori*, who may alienate such lands only to the Queen. In *Te Runanga o Wharekauri Rekohu Inc v. Attorney-General,*[926] the New Zealand Court of Appeal found that "*[t]he sui generis nature of Indian title [to land], and the historic powers and responsibility assumed by the Crown constituted the source of…a fiduciary obligation*", which was affirmed by the Supreme Court of New Zealand in *Proprietors of Wakatū v. Attorney-General.*[927] With the enactment of the Treaty of Waitangi (State Enterprises) Act,

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[919] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, The Situation of Maori People in New Zealand,* UN Doc A/HRC/18/35/Add.4 (2011), para. 6.

[920] The Māori Welfare Act, 1962, s. 17; Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 43.

[921] The Local Government Act, 2002, s. 82.2.

[922] Maori Development Act, 1991, s. 5.1.b.

[923] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 47.

[924] *Trans-Tasman Resources Limited v. The Taranaki-Whanganui Conservation Board*, NZSC 127 (2021), para. 26.

[925] International Work Group for Indigenous Affairs, *The Indigenous World 2025* (39th edn., 2025), p. nos. 542-543.

[926] *Te Runanga o Wharekauri Rekohu Inc v. Attorney-General*, 2 NZLR 301 (CA) (1993).

[927] *Proprietors of Wakatū v. Attorney-General*, NZSC 17 (2017).

1988 *Māori* rights and interests in the management of land and resources came to be safeguarded.[928] Further, the *Māori* Land Act, 1993 designated as '*Māori* reservations' the areas under *Māori* freehold and general lands, as well as territories belonging to the Crown but which are of historical, spiritual, religious or emotional significance to the *Māori*.[929] New Zealand also recognises '*Māori* reserves', which are distinct from *Māori* reservations.[930] *Māori* reserves are the territories demarcated by the Crown and leased in perpetuity to the owners (who may or may not be *Māori*), but over which freehold has been granted to the *Māori*.[931]

The Treaty of Waitangi Act, 1975, created a *Māori* Land Court, vested with the powers of a tribunal to adjudicate upon *Māori* land claims (ownership, administration and transfer of ownership), succession, title improvement and alienation of *Māori* land, replacing the Native Land Court established under the Native Land Act, 1865[932] predominantly for the purpose of confiscation of *Māori* lands.[933] The *Māori* right to the seabed and foreshore has been hugely controversial. In response to widespread protests, New Zealand revoked the ownership of the Crown from the seabed and foreshore vide the Marine Coastal Area Act, 2011[934] based on a 'no ownership' principle, thus enabling the *Māori* to seek customary title through judicial processes or negotiations with the government.[935] The Marine Coastal Area Act, 2011 also entitles the *Māori* to participate in the conservation of marine and coastal areas.[936]

2.1.4. Protection of Culture and Traditions

Article 2 of the Treaty (English and *Māori* versions) also guarantees the *Māori commercial* and non-commercial fishing rights. Article 2 of the Treaty (English version) also protects those *Māori* fisheries over which there is *Māori* title. The *Māori* are also entitled to hunt, fish and gather food.[937] Vide the Fisheries Act, 1983 (since repealed), the *Māori* customary right to fishing was acknowledged.[938] In *Te Weehi v. Regional Fisheries Officer,* the Supreme Court of New Zealand also affirmed that the *Māori*

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928 The Treaty of Waitangi (State Enterprises) Act, 1988, preamble, s. 9.

929 The Māori Land Act, 1993, s. 338.

930 Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 42.

931 *Ibid.*

932 The Native Lands Act, 1865, s. 5.

933 Treaty of Waitangi Act, 1975, s. 6AA.

934 The Marine and Coastal Area (Takutai Moana) Act, 2011, s. 5.

935 Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 43.

936 *Ibid.*

937 Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 45.

938 *Ibid*.

have the customary right to fish.[939] The customary *Māori* right to fish is now expressly guaranteed by the Treaty of Waitangi (Fisheries Claims) Settlement Act, 1992.[940] Further, under the Deed of Settlement, 1992, New Zealand is obligated to facilitate the *Māori* customary fisheries management practices and the traditional gathering of fish.[941] The *Māori* right to fish is also regulated by the Fisheries Act 1996,[942] the *Māori* Fisheries Act, 2004,[943] and the *Māori* Commercial Aquaculture Claims Settlement Act, 2004.[944] New Zealand has also formulated the Fisheries Treaty Strategy towards ensuring that its obligations to the *Māori* under the Treaty of Waitangi, related to fisheries and aquaculture, are met.[945]

2.1.5. Customary Law and Legal Systems

Laws and customs which are long-standing and universally observed by the *Māori* (also referred to as *tikanga Māori)* are recognised as having the force of law based on the 'presumption of continuity' and are accordingly enforceable by means of the remedies available at law and in equity.[946] The Treaty of Waitangi protects *tikanga Māori*; New Zealand accepts *tikanga Māori* as a source of treaty law.[947] *Tikanga Māori* regulates sentencing, family protection claims, conservation and use of natural resources, and administration of land.[948] The *Māori* Land Court applies the *tikanga Māori* for the settlement of land claims; for instance, for disputes relating to freehold land (with multiple owners), the *Māori* Land Court may hold "*land that is held by Māori in accordance with tikanga Māori*" to be '*Māori customary land*'.[949]

New Zealand also requires ordinary domestic courts to understand *Māori* customs and cultural values and their application to a given situation.[950] The Supreme Court of New Zealand held in *Ellis v. R* that "*tikanga has been and will continue to be recognised in the development of the common law of Aotearoa/New Zealand in cases where it is relevant*", that it often "*forms part of New Zealand law as a result of being incorporated into statutes and regulations*" and that it "*may be a relevant consideration in*

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939 *Te Weehi v. Regional Fisheries Officer*, 1 N.Z.L.R. 682 (1986).
940 The Treaty of Waitangi (Fisheries Claims) Settlement Act, 1992, s. 10(c).
941 The Deed of Settlement, 1992, s. 3.5.1.1.
942 The Fisheries Act, 1996, s. 5.
943 The Maori Fisheries Act, 2004, s. 3.
944 The Māori Commercial Aquaculture Claims Settlement Act, 2004, s. 3.
945 Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 45.
946 *Id*. at 46.
947 *Ibid.*
948 *Ibid.*
949 *Ibid.*
950 *Ellis v. R*, NZSC 114 (2020), para. 279.

the exercise of [judicial] discretions".[951] The case dealt with whether the right of appeal against criminal convictions expires with the death of the appellant, with common law and *tikanga Māori* offering conflicting answers.[952]

The *Māori* Community Development Act, 1962 established the *Māori* District Committees (composed of local *Māori* committees), the *Māori* District Councils, and the National *Māori* Council of New Zealand (composed of *Māori* District Committees).[953] Under the *Māori* Community Development Act, 1962, the *Māori* District Committees are authorised to function on the basis of *Māori* customary law, but under the direction and control of the Minister of *Māori* Affairs in New Zealand.[954]

2.1.6. Preservation of Language

The *Māori* Language Act, 1987 recognises the *Māori* language as an official language in New Zealand,[955] thus entitling the *Māori* to orally communicate in their native language in legal proceedings.[956] The *Māori*, however, do not have the right to insist on being addressed or answered in the *Māori* language.[957] The *Māori* Language Act, 1987, also set up the *Māori* Language Commission, tasked with "*promot[ing] the Māori language, and, in particular, its use as a living language and as an ordinary means of communication*".[958] New Zealand initiated the *Māori* Language Strategy in 2003, with the objective of revitalising the *Māori* language.[959] With the passing of the *Māori* Language Act, 2016, *Māori* languages have been conferred official status, thus enabling their use in official notices, legal proceedings and business transactions.[960]

2.1.7. Non-Discrimination and Affirmative Action

The Bill of Rights Act, 1990 and the Human Rights Act, 1993, prohibit discrimination on grounds of

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[951] *Id*. at para. 19.

[952] *Id*. at paras. 24-26, 312.

[953] The Māori Community Development Act, 1962, s. 15.

[954] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 43; The Māori Community Development Act, 1962, s. 3.

[955] The Māori Language Act, 1987, s. 3.

[956] *Id*. s. 4(1).

[957] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 45.

[958] The Māori Language Act, 1987, s. 7.

[959] Ministry of Maori Development, *The Māori Language Strategy, Te Puni Kokiri*, *available at:* https://www.tpk.govt.nz/en/o-matou-mohiotanga/te-reo-maori/the-maori-language-strategy (last visited on Oct. 5, 2025).

[960] The Māori Language Act, 2016, s. 5; Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 45.

race.[961] The Human Rights Act 1993 further sanctions affirmative action by expressly clarifying that statutory or policy measures adopted with the objective of advancing disadvantaged communities do not amount to discrimination.[962] However, as early as the 1980s, New Zealand had introduced measures such as the *Māori* and Pacific Islander Recruitment Scheme to raise the representation of the *Māori* in public sector employment.[963] Recently, New Zealand enacted the Public Service Act, 2020, stipulating that the employer should endeavour to recognise the aspirations, aims and requirements of the *Māori* and strive for the increased involvement of the *Māori* in public service.[964] The Education Act, 1989 also empowers universities with the leeway to resort to 'discriminatory' measures in furtherance of affirmative action.[965] In admissions to medical and legal studies, New Zealand has instituted policies devising 'special entry quotas' for the *Māori*.[966]

2.2. Australia

2.2.1. Constitutional Recognition

Aboriginal and Torres Strait Islander peoples, indigenous to Australia, are not specifically referenced in the Constitution.[967] Section 51(xxvi), as originally adopted in 1901, granted to the Commonwealth the legislative power to make special laws, when deemed necessary, with respect to "*people of any race, other than the aboriginal race in any state*".[968] Further, Section 127 stipulated that "*in reckoning the numbers of people of the Commonwealth...aboriginal natives shall not be counted*".[969] However, in 1967, the Constitution was amended through a referendum, deleting Section 127, thus allowing Aboriginal races to be counted in the national population of Australia towards electoral representation.[970] The amendment also extended the legislative power of the Commonwealth under Section 51(xxvi) vis-à-vis

[961] The New Zealand Bill of Rights Act, 1990, s. 19; The Human Rights Act, 1993, s. 21.

[962] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. nos. 48, 49; The Human Rights Act, 1993, s. 73.

[963] Marilyn E. Lashley, "Remedying Racial and Ethnic Inequality in New Zealand: Reparative and Distributive Policies of Social Justice", in Samuel L. Myers and Bruce P. Corrie (eds.), *Racial and Ethnic Economic Inequality: An International Perspective* 138 (Peter Land Publishing, 1996).

[964] The Public Service Act, 2020, ss. 14, 75.

[965] The Education Act, 1989, s. 16.

[966] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 49.

[967] Australian Human Rights Commission, *About Constitutional Recognition*, *available at:* https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/about-constitutional-recognition (last visited on Oct. 5, 2025)

[968] The Constitution of Australia, s. 51(xxvi).

[969] *Id*. s. 127.

[970] Constitution Alteration (Aboriginals), 1967, s. 3.

Aboriginal races through the deletion of the phrase "*other than the aboriginal race in any state*".[971] As a consequence of such alteration, the mention of 'aboriginal races' was entirely removed from the Constitution.

Although a referendum was held in 2024 for recognising Aboriginal and Torres Strait Islander peoples in the Constitution as 'First Peoples of Australia' and securing an indigenous voice in the Parliament through a constitutionally enshrined representative mechanism to provide expert advice on laws and policies that affect them, it was not passed.[972] Each of the six states in Australia, nevertheless, recognises Aboriginal peoples in their respective constitutions; the constitution of Queensland recognises Torres Strait Islander peoples.[973] In 2008, the Australian Parliament apologised for "*the laws and policies of successive Parliaments and governments that have inflicted profound grief, suffering and loss*" on Aboriginal and Torres Strait Islander peoples.[974]

2.2.2. Title to Ancestral Lands

At the time of the drafting of the Constitution, Australia was considered a land that belonged to no one until the establishment of European settlements. As a result, Aboriginal and Torres Strait Islander peoples had no say in the creation of the Australian nation on their ancestral territories.[975] However, Aboriginal peoples have now been recognised as the 'First peoples of Australia' by the High Court in its *Mabo* decisions, expressly rejecting the notion of 'terra nullis', that Australia was an unoccupied land prior to colonisation and categorically holding that common law recognises the past and continuing traditional customary title of the Aboriginal and Torres Strait Islander peoples to Australian land and waters.[976] The Aboriginal and Torres Strait Islander Peoples Recognition Act, 2013 codified this understanding into law: "*The Parliament, on behalf of the people of Australia, recognises that the continent and the islands now known as Australia were first occupied by Aboriginal and Torres Strait Islander peoples…acknowledges the continuing relationship of Aboriginal and Torres Strait Islander*

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[971] Australian Human Rights Commission, *About Constitutional Recognition*, *available at:* https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/about-constitutional-recognition (last visited on Oct. 5, 2025).

[972] *Ibid.*

[973] United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Australia*, UN Doc A/HRC/36/46/Add.2 (2017), para. 18.

[974] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 13.

[975] Australian Human Rights Commission, *About Constitutional Recognition*, *available at:* https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/about-constitutional-recognition (last visited on Oct. 5, 2025)

[976] *Mabo v. Queensland* (No. 2), 175 CLR 1 F.C. 92/014 (1992).

peoples with their traditional lands and waters."[977]

Even before the *Mabo* decisions, a number of state and federal territorial legislations had acknowledged the rights of Aboriginal and Torres Strait Islander peoples to their ancestral territories. For instance, the Aboriginal Land Trust Act, 1966 of South Australia permitted Aboriginal ownership of land but did not recognise common law native title.[978] Subsequently, the Aboriginal Land Rights (Northern Territory) Act, 1976 became the first legislation to recognise the Aboriginal ownership of land without having to make a land claim and legally enshrine 'inalienable freehold title' thereto.[979] As a result, Aboriginal reserves were transformed into Aboriginal lands.[980]

Vide the *Pitjantjatjara* Land Rights Act, 1981 of South Australia, all *Pitjantjatjaras* were granted "*unrestricted rights of access to the lands*"[981] as "*a special measure for the purpose of adjusting the law of the State to grant legal recognition and protection of the claims of the Anunga Pitjantjatjara to the traditional homelands on which they live*".[982] All Australian states have since enacted legislation addressing the Aboriginal right and title to lands. With the passing of the Native Title Act, 1993[983] by the Commonwealth, the pre-existing native title and Aboriginal rights to land and water came to be expressly recognised. The Native Title Act, 1993, also laid down the statutory framework for seeking compensation for acts impacting native title to land; also, through a subsequent amendment in 1998, several limitations were imposed on potential land claims by Aboriginal peoples.[984] Recently, the Eastern Maar nation, the traditional owners of the Twelve Apostles, as recognised under the Great Ocean Road and Environs Protection Act, 2020, successfully retook possession of the area, pursuant to a successful land claim.[985]

2.2.3. Self-Governance

In Australia, Aboriginal peoples are entitled to exercise self-governance at the local levels to a limited

[977] The Aboriginal and Torres Strait Islander Peoples Recognition Act, 2013, s. 3.

[978] The Aboriginal Land Trust Act, 1966, s. 5; Christa Scholtz, "Federalism and Policy Change: An Analytic Narrative of Indigenous Land Rights Policy in Australia (1966-1978)" 46(2) *Canadian Journal of Political Science* 406 (2013).

[979] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 7.

[980] *Ibid*.

[981] The Pitjantjatjara Land Rights Act, 1981, s. 18.

[982] *David Alan Gerhardy v. Robert John Brown*, 59 A.L.J.R. 311 (1985).

[983] The Native Title Act, 1993, s. 10.

[984] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 7.

[985] *Austin on behalf of the Eastern Maar People v. State of Victoria*, FCA 237 (2023).

extent through Aboriginal Land Councils.[986] Aboriginal peoples elect members of the Aboriginal Land Councils, which are organised as incorporated, statutory entities that represent Aboriginal landowners in every state and federal territory in the management of native title. Aboriginal Land Councils also supervise the delivery of services to Aboriginal peoples, including housing, legal affairs, employment, training, and property acquisition and management.[987] Aboriginal Land Councils may also formulate and implement bylaws on the governance of Aboriginal lands and reserves, relating to matters such as admission of people, regulation of traffic, control over alcohol, substances and weapons, and waste disposal.[988]

At the state level, Aboriginal Regional Authorities have also taken steps towards recognising Aboriginal political collectives and instituting Aboriginal self-determination as the driving force behind Aboriginal affairs policies. For instance, the Aboriginal and Torres Strait Islander Commission Act, 1989 (now Aboriginal and Torres Strait Islander Act, 2005)[989] established the Torres Strait Regional Authority, a self-governing body comprising 20 elected representatives, to administer the Torres Strait Islands through provision of local and government services and serve as the political representative structure for Torres Strait Islanders and strengthen the region's economic, cultural, and social development. The earlier Torres Strait Islanders Act, 1939[990] also vested Torres Strait Islanders with the right to vote and the authority to elect representatives to the local government, including their own chairmen and councillors. Today, all Aboriginal and Torres Strait Islander peoples have the right to vote, as well as contest as candidates for elected office.

2.2.4. Protection of Culture and Traditions

The Aboriginal and Torres Strait Islander Peoples Recognition Act, 2013 protects "*the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples*".[991] The Aboriginal and Torres Strait Islander Heritage Protection Act, 1984[992] safeguards places, areas, and objects that are culturally significant to the Aboriginal and Torres Strait Islander peoples. The National Parks and Wildlife Conservation Act, 1975 grants to the aboriginal peoples the right to "*the traditional use of any area of land or water for hunting, for food-gathering (otherwise than for purposes of sale) and for*

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[986] Government of Australia, *Aboriginal Land and Permits*, *available at:* https://nt.gov.au/property/land/aboriginal-land-management/aboriginal-land-and-permits/land-council-roles-and-contacts (last visited on Oct. 5, 2025).

[987] Jens Korff, "Aboriginal Land Councils" *Creative Spirits* (Jul. 17, 2020).

[988] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 8.

[989] The Aboriginal and Torres Strait Islander Act, 2005, s. 142A.

[990] The Torres Strait Islanders Act, 1939, s. 11.

[991] The Aboriginal and Torres Strait Islander Peoples Recognition Act, 2013, s. 3.

[992] The Aboriginal and Torres Strait Islander Heritage (Interim Protection) Act, 1984, s. 4.

ceremonial and religious purposes".[993] States and federal territories also have similar statutes protecting aboriginal culture and heritage, traditional hunting and fishing practices, and the right to deal with the flora and fauna on their indigenous territories. The traditional right of Aboriginal peoples to fish is also recognised in the Torres Strait Treaty,[994] an international treaty concluded by and between Australia and Papua New Guinea in 1978.[995] Today, the Australian Human Rights Commission, an independent statutory body tasked with promoting awareness of human rights and offering guidance on Australia's domestic and international human rights obligations, recognises Aboriginal and Torres Strait Islander peoples as the "*traditional custodians of Country*" and "*recognise their continuing connection to land, waters and culture*".[996]

2.2.5. Preservation of Language

Australia has also taken a variety of measures to conserve Aboriginal languages. The Maintenance of Indigenous Languages and Records programme aids in the creation of an active network of community-based indigenous language centres and language organisations, language projects and policy initiatives.[997] The National Indigenous Languages Policy aims to raise awareness, revive endangered languages, and support indigenous language programmes in schools.[998]

For the first time in Australia, New South Wales had enacted legislation for the protection of Aboriginal languages.[999] The Aboriginal Languages Act, 2017, not only highlights the importance of Aboriginal languages but also acknowledges that the extinction of Aboriginal languages is a result of government (in)action.[1000] The Act also sets up the Aboriginal Languages Trust for the promotion and maintenance of Aboriginal languages.[1001]

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[993] The National Parks and Wildlife Conservation Act, 1975, s. 70.1.

[994] The Torres Strait Treaty, 1978, art. 10.3.

[995] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 10.

[996] Australian Human Rights Commission, *available at*: https://humanrights.gov.au/ (last visited on Nov. 11, 2025).

[997] The Maintenance of Indigenous Languages and Records program, *available at:* https://ourlanguages.org.au/wp-content/uploads/2010/06/milr_funding.pdf (last visited on Oct. 5, 2025); Department of the Environment, Water, Heritage and the Arts, *Social Justice Report 2009 Appendix 5* (2010), *available at:* https://humanrights.gov.au/sites/default/files/content/social_justice/sj_report/sjreport09/pdf/sjr_nx5.pdf (last visited on Oct. 5, 2025).

[998] Department of the Environment, Water, Heritage and the Arts, *Social Justice Report 2009 Appendix 3* (2010), *available at:* https://humanrights.gov.au/sites/default/files/content/social_justice/sj_report/sjreport09/pdf/sjr_nx5.pdf (last visited on Oct. 5, 2025).

[999] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University*, (2021) p. no. 10.

[1000] The Aboriginal Languages Act, 2017, preamble.

[1001] *Id.* s. 5.

2.2.6. Customary Laws and Legal Systems

Aboriginal customary laws and practices have rarely been recognised in Australian law, even though Aboriginal peoples continue to apply and be influenced by their traditional norms.[1002] In the *Mabo* decision, however, the High Court had recognised the customary rights of indigenous peoples to land, thus accepting that indigenous customary law has legal force in Australia.[1003] Customary law is also taken into account in the bail and sentencing decisions before domestic courts.[1004] Commonwealth and state legislation also recognise, to a limited extent, indigenous customary laws and traditions relating to Aboriginal marriages, childcare practices, inheritance, and protection of sacred and cultural sites.[1005] In Western Australia, the Aboriginal Communities Act, 1979[1006] empowers Aboriginal peoples to make their own bylaws derived from their customary traditions. Further, under the Aboriginal Land Rights (Northern Territory) Act, 1976, Aboriginal peoples are entitled to make claims to the Crown based on their customary ownership of lands.[1007]

2.2.7. Consultation

Although Aboriginal and Torres Strait Islander peoples have advocated for the constitutional entrenchment of their right to be consulted on policies and legislation which affect them, on account of the failure of the 2024 referendum, an Indigenous voice in the Parliament could not be guaranteed.[1008] However, Australia had established the Aboriginal and Torres Strait Islander Commission (ATSIC) in 1990 as a government body tasked with policymaking and service delivery targeting the indigenous peoples across the country.[1009] The ATSIC was composed of 35 regional council members as well as a

[1002] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 11.

[1003] *Mabo v. Queensland* (No. 2), 175 CLR 1 F.C. 92/014 (1992).

[1004] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 11.

[1005] *Ibid*.

[1006] The Aboriginal Communities Act, 1979, ss. 7, 8.

[1007] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 11.

[1008] Tiffanie Turnbull, "Voice referendum: What is Australia's Voice to Parliament proposal?" *BBC News*, Oct. 14, 2023; Australian Human Rights Commission, *About Constitutional Recognition: Recognition of Aboriginal and Torres Strait Islander Peoples in the Australian Constitution*, *available at:* https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/about-constitutional-recognition (last visited on Oct. 5, 2025).

[1009] The Centre of Democracy, *The Aboriginal and Torres Strait Islander Commission*, *available at:* https://www.centreofdemocracy.sa.gov.au/milestone/aboriginal-and-torres-strait-islander-commission-atsic/ (last visited on Oct. 5, 2025).

national Board of Commissioners, elected by the Aboriginal and Torres Strait Islander peoples.[1010] The ATSIC was, however, abolished in 2005, and its functions were taken over by the Office of Indigenous Policy Coordination (OIPC), a government division under the Department of Families, Housing, Community Services and Indigenous Affairs (and therefore lacking a representative character).[1011] The OIPC offers policy advice on Aboriginal issues to the Commonwealth and coordinates the delivery of services to the Aboriginal peoples.[1012] Subsequently, though a national representative body, the National Congress of Australia's First Peoples, was established to replace the ATSIC, it ceased its operations in 2019.[1013] Therefore, the struggle of Aboriginal and Torres Strait Islander peoples to have their right to be consulted legally guaranteed is ongoing.[1014]

2.2.8. Non-Discrimination and Affirmative Action

Australia, through various policies and legislation, has implemented affirmative action measures and specific initiatives aimed at improving outcomes for Aboriginal and Torres Strait Islander peoples.[1015] These efforts are designed to address historical disadvantages and promote equality in areas such as employment, economic development, and social well-being. A number of Commonwealth and state legislations in Australia guarantee affirmative action for the benefit of Aboriginal and Torres Strait Islander peoples.[1016] The Equal Employment Opportunity (Commonwealth Authorities) Act, 1987, recognises "*members of the Aboriginal race of Australia or persons who are descendants of indigenous inhabitants of the Torres Strait Islands*" as a 'designated group', with the objective of ending discrimination and promoting equal opportunity in recruitment.[1017] Further, the Commonwealth Racial Discrimination Act, 1975,[1018] permits the adoption of remedial measures, taking into account racial distinctions, by granting special treatment in hiring practices to groups that have been historically

[1010] The Parliament of Australia, *Evolution of ATSIC*, *available at:* https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/indigenousaffairs/report/final/c02 (last visited on Oct. 5, 2025).

[1011] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 12.

[1012] *Ibid*.

[1013] Australian Human Rights Commission, *The History of Aboriginal and Torres Strait Islander Peoples Advocating for the Right to be Heard*, *available at:* https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/history-aboriginal-and-torres-strait (last visited on Oct. 5, 2025).

[1014] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 12.

[1015] *Id*. at 14, 15.

[1016] Australian Public Service Commission, *Affirmative Measure for Recruiting Aboriginal and Torres Strait Islander Australians: A guide for agencies*, *available at:* https://www.apsc.gov.au/working-aps/diversity-and-inclusion/aboriginal-and-torres-strait-islander-workforce/affirmative-measure-recruiting-aboriginal-and-torres-strait-islander-australians-guide-agencies (last visited on Oct. 5, 2025).

[1017] The Equal Employment Opportunity (Commonwealth Authorities) Act, 1987, s. 3.

[1018] The Commonwealth Racial Discrimination Act, 1975, s. 8.

denied human rights. Australia also established a Royal Commission into Aboriginal Deaths in Custody in 1987, in response to high rates of indigenous deaths in custody.[1019] At the state level, acts like the Tasmanian State Service Act, 1984 recognises Aboriginal and Torres Strait Islander peoples as the designated target for 'Equal Employment Opportunity', thereby requiring authorities to earmark certain 'Aboriginal Identified Positions' in state public service, which may only be filled by Aboriginal peoples. [1020]

The Commonwealth has also adopted policy measures aimed at improving the economic conditions of Aboriginal peoples, including the Indigenous Procurement Policy,[1021] which reserves certain procurement contracts for Aboriginal businesses, and the Employment Parity Initiative[1022] aimed at providing additional jobs to Aboriginal and Torres Strait Islander peoples.[1023] Since 2007, vide the National Agreement on 'Closing the Gap', a Commonwealth initiative (developed in partnership between Australian governments and Aboriginal and Torres Strait Islander organisations) for identifying and overcoming the disadvantages faced by Aboriginal and Torres Strait Islander peoples, progress is being periodically tracked by the Productivity Commission against 17 socio-economic outcomes crucial to the life and well-being of Aboriginal peoples, so as to assess whether the quality of life of Aboriginal and Torres Strait Islander peoples is improving over time. Further, the human rights outcomes of Aboriginal peoples are monitored by the Aboriginal and Torres Strait Islander Social Justice Commissioner, who annually tables a report before the Australian Parliament.[1024] In 2024, Australia established the National Commission for Aboriginal and Torres Strait Islander Children and Young People, with the objective of promoting better outcomes for the rights, interests, and well-being of Aboriginal children, youth and their families.[1025]

Despite these advancements, the Constitution continues to implicitly permit racial discrimination:

[1019] National Archives of Australia, *Royal Commission into Aboriginal Deaths in Custody*, *available at:* https://www.naa.gov.au/explore-collection/first-australians/royal-commission-aboriginal-deaths-custody (last visited on Oct. 5, 2025).

[1020] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University*, p. no. 14 (2021).

[1021] National Indigenous Australians Agency, *The Indigenous Procurement Policy*, *available at:* https://www.niaa.gov.au/our-work/employment-and-economic-development/indigenous-procurement-policy-ipp (last visited on Oct. 5, 2025).

[1022] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. nos. 14-15.

[1023] *Id*. at 14.

[1024] Closing the Gap, *National Agreement on Closing the Gap: At a Glance*, *available at:* https://www.closingthegap.gov.au/national-agreement (last visited on Oct. 5, 2025).

[1025] Prime Minister and Cabinet Portfolio, *Establishment of the National Commission for Aboriginal and Torres Strait Islander Children and Young People*, *available at:* https://ministers.pmc.gov.au/mccarthy/2024/establishment-national-commission-aboriginal-and-torres-strait-islander-children-and-young-people (last visited on Oct. 5, 2025).

Section 51 (xxvi), which permits the enactment of special laws for "*people of any race*", has been widely criticised for providing a basis for passing discriminatory legislation, such as the 1998 amendments to the Native Title Act and the Northern Territory Emergency Response.[1026] Furthermore, Section 25 allows states to prevent people of specific races from voting in elections by enacting laws to this effect.[1027]

3. North American countries

3.1. Canada

3.1.1. Historical Treatment

A number of distinct indigenous communities, including *First Nations*, *Métis* and *Inuit*, are native to North America.[1028] Canada acknowledged the existence of its indigenous populations for the first time in the Royal Proclamation, 1763, which recognised the "*several Nations or Tribes of Indians*".[1029] Initially, indigenous rights in Canada were governed by the British North America Act, 1867, which authorised the federal government to legislate on "*Indians and lands reserved for Indians*".[1030]

3.1.2. Constitutional and Legal Recognition

Subsequently, the Constitution Act, 1982 expressly recognised 'aboriginal peoples'. Section 35(2) defines 'aboriginal peoples' as including the Indian (the legal term referring to the *First Nations*), *Inuit* and *Métis* peoples of Canada.[1031] The Constitution Act, 1982, however, does not set out indigenous rights, but Section 35(1) provides: "*the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed*", thus recognising that aboriginal peoples and their rights predate the Constitution Act, 1982.[1032] Per Section 35(1) of the Constitution Act, 1982, since only those pre-existing aboriginal and treaty rights vested in indigenous peoples are protected by Section 35, the crucial responsibility of determining what such rights are has been dispensed by courts.[1033]

Aboriginal rights refer to the collective rights of Aboriginal peoples, stemming from their status as the native peoples of Canada. In *R v. Van der Peet,* the Supreme Court of Canada held: "*to be an aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of*

[1026] The Constitution, s. 51(xxvi).
[1027] *Id.* s. 25.
[1028] Government of Canada, *Indigenous peoples and communities*, *available at:* https://www.rcaanc-cirnac.gc.ca/eng/1100100013785/1529102490303 (last visited on Oct. 5, 2025).
[1029] The Royal Proclamation, 1763, para. 13.
[1030] The British North America Act, 1867, s. 91(24).
[1031] The Constitution Act, 1982, s. 35(2).
[1032] *Id.* s. 35(1).
[1033] University of British Columbia, *Constitution Act, 1982 Section 35*, *available at:* https://indigenousfoundations.arts.ubc.ca/constitution_act_1982_section_35/ (last visited on Nov. 11, 2025)

the aboriginal group claiming the right."[1034] Treaty rights include those that now exist or may be acquired in the future by way of agreements with the Crown. As early as 1701, specific groups of *First Nations, Métis* or *Inuit* have respectively concluded legally binding agreements with the Crown (federal, provincial and territorial governments), referred to as historic treaties, recognising the rights of aboriginal peoples. Under the first historic treaty, the Aboriginal peoples surrendered their interests in lands in exchange for benefits including reserves, annual payments, medical care and education.[1035] In 1973, the Supreme Court of Canada recognised aboriginal title to land as a legal right for the first time in *Calder et. al. v. Attorney-General of British Columbia,*[1036] paving the way for the first modern treaty, the James Bay and Northern Quebec Agreement, signed in 1975.[1037]

Since then, several modern treaties have been executed, reflecting a constitutionally entrenched commitment between the federal government and indigenous peoples and furthering the reconciliation of pre-existing indigenous sovereignty with state sovereignty, in particular through affirming indigenous rights with respect to land ownership, conservation of indigenous culture, heritage and languages, participation in resource management and development, socio-economic well-being, and self-governance, political recognition and representation.[1038] In *Ontario v. Restoule*, the Supreme Court of Canada held that the federal government was in breach of its treaty obligations when it failed to consider augmenting the annuity payments to the Robinson-Superior *First Nations,* despite the provision stipulating that annuity payments would be hiked over time if it could be done so without the Crown incurring a loss.[1039] The Supreme Court stated that this failure was a "*mockery of the Crown's treaty promise to the Anishinaabe of the upper Great Lakes*".[1040] Further, in *R v. McPherson,* the Supreme Court of Canada ruled that provincial laws which conflict with the treaty rights of Aboriginal peoples must be deemed inapplicable to them.[1041]

The Canadian Charter of Rights and Freedoms (a part of the Constitution Act, 1982)[1042] stipulates in Section 25 that the individual rights and freedoms guaranteed "*shall not be construed so as to abrogate or*

[1034] *R v. Van der Peet*, 2 S.C.R. 507 (1996), para. 46.

[1035] Government of Canada, *What are treaties with Indigenous peoples*, *available at:* https://www.rcaanc-cirnac.gc.ca/eng/1100100028574/1529354437231 (last visited on Oct. 5, 2025).

[1036] *Calder et. al. v. Attorney-General of British Columbia*, SCR 313 (1973).

[1037] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 17.

[1038] Government of Canada, *Canada's Collaborative Modern Treaty Implementation Policy*, *available at:* https://www.rcaanc-cirnac.gc.ca/eng/1672771319009/1672771475448 (last visited on Nov. 11, 2025).

[1039] *Ontario (Attorney General) v. Restoule*, SCC 27 (2024).

[1040] *Id.* at para. 2.

[1041] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 18.

[1042] The Constitution Act, 1982, part I.

derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada".[1043] Section 25 thus ensures that the collective rights and freedoms of indigenous peoples in Canada are protected as a distinct minority. For instance, in *Dickson v. Vuntut Gwitchin First Nation (VGFN),* the Supreme Court of Canada was faced with the issue of the interrelationship between the right to equality under Section 15(1) of the Charter and indigenous rights under Section 25 thereof, in the context of an electoral residency requirement in the VGFN Constitution that prescribed residence on VGFN lands as a precondition for eligibility to contest for certain positions.[1044] The Supreme Court of Canada ruled that although the residence requirement was in violation of the right to equality, it was saved by Section 25, which protects the decisions of indigenous governments made in the exercise of their right to self-government.[1045]

Canada has also adopted into federal law the UNDRIP vide the UN Declaration on the Rights of Indigenous Peoples Act, 2021, thus becoming one of the first countries to do so.[1046] Its Preamble states that the UNDRIP establishes a framework for reconciliation, justice and peace, and denunciates the doctrines of discovery and *terra nullius* as "*racist, scientifically false, legally invalid, morally condemnable and socially unjust*".[1047] The UN Declaration on the Rights of Indigenous Peoples Act, 2021, requires that the federal laws of Canada be consistent with the UNDRIP.[1048] The UN Declaration on the Rights of Indigenous Peoples Act, 2021, further explicitly affirms that the UNDRIP is "*a universal international human rights instrument with application in Canadian law*",[1049] thus requiring Canadian courts to apply the UNDRIP in the interpretation of domestic law[1050] (including the Constitution Act, 1982), thereby vesting on it, 'quasi-constitutional' stature.[1051]

3.1.3. Title to Ancestral Lands

Numerous historic treaties have guaranteed to Aboriginal peoples the right to land and territory. The Supreme Court of Canada in *Delgamuukw v. British Columbia* expressly ruled that the aboriginal right and title to lands is affirmed by Section 35 of the Constitution Act, 1982, aboriginal peoples are entitled

[1043] *Id.* s. 25.
[1044] *Dickson v. Vuntut Gwitchin First Nation*, SCC 10 (2024).
[1045] *Id.* at para. 503.
[1046] Government of Canada, *Backgrounder: United Nations Declaration on the Rights of Indigenous Peoples Act*, *available at:* https://www.justice.gc.ca/eng/declaration/about-apropos.html (last visited on Oct. 5, 2025).
[1047] International Work Group for Indigenous Affairs, *The Indigenous World 2024* (38th edn., 2024), p. no. 484.
[1048] The United Nations Declaration on the Rights of Indigenous Peoples Act, 2021, s. 5.
[1049] *Id.* s. 4 (a).
[1050] *Id.* s. 4 (b).
[1051] Human Rights Council, *Constitutions, laws, legislation, policies, judicial decisions and other mechanisms through which States have taken measures to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, in accordance with article 38 of the Declaration ,* UN Doc A/HRC/57/62 (Aug. 2, 2024), para. 16.

to the exclusive occupation and use of their indigenous territories if it can be proven that their occupation of such lands predated the assertion of British sovereignty and has since continued.[1052] The aboriginal title to lands is also acknowledged in a number of statutes. Under the Indian Act, 1876, lands have been reserved for *First Nations,* over which they have been granted communal ownership (alienable only in favour of the Crown), although the title is vested in the Crown.[1053] Vide the Manitoba Act, 1870, *Métis* were allocated lands,[1054] and the *Métis* Settlements Act of Alberta, 1990 protects the collective land base of the *Métis*.[1055] The land rights of the *Inuit* are guaranteed under the James Bay and Northern Quebec Agreement, the Inuvialuit Final Agreement (The Western Arctic Claim Settlement), the Labrador *Inuit* Land Claims Agreement-In-Principle, and the Nunavut Land Claims Agreement Act.[1056]

Where the aboriginal right and title to lands is not governed by treaty, legislation, or judicial pronouncements, the government of Canada has sought to engage in land claim negotiations with aboriginal peoples.[1057] With the passing of the Haida Nation Recognition Act, 2024, British Columbia became the first province in Canada to expressly recognise aboriginal title to lands through legislation.[1058] Canada has, however, failed to reform certain of its unilaterally imposed policies which extinguish Aboriginal rights and title, including the Comprehensive Land Claims and Inherent Right to Self-Government Policies.[1059] Further, the Additions to Reserve Policy,[1060] which allows *First Nations* to add lands to their reserves, has had limited implementation in practice, with a steady decline in approvals across the country over the years.[1061]

3.1.4. Self-Governance, Participation, and Consultation

The government of Canada accepts that Aboriginal peoples have the inherent right of self-governance in matters of their lands, resources, cultures, traditions, languages and institutions, which is protected

[1052] *Delgamuukw v. British Columbia*, 3 SCR 1010 (1997), paras. 114, 189-192.
[1053] The Indian Act, 1876.
[1054] The Manitoba Act, 1870.
[1055] The Métis Settlements Act of Alberta, 1990.
[1056] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 17.
[1057] *Id.* at 16.
[1058] International Work Group for Indigenous Affairs, *The Indigenous World 2025* (39th edn., 2025), p. no. 523.
[1059] Government of Canada, *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*, *available at:* https://www.rcaanc-cirnac.gc.ca/eng/1100100031843/1539869205136 (last visited on Oct. 5, 2025).
[1060] Government of Canada, *Additions to Reserve*, *available at:* https://www.sac-isc.gc.ca/eng/1332267668918/1611930372477 (last visited on Oct. 5, 2025).
[1061] Government of Canada, *Additions to Reserve: Policy Redesign*, *available at:* https://www.rcaanc-cirnac.gc.ca/eng/1702578996213/1702579033924 (last visited on Nov. 11, 2025).

by Section 35 of the Constitution Act, 1982.[1062] However, it is neither recognised in legislation nor in the decisions of the Supreme Court of Canada.[1063] Canada also does not afford Aboriginal peoples guaranteed representation in the Parliament or the legislatures at the federal and provincial levels. Canada has nevertheless adopted policy measures in acknowledgement of the right of Aboriginal peoples to self-governance.[1064] For instance, the Agenda for Action with *First Nations* states that "*aboriginal people enjoyed their own forms of government for thousands of years before this country was founded and they continue to have the inherent right to self-government. The federal government is committed to working out government-to-government relationships at an agreed-upon pace acceptable to First Nations*".[1065]

The Indian Act, 1876, under which *First Nations* are entitled to formulate bylaws for their communities, but with the approval of the Minister for Indian Affairs, had also granted a limited right of self-governance to *First Nations*.[1066] Specific claims arising from past wrongs against *First Nations*, for instance, relating to the administration of land and other assets or the non-fulfilment of historic treaty obligations, when made to the Minister of Crown-Indigenous Relations and Northern Affairs, are extra-judicially resolved outside the court system through negotiated settlements with *First Nations.*[1067] The federal government has also concluded over 25 self-government agreements with Aboriginal groups, thus granting them treaty rights to self-governance.[1068] For instance, the Nisga'a Final Agreement Act, 1999 establishes the Nisga'a government and confers upon it the authority to conduct Nisga'a affairs, exercise jurisdiction, and manage natural resources, in accordance with provincial legislation.[1069]

Several decisions of the Supreme Court of Canada have held that Canada has a duty, under Section 35 of the Constitution Act, 1982, to meaningfully consult and, where appropriate, accommodate indigenous groups in decision-making related to the issuance of permits, authorisations or funding on

[1062] Government of Canada, *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*, *available at:* https://www.rcaanc-cirnac.gc.ca/eng/1100100031843/1539869205136 (last visited on Oct. 5, 2025).

[1063] Government of Canada, *Aboriginal Rights*, available at: https://www.justice.gc.ca/eng/csj-sjc/ijr-dja/35pedia-wiki35/p6.html (last visited on Nov. 11, 2025).

[1064] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 20.

[1065] Shin Imai, *Aboriginal Law Handbook* 117 (Thomson Canada Ltd., 1999).

[1066] Government of Canada, *Self-government*, available at: https://www.rcaanc-cirnac.gc.ca/eng/1100100032275/1529354547314 (last visited on Nov. 11, 2025).

[1067] Government of Canada, *Specific Claims*, *available at:* https://www.rcaanc-cirnac.gc.ca/eng/1100100030291/1539617582343 (last visited on Oct. 5, 2025).

[1068] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. nos. 16-18.

[1069] The Nisga'a Final Agreement Act, 1999.

matters that may impact aboriginal or treaty rights.[1070] Where amendments to Aboriginal rights and freedoms are being deliberated upon, the government is thus obliged to invite the participation of Aboriginal peoples through their representatives as a procedural safeguard.[1071] *First Nations, Métis* and *Inuit* are represented at the regional, provincial and federal levels by several representative organisations, including the Assembly of *First Nations*, the *Métis* National Council, and the *Inuit* Tapiriit Kanatami.[1072]

Canada has also formulated the Aboriginal Consultation and Accommodation: Interim Guidelines for Federal Officials to Fulfil the Legal Duty to Consult. In the landmark decision of *Haida Nation v. British Columbia (Minister of Forests),*[1073] the Supreme Court of Canada held that both the federal and provincial governments have a 'duty to consult' aboriginal peoples and to take into consideration their concerns before claims relating to aboriginal rights or title are settled, towards reconciling aboriginal and other interests. However, in *Mikisew Cree First Nation v. Canada (Governor General in Council),*[1074] the Supreme Court of Canada ruled that the legal duty to consult extends only to the state's conduct under existing statutes and not to the legislative process itself for the deliberation and enactment of new statutes, although governments may engage in dialogue with Aboriginal peoples as a matter of policy.

3.1.5. Protection of Culture and Traditions

The right of Aboriginal peoples to safeguard their culture is inherent in Section 35 of the Constitution Act, 1982. In *R v. Sparrow,* in relation to an Indian who was convicted for violating the fishing regulations prescribed under the Fisheries Act, 1970, the Supreme Court of Canada found that the aboriginal right to engage in salmon fishing by means of any non-dangerous methods "*has always constituted an integral part of their distinctive culture*" and is therefore protected by Section 35 of the Constitution Act, 1982.[1075] It further held that Aboriginal rights could be limited only for a compelling reason, and that too if the limitation interfered with the Aboriginal right in the least intrusive way possible.[1076] The cultural rights of aboriginal peoples, including hunting, trapping and fishing, as well as the practice of their religion, are also expressly recognised in treaties. In *R v. Sioui,* the Supreme Court of Canada affirmed the treaty right to "*the free exercise of their religion, customs and trade with the*

[1070] *R. v. Sparrow*, 1 SCR 1075 (1990); *Haida Nation v. British Columbia (Minister of Forests)*, 3 S.C.R. 511 (2004); *Mikisew Cree First Nation v. Canada* (Governor General in Council), 2 SCR 765 (2018).

[1071] Government of Canada, *Government of Canada and the duty to consult*, *available at:* https://www.rcaanc-cirnac.gc.ca/eng/1331832510888/1609421255810 (last visited on Oct. 5, 2025).

[1072] International Work Group for Indigenous Affairs, *The IndAboriginaligenous World 2025* (39th ed., 2025), p. no. 478.

[1073] *Haida Nation v. British Columbia (Minister of Forests)*, 3 S.C.R. 511 (2004).

[1074] *Mikisew Cree First Nation v. Canada (Governor General in Council)*, 2 SCR 765 (2018).

[1075] *R. v. Sparrow*, 1 SCR 1075 (1990), p. no. 1094.

[1076] *Id.* at 1113.

English".[1077] Further, the domestic courts in Canada recognise Aboriginal customary law and practices, including customary marriages and adoptions. Customary marriages are considered to be equivalent to marriages solemnised under provincial laws.[1078]

3.1.6. Non-Discrimination and Affirmative Action

Canada has adopted a number of legislative and policy measures towards affirmative action benefiting Aboriginal peoples. The Employment Equity Act, 1995 mandates every employer to implement equity in the federal public service by "*instituting such positive policies and practices and making such reasonable accommodations as will ensure that persons in designated groups achieve a degree of representation in each occupational group in the employer's workforce that reflects their representation in the Canadian workforce*".[1079] Although there are no specific legislations enshrining affirmative action in favour of Aboriginal peoples at the provincial and territorial levels, employers are nevertheless prohibited from discriminating against Aboriginal peoples on grounds of their racial identity in recruitment and wages.[1080]

At the territorial level, several affirmative action schemes have been introduced to ensure employment equity for Aboriginal peoples of *Inuit*, *Métis,* or Dene descent in territorial public services.[1081] Through the Breaking Trail Together program, preference in hiring is granted to Aboriginal peoples so as to increase the strength of Aboriginal employees in territorial public service.[1082] Further, under the Nunavut Land Claim Agreement, federal and territorial governments endeavour to hire and train Inuit for government positions.[1083] Canada has also formulated the Aboriginal Skills and Employment Partnership and the Aboriginal Skills and Employment Training Strategy under the aegis of the federal Department of Human Resources and Skills Development towards funding initiatives that aid Aboriginal peoples and private employers to prepare for, recruit and retain Aboriginal employees.[1084]

[1077] *R. v. Sioui*, 1 SCR 1025 (1990), p. no. 1026

[1078] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 19.

[1079] The Employment Equity Act, 1995, s. 5.

[1080] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 22.

[1081] *Ibid.*

[1082] Yukon Public Service, *Breaking Trail Together - Strategic Plan 2019-2029*, *available at:* https://yukon.ca/sites/default/files/2025-04/psc_breaking-trail-together-strategic-plan-2019-29.pdf (last visited on Oct. 3, 2025).

[1083] Government of Canada Publication, *Nunavut Land Claim Agreement*, *available at:* https://publications.gc.ca/collections/Collection/R32-134-1993E.pdf (last visited on Oct. 6, 2025).

[1084] Government of Canada, *Evaluation of the Aboriginal Skills and Employment Training Strategy and the Skills and Partnership Fund*, *available at:* https://www.canada.ca/en/employment-social-

3.2. United States

3.2.1. Constitutional and Legal Recognition

In the United States, indigenous peoples of North America are legally termed 'Indians'. Article 1 of the Constitution of the United States, as well as Section 2 of the Fourteenth Amendment to the Constitution, explicitly refer to 'Indians' and 'Indian Tribes'.[1085] Several domestic statutes also use the words 'tribe' or 'band' to designate peoples having the same or similar heritage, who inhabit a particular area, and are united as a community under one leadership.[1086] Today, the phrase 'Native groups' is widely used to describe indigenous peoples in the United States.[1087] 'Alaska Natives' and 'Native Hawaiians' specifically refer to those indigenous to the territories of Alaska and Hawaii, respectively.[1088] However, not all Native groups are officially recognised in the United States.[1089] While the federal government has recognised a number of Native groups as American Indian or Alaska Native Tribes, Native Hawaiians are not similarly recognised. In addition to the federally recognised Native groups, state governments may also recognise certain other Native groups.[1090] The federal or state recognition of Native groups is dependent on factors such as the extent of Native governmental control over individual lives and affairs, the extent to which the Native group exercises political authority over a particular territory and the continuity of the Native group's history.[1091]

Article 1 of the Constitution expressly vests on the Congress the plenary power to regulate commerce with the 'Indian tribes'.[1092] In *United States v. Antelope*,[1093] the Supreme Court of the United States held: "*classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution and supported by the ensuing history of the Federal Government's relations with Indians.*"[1094] In exercise of such constitutionally sanctioned plenary power over Native groups, a number of federal

development/corporate/reports/evaluations/aboriginal-skills-employment-training-strategy-skills-partnership-fund.htm (last visited on Oct. 6, 2025).

[1085] The Constitution of the United States, 1789, art. 1, s. 8; The Constitution of the United States (Fourth Amendment) 1979, s. 2.

[1086] Legal Information Institute, "American Indian Law" *Cornell Law School*, *available at*: https://www.law.cornell.edu/wex/american_indian_law (last visited on Oct. 5, 2025).

[1087] International Work Group for Indigenous Affairs, *The Indigenous World 2025* (39th edn., 2025), p. no. 528.

[1088] Legal Information Institute, "American Indian Law" *Cornell Law School*, *available at*: https://www.law.cornell.edu/wex/american_indian_law (last visited on Oct. 5, 2025).

[1089] International Work Group for Indigenous Affairs, *The Indigenous World 2025* (39th edn., 2025), p. no. 528.

[1090] Legal Information Institute, "American Indian Law" *Cornell Law School*, *available at*: https://www.law.cornell.edu/wex/american_indian_law (last visited on Oct. 5, 2025).

[1091] *Ibid.*

[1092] The Constitution, 1789, art. 1, s. 8.

[1093] *United States v. Antelope*, 430 U.S. 641 (1977).

[1094] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 69.

legislations have been passed, the first of which was the Indian Non-Intercourse Act, 1790, which reaffirmed the power of the federal government to conclude treaties with Native nations, defined the rights of 'Indians' and 'non-Indians' within and outside native lands, and prohibited the sale of native lands except "*under the authority of the United States*".[1095] Nevertheless, it was only with the passing of the Indian Citizenship Act, 1924, that Native peoples born in the territory of the United States came to be recognised as citizens (in addition to the citizenship of their Native nations), having the same rights and benefits as other citizens, in addition to special protections.[1096] The rights of Native groups to vote in federal, state, and local elections were statutorily affirmed much later, vide the Voting Rights Act, 1965.[1097] Today, Native peoples have the right to be elected to hold seats in public office.[1098]

3.2.2. Self-Determination, Self-Governance, Participation, and Consultation

Federally recognised Native groups or 'Native nations' are, in principle, vested with sovereignty to independently govern themselves, distinct from the federal and state governments.[1099] In the landmark decision in *Cherokee Nation v. Georgia*, the Supreme Court of the United States ruled Native nations are to be treated as "*domestic dependent nations*" having privileges and immunities and that "*the relationship of the tribes to the United States resembles that of a 'ward to its guardian'*".[1100] The trust or guardianship responsibility of the federal government over Native groups stems from historic treaties concluded by the United States and Native groups between 1778 and 1871, pursuant to which Native groups ceded large tracts of their ancestral territories to the United States upon its independence in exchange for certain protections, benefits and services for the Native peoples as well as respect for their sovereignty.[1101] Nevertheless, in *United States v. Wheeler*, the Supreme Court of the United States clarified that Native groups had been "*self-governing sovereign political communities*' before the Europeans arrived and *have not given up their full sovereignty*".[1102]

Accordingly, though Native nations have a government-to-government relationship with the United States,[1103] on account of their simultaneous characterisation as wards of the federal government, their

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[1095] The Indian Non-Intercourse Act, 1790, s. 4.

[1096] Angela Harmon, "Native American Rights" *Research Starters* (2024), *available at*: https://www.ebsco.com/research-starters/politics-and-government/native-american-rights (last visited on Oct. 5, 2025).

[1097] Voting Rights Act, 1965, s. 2.

[1098] Library of Congress, *Native American Voting Rights, Voters and Elections*, *available at*: https://www.loc.gov/classroom-materials/elections/voters/native-americans/ (last visited on Oct. 5, 2025).

[1099] *Ibid*.

[1100] *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831), p. no. 17.

[1101] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 65.

[1102] *Id.* at 68; *United States v. Wheeler* 435 U.S. 313 (1978), p. no. 323-324.

[1103] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University*, (2021), p. nos. 65, 68.

sovereignty is subject to an overriding federal power, including the authority to limit, amend or revoke the rights of Native groups. Such right of the federal government to regulate affairs of the Native groups is 'exclusive';[1104] Native nations are immune from the exercise of authority in this regard by states. In *Worcester v. Georgia*, the Supreme Court of the United States clarified: "*The Cherokee Nation, then, is a distinct community occupying its own territory...in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this Nation, is, by our Constitution and laws, vested in the Government of the United States.*"[1105]

In *United States v. Mazurie*, acknowledging Native sovereignty, the Supreme Court of the United States held: "*Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory... Indian tribes within 'Indian Country' are a good deal more than 'private, voluntary organizations.*"[1106] Similarly, regarding the nature of Native sovereignty, the Supreme Court of the United States clarified in *United States v. Wheeler*, "*[T]he powers of Indian tribes, are, in general, inherent powers of a limited sovereignty which has never been extinguished*".[1107] The Indian Reorganisation Act, 1934 expressly grants sovereignty and the right of self-government to Native groups over their territories: "*any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare.*"[1108]

The Indian Reorganization Act, 1934 also required Native nations to adopt and ratify their own Constitutions (subject to the approval of the federal government), thus laying the foundation for Native governments.[1109] Native governments are elected by Native groups through separate elections, are tasked with the regulation of Native affairs, and operate under federal oversight.[1110] The Native governments are empowered to enforce laws, impose and collect taxes, determine native citizenship, and regulate various other activities, but not to print currency, declare war, or engage in foreign affairs.[1111] The Indian Self-Determination and Education Assistance Act, 1975, promoted the participation of Native groups

[1104] Gregory Ablavsky, "Beyond the Indian Commerce Clause" 124 *The Yale Law Journal* 882 (2015).

[1105] *Worcester v. Georgia*, 31 U.S. 515 (1832), p. no. 31.

[1106] *United States v. Mazurie*, 419 U.S. 544 (1975), p. no. 557; Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 65.

[1107] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University*, (2021), p. no. 65; *United States v. Wheeler*, 435 U.S. 313 (1978), p. no. 322.

[1108] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University*, (2021), p. no. 65; The Indian Reorganisation Act, 1934, s. 17(h)(1).

[1109] The Indian Reorganisation Act, 1934, s. 16(a).

[1110] *Id*. s. 16.

[1111] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. nos. 64, 65.

in the administration of federal welfare programmes targeting Native peoples.[1112] Later, with the enactment of the Tribal Self-Governance Act, 1994, the federal Bureau of Indian Affairs divested to the Native governments, the responsibility for policy making and administration.[1113]

Native groups have been guaranteed the right to be consulted by the federal government vide Executive Order 13175 of 2000, which directs "*regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes*".[1114] The requirement for consultation is also embedded in specific federal legislation, such as the National Historic Preservation Act, 1996, which mandates consultation with Native groups on any undertaking that could affect historic properties with cultural or religious significance to them.[1115] Further, the Tribal Law and Order Act, 2010, requires the Bureau of Indian Affairs and the Office of Justice Services to formulate policies, procedures and guidelines for consultations with Native groups in the development of regulatory policies that impact them. In 2013, the Advisory Council on Historic Preservation took measures to incorporate the requirement of FPIC into its programmes, policies and initiatives.[1116]

3.2.3. Usage of Territories, Forest and Natural Resources, and Title to Ancestral Lands

In *Worcester v. Georgia*, the Supreme Court of the United States noted: "*The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States.*"[1117] Since several Native groups had ceded their ancestral territories to the United States under historic treaties, the Indian Reorganisation Act, 1934 proclaims that Native lands are held by the federal government in trust for Native peoples.[1118] Although the Indian Reorganisation Act, 1934, recognised the title of federally recognised tribes to their ancestral territories, such that their native lands cannot be unilaterally confiscated, the ancestral territories traditionally occupied by other Native groups (not having federal recognition) could be expropriated by the federal government without confiscation.[1119] The Indian Reorganisation Act, 1934, further stipulates that Native lands can only be alienated to the United

[1112] *Id*. at 65.
[1113] *Id*. at 66.
[1114] Executive Order 13175 – Consultation and Coordination with Indian Tribal Government, 2000, preamble.
[1115] The National Historic Preservation Act, 1996, s. 106
[1116] United Nations General Assembly, *Report of the Special Rapporteur on the rights of indigenous peoples on her mission to the United States of America*, UN Doc A/HRC/36/46/Add.1 (Aug. 9, 2017), para. 22.
[1117] *Worcester v. Georgia*, 31 U.S. 515 (1832).
[1118] Howard University, "A Brief History of Civil Rights in the United States: The Self-Government Era (1934 - 1953)" *Vernon E. Jordan Law Library* (Jan. 6, 2023), *available at*: https://library.law.howard.edu/civilrightshistory (last visited on Oct. 7, 2025).
[1119] Vine Deloria, *The Indian Reorganization Act: Congress and Bills* (University of Oklahoma Press, 2002).

States.[1120]

Native peoples are also entitled to the inherent right of use of water and waterways, as well as the protection of streams, rivers and other water sources within Native lands, as affirmed by the Supreme Court of the United States in *Winters v. United States*.[1121] Further, under the Clean Water Act, 1972, Native groups have the authority to regulate their water resources (akin to states) and can subject upstream users to their own standards, provided such standards have been approved by the Environmental Protection Agency.[1122] The Indian Claims Commission, established in 1946 and later replaced by the US Court of Claims in 1970, adjudicated upon native land claims. However, where a claim was successful, the Indian Claims Commission was only authorised to award monetary compensation in lieu of land title but was not empowered to restore land rights.[1123]

Restrictions have also been imposed on the land rights of Native groups vide federal legislation, including the Indian Mineral Leasing Act, 1938, which provides that "*unallotted lands within any Indian reservation or lands owned by any tribe, group or band of Indians under Federal jurisdiction…may, with the approval of the Secretary of the Interior, be leased for mining purposes*".[1124] The subsequent Indian Mineral Development Act, 1982, granted more autonomy to Native groups in the management of natural resources on Native lands by enabling Native groups to conclude joint venture agreements (subject to federal approval) for the exploitation of minerals occurring on their ancestral territories.[1125] The Energy Policy Act, 2005, authorises Native groups to exercise autonomy in energy development on Native lands by entering into agreements (subject to federal approval), granting right-of-way over their ancestral territories.[1126] However, under the Helping Expedite and Advance Responsible Tribal Home Ownership Act, 2012, Native governments have been empowered to grant leases of Native lands in accordance with their own native regulations, without federal approval.[1127]

3.2.4. Protection of Culture and Traditions

A number of federal and state legislations and other instruments grant protection to the religious, cultural and linguistic rights of Native groups. The National Historic Preservation Act, 1966 safeguards

[1120] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 65.
[1121] *Ibid*.
[1122] *Ibid*.
[1123] *Id*. at 64.
[1124] The Indian Mineral Leasing Act, 1938, s. 396a.
[1125] United Nations General Assembly, *Report of the Special Rapporteur on the rights of indigenous peoples on her mission to the United States of America*, UN Doc A/HRC/36/46/Add.1 (Aug. 9, 2017), para. 16.
[1126] *Id*. at para. 17.
[1127] *Id*. at para. 18.

the religious and cultural sites of Native groups.[1128] The Native American Graves Protection and Repatriation Act, 1990 guarantees the protection and repatriation of native ancestral remains and sacred artefacts.[1129] The Indian Civil Rights Act, 1968 guarantees to the Native groups the right to freely establish and exercise their religion.[1130] Native governments are, however, prohibited from forcing Native peoples to follow a particular religion or punishing them for their religious beliefs.[1131] The United States has also adopted a number of statutory and policy measures "*to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites*".[1132] Accordingly, federally recognised Native groups are exempt from prosecution for the possession of hawk feathers under the Migratory Bird Treaty Act, 1918.[1133] Similar exceptions have been carved out for the taking of eagles and eagle parts used for Native religious and cultural purposes.[1134]

Native groups also have the traditional right to hunt and fish on their ancestral territories, so long as such rights have not been expressly curtailed by the federal government or categorically relinquished by the Native groups themselves.[1135] Within Native lands, Native governments exercise exclusive jurisdiction over hunting and fishing, subject, however, to federal conservation regulations. State governments are not entitled to regulate Native groups in this regard within their Native lands.[1136] Native groups are additionally authorised to hunt, fish and trap on public forest lands (but not private, developed or cultivated lands) vide treaties, statutes and intergovernmental agreements.[1137] For instance, the Navajo Treaty permits Native peoples to hunt on the unoccupied ground in San Juan County.[1138] The Native American Language Act, 1990, safeguards Native languages: "*The Congress finds that the status of the cultures and languages of Native Americans is unique and the United States has the*

[1128] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 67; The National Historic Preservation Act, 1966, § 300101.

[1129] Howard University, "A Brief History of Civil Rights in the United States: The Self-Government Era (1934 - 1953)" *Vernon E. Jordan Law Library* (Jan. 6, 2023), *available at*: https://library.law.howard.edu/civilrightshistory (last visited on Oct. 7, 2025); The Native American Graves Protection and Repatriation Act, 1990, §§. 3002, 3005.

[1130] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 67; The Indian Civil Rights Act, 1968, s. 1302 (a)(1).

[1131] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 67.

[1132] 95th Congress, Joint Resolution, *American Indian Religious Freedom,* Public Law 95-341 (Aug. 11, 1978), p. no. 1.

[1133] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 67.

[1134] *Ibid*.

[1135] *Ibid*.

[1136] *Ibid*.

[1137] *Ibid*.

[1138] Treaty with the Navajo, 1868, art. 9.

responsibility to act together with Native Americans to ensure the survival of these unique cultures and languages."[1139]

3.2.5. Customary Laws and Legal Systems

The Indian Tribal Justice Act, 1993, iterating that "*traditional tribal judicial practices are essential to the maintenance of the culture and identity of Indian tribes*", accorded recognition to Native laws and affirmed the authority of Native courts to adjudicate upon certain matters relating to their affairs in accordance with the unique justice systems particular to their Native groups.[1140] In 1883, in the landmark decision in the *Ex Parte Crow Dog* case, the Supreme Court of the United States, relying on the General Crimes Act, 1834, ruled that the federal government was not entitled to exercise jurisdiction over crimes committed *inter se* Native peoples within their native territories.[1141]

However, with the enactment of the Major Crimes Act, 1885, Native courts no longer had the authority to prosecute violent felonies (murder, rape, kidnapping, murder, manslaughter, rape, assault with intention to kill, arson, burglary, and larceny) committed between their own Native peoples, based on their Native norms, customs or practices; instead, such crimes were subject to the sole jurisdiction of federal courts, to the exclusion of state jurisdiction.[1142] This was recently reaffirmed by the Supreme Court of the United States in *McGirt v. Oklahoma*, in relation to the conviction of a Creek Nation individual for sex crimes committed against a child within the Creek Nation territory situated in Oklahoma: "*when Congress adopted the [Major Crimes Act], it broke many treaty promises that had once allowed tribes like the Creek to try their own members. But, in return, Congress allowed only the federal government, not the States, to try tribal members for major crimes.*"[1143] However, a subsequent decision of the Supreme Court of the United States in *Oklahoma v. Castro-Huerta*[1144] clarified that when crimes are committed by a non-Native individual against a Native victim on Native lands, both federal and state governments have concurrent jurisdiction to prosecute such crimes.[1145]

Ordinarily, Native courts are not entitled to exercise jurisdiction over non-Native individuals, as ruled

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[1139] Adrienne Davidson and Veldon Coburn, "Multiculturalism Policy Index: Indigenous Peoples", *Queen's University* (2021), p. no. 67; Native American Language Act, 1990, s. 102(1).

[1140] The Indian Tribal Justice Act, 1993, s. 2(7).

[1141] HeinOnline Blogger, "Court Cases Involving Indigenous Rights in U.S. History" *HeinOnline Blog* (Nov. 13, 2024); *Ex Parte Crow Dog*, 109 U.S. 556 (1883), p. no. 561.

[1142] Howard University, "A Brief History of Civil Rights in the United States: The Self-Government Era (1934 - 1953)" *Vernon E. Jordan Law Library* (Jan. 6, 2023), *available at*: https://library.law.howard.edu/civilrightshistory (last visited on Oct. 7, 2025).

[1143] Martha F. Davis, "American Indians and Indigenous Peoples in State Constitutions" *State Court Report* (Aug. 5, 2025); *McGirt v. Oklahom*a, No. 18-9526 (2020), p. no. 38.

[1144] *Oklahoma v. Castro-Huerta*, No. 21-429 (2022).

[1145] Martha F. Davis, "American Indians and Indigenous Peoples in State Constitutions" *State Court Report* (Aug. 5, 2025).

by the Supreme Court of the United States in *Oliphant v. Suquamish Indian Tribe*.[1146] However, with the enactment of the Violence Against Women Reauthorisation Act, 2013, Native courts have been vested with the authority to prosecute non-Native individuals for non-violent crimes committed against women.[1147] The subsequent Violence Against Women Reauthorisation Act, 2022, extended the jurisdiction of Native courts to cover other crimes, such as stalking and assault of Native police officers, perpetrated by non-Native individuals.[1148] Vis-à-vis civil matters, in *Williams v. Lee*, the Supreme Court of the United States determined that states cannot exercise jurisdiction within Native nations in respect of actions brought by non-Native individuals against Native peoples; such disputes are within the exclusive jurisdiction domain of Native courts, which may only be restricted by the federal government.[1149]

4. South American countries

4.1. Ecuador

4.1.1. Constitutional and Legal Recognition

Ecuador has 18 officially recognised indigenous peoples and 14 nations.[1150] The Constitution characterises Ecuador as a plurinational and intercultural State, composed of different nations and peoples.[1151] The Constitution vests on indigenous peoples the nationality of Ecuador, regardless of their affiliations to indigenous nations,[1152] considers indigenous peoples as forming an integral part of Ecuador,[1153] protects their individual and collective rights,[1154] and institutes *sumak kawsay*[1155] (the indigenous philosophy of 'the good way of living') as the underlying objective for all public actions.[1156] The Constitution also makes international human rights instruments ratified by Ecuador directly

[1146] *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

[1147] Howard University, "A Brief History of Civil Rights in the United States: The Self-Government Era (1934 - 1953)" *Vernon E. Jordan Law Library* (Jan. 6, 2023), *available at*: https://library.law.howard.edu/civilrightshistory (last visited on Oct. 7, 2025); Violence Against Women Reauthorisation Act, 2013, s. 204 (b) (1).

[1148] Howard University, "A Brief History of Civil Rights in the United States: The Self-Government Era (1934 - 1953)" *Vernon E. Jordan Law Library* (Jan. 6, 2023), *available at*: https://library.law.howard.edu/civilrightshistory (last visited on Oct. 7, 2025).

[1149] *Williams v. Lee*, 358 U.S. 217 (1959), p. no. 358.

[1150] United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37/ (Jul. 4, 2019) para. 7.

[1151] *Id*. at para. 16.

[1152] The Constitution of Ecuador, 2008, art. 6.

[1153] *Id*. art. 3.8.

[1154] *Id*. arts. 34, 343, 358.

[1155] *Id*. preamble.

[1156] *Id*. arts. 14, 250, 275, 387.

applicable domestically.[1157]

4.1.2. Self-Determination, Self-Governance, Participation, and Consultation

The Constitution, in particular, authorises indigenous peoples to create territorial districts to be administered by indigenous territorial governments, following a decentralised model so as to preserve their culture.[1158] The Organic Code on Territorial Organisation, Autonomy and Decentralisation, 2010, prescribes regulations governing the creation of these indigenous districts.[1159] This is in stark contrast to the previous Constitution's treatment of indigenous peoples, which stated: "*[t]his Constituent Congress appoints the venerable parish priests as guardians and natural parents of the natives by exciting their ministry of charity in favour of this innocent, abject and miserable class.*"[1160]

The Act on Equality Councils, 2014, towards the implementation of the rights enshrined in the Constitution,[1161] created equality councils.[1162] The National Council for Equality of Peoples and Nations, set up in 2016, serves as the representative of indigenous peoples in decision-making processes in Ecuador; however, it does not have a mechanism for direct representation of indigenous peoples, thus limiting its autonomy.[1163] The Constitution, nevertheless, recognises the right of indigenous peoples to preserve and develop their modes of social organisation and their authorities;[1164] but the statutes, boards and governing councils of indigenous peoples are required to be registered in the same manner as a civil society organisation so as to be accepted as legitimate authorities by state agencies,[1165] thereby further limiting the right of indigenous peoples to autonomy and self-governance. Nonetheless, autonomous institutions such as the Council for the Advancement of the Nations and Peoples of Ecuador, the Development Fund for the Indigenous Nations and Peoples of Ecuador and the National Directorate for Intercultural Health are controlled by indigenous organisations.[1166]

The Constitution also guarantees to the indigenous peoples the collective rights to free, prior and

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[1157] *Id*. art. 417.

[1158] *Id*. art. 60; United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37 (Jul. 4, 2019), para. 23.

[1159] United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37 (Jul. 4, 2019), para. 23.

[1160] The Constitution, 1830, art. 68.

[1161] The Constitution, 2008, arts. 156, 157.

[1162] United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37 (Jul. 4, 2019), para. 18.

[1163] *Ibid*.

[1164] The Constitution, 2008, arts. 57.1, 57.9

[1165] United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37 (Jul. 4, 2019), para. 44.

[1166] *Id*. at para. 8.

informed consultation (but not consent) in the context of non-renewable resource projects, and pre-legislative consultation prior to the enactment of statutes that may have an effect on their collective rights.[1167] Acknowledging the impact of mining concessions on ancestral territories of the *A'i Cofán* indigenous people of the Sinangoe community, the Constitutional Court of Ecuador ruled in the *A'I Cofán* case: "*The matter is serious because the mining activity, if not adequately consulted on, informed, planned and executed, could affect their ancestral territories, because it would induce a radical change in their ways of life and threaten nature, water, environment, culture, territory and health.*"[1168] The Constitutional Court further held: "*the obligation for prior consultation does not refer solely to those plans or projects that are located within the lands of Indigenous communities or peoples…but also to those that, even though they are not on their land, could directly affect them environmentally or culturally because they are within their sphere of influence…under no circumstances can a project be carried out that results in excessive sacrifices to the collective rights of communities and nature.*"[1169]

4.1.3. Title to Ancestral Lands

The Constitution also grants to indigenous peoples the right of permanent ownership over communal lands, which are to be inalienable, non-seizable and indivisible (and exempt from fees and taxes), as well as the right to maintain possession and have ownership, free of charge, of ancestral lands.[1170] The Constitution also safeguards the rights of indigenous peoples to participate in the use, enjoyment, administration and conservation of the renewable natural resources present on their lands.[1171] However, the state has exclusive ownership of non-renewable natural resources,[1172] and exercises control over the lands and territories included in protected areas.[1173] Nevertheless, the Constitution protects the right of indigenous peoples not to be displaced from their ancestral lands and the collective ownership of communes as an ancestral form of territorial organisation.[1174] The Organic Act on Rural Lands and Ancestral Territories, 2016 and the regulations thereto lay down procedures for requesting legalisation

[1167] The Constitution, 2008, art. 57.7.

[1168] *A'I Cofán Community of Sinangoe v. Minister of Energy and Non-Renewable Natural Resources*, No. 273-19-JP/22 (2022).

[1169] Amnesty International, *Ecuador: Constitutional Court Ruling to Protect Indigenous Peoples from Mining Projects Affecting Their Human Rights* (Feb. 10, 2022).

[1170] The Constitution, 2008, arts. 57.4, 57.5; United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37 (Jul. 4, 2019), para. 21.

[1171] The Constitution, 2008, art. 57.6; United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37 (Jul. 4, 2019), para. 21.

[1172] United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37 (Jul. 4, 2019), para. 24.

[1173] The Constitution, 2008, art. 261.7.

[1174] *Id*. arts. 42, 57.11.

of rural properties and ancestral territories, but were enacted without consulting indigenous peoples.[1175]

4.1.4. Protection of Culture and Traditions

Notably, the Constitution recognises the distinct rights of nature (*pacha mama* or Mother Earth) as a living subject with legal personality,[1176] thus affording an additional legal basis to indigenous peoples for shielding their culturally or religiously significant ancestral territories from exploitation or destruction resulting from extractive, industrial or infrastructural projects. Ecuador recently passed the Organic Law for the Strengthening of Protected Areas, 2025, with the objective of ensuring compliance with environmental legislation, but it empowers military and law enforcement agencies to intervene in protected areas to deal with criminal groups engaged in mining, logging, cattle ranching or drug trafficking in the forests.[1177] It has been widely criticised by indigenous peoples for being enacted without prior legislative consultation, violating collective rights to ancestral territories by treating them as state-owned lands or unowned lands, risking the criminalisation of indigenous peoples, and imposing the administration of ancestral territories on state and private entities.[1178]

The Constitution and the Organic Act on Intercultural Education, 2011, protect the right of indigenous peoples to bilingual intercultural education.[1179] The Organic Act on Higher Education, 2010, provides for the inclusion of interculturality in higher education.[1180] Ecuador also established the Secretariat for Bilingual Intercultural Education under the Ministry of Education, vested with administrative, technical, educational, operational and financial autonomy.[1181] The Constitution also recognises ancestral medicine and the traditional medical practices of indigenous peoples.[1182] Ecuador has created the National Directorate for Intercultural Health under the Ministry of Public Health to provide training in intercultural health and childbirth with indigenous midwives.[1183]

[1175] United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37 (Jul. 4, 2019), para. 22.

[1176] The Constitution, 2008, preamble, art. 71.

[1177] Maxwell Radwin, "Ecuador's new protected areas law sparks debate over security, development" *Mongabay*, *available at:* https://news.mongabay.com/2025/07/ecuadors-new-protected-areas-law-sparks-debate-over-security-development (last visited on Oct. 6, 2025).

[1178] *Ibid*.

[1179] The Constitution, 2008, art. 57.14; The Organic Act on Intercultural Education, 2011, arts. 77, 78.

[1180] United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37 (Jul. 4, 2019), para. 60; The Organic Act on Higher Education, 2010, art. 3.

[1181] United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37 (Jul. 4, 2019), para. 62.

[1182] The Constitution, 2008, arts. 57.12, 362.

[1183] United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37 (Jul. 4, 2019), para. 64.

The Constitution also expressly refers to indigenous peoples in voluntary isolation, recognises their lands as ancestral possessions, requires the state to take measures to ensure respect for their choices in exercise of their right to self-determination, and prohibits extractive activities on their territories.[1184] Any violation of these rights of indigenous peoples in voluntary isolation is criminalised as 'ethnocide'.[1185] For the protection of indigenous peoples in voluntary isolation, Ecuador has also created inviolable 'protected zones' enclosing their traditional territories, adjoined by 'buffer zones' where the development of new infrastructure and other projects which may adversely impact their lives is prohibited.[1186] Ecuador has also set up a Directorate for the Protection of Indigenous Peoples in Voluntary Isolation.[1187] In the recent past, however, Ecuador has granted mining concessions in the protected forests within the protected zones, thus eroding the rights of indigenous peoples without obtaining their FPIC.[1188]

4.1.5. Customary Laws and Legal Systems

The Constitution recognises the indigenous justice system (which operates *pro bono*), and calls for its adequate coordination and cooperation with the ordinary justice system.[1189] Indigenous authorities are authorised to carry out judicial responsibilities and apply traditional rules and procedures which are in conformity with the Constitution and internationally recognised human rights within indigenous territories.[1190] The decisions of the indigenous courts are to be taken into consideration in the application of the principle of double jeopardy in the domestic penal system of Ecuador.[1191] Ecuador is also obligated to respect the decisions of indigenous courts; the decisions are, however, subject to constitutional review.[1192] Though there are no constitutional limitations on the jurisdiction of indigenous courts, the Constitutional Court of Ecuador held in the *La Cocha case* that ordinary courts retained exclusive jurisdiction over crimes against life, which indigenous authorities were barred from adjudicating upon.[1193] The ordinary justice system of Ecuador nevertheless remains open to indigenous peoples.[1194] Indigenous prosecutors' offices were established in 2008 to facilitate access to justice for

[1184] The Constitution, 2008, art. 57.
[1185] *Ibid*.
[1186] United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37 (Jul. 4, 2019), para. 65.
[1187] *Id*. at para. 66.
[1188] *Id*. at para. 71.
[1189] The Constitution, 2008, art. 171; United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37 (Jul. 4, 2019), para. 51.
[1190] The Constitution, 2008, art. 171.
[1191] *Id*. art. 76.7 (i).
[1192] *Id*. art. 171.
[1193] *Victor Manuel Olivio Pallo v. La Cocha Community Case* 0731-10-EP (2014).
[1194] United Nations General Assembly, Human Rights Council, *Visit to Ecuador, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/42/37 (Jul. 4, 2019), para. 50.

Indigenous peoples before ordinary courts, although they have been heavily criticised for unduly interfering with the indigenous justice system and creating conflicts.[1195]

4.2. Colombia

4.2.1. Constitutional Recognition

In Colombia, there are over 115 indigenous peoples,[1196] having distinct historical origins, traditional languages, and cultural practices, a majority of whom reside within the 896 legally constituted indigenous reserves.[1197] The Constitution of Colombia recognises indigenous peoples, their collective rights to land reserves, and cultural, social and economic integrity.[1198]

4.2.2. Title to Ancestral Lands

'Reserves' refer to the constitutionally formalised ancestral territories of indigenous peoples which are collectively owned and are unseizable, imprescriptible, and inalienable.[1199] It includes not only the inhabited, exploited or titled territories of indigenous peoples, but also the traditional spaces in which indigenous worldviews, economic systems, resources and organisations are rooted.[1200] The Constitutional Court of Colombia has expressly affirmed this understanding: "*Due to the particular significance that land has for Indigenous Peoples, the protection of their territory is not limited to lands that are titled but is a legal concept that extends to the entire area essential to ensure the full and free exercise of their cultural, religious and economic activities, in accordance with the ways they have been undertaken ancestrally.*"[1201] The traditional occupation of their ancestral territories by indigenous peoples is thus deemed equivalent to a title vested by the Colombian State.[1202] However, the State retains the ownership of subsoil and non-renewable resources therein.[1203]

Act No. 160 of 1994 grants lands to indigenous peoples through the establishment, extension, consolidation, rehabilitation and restructuring of reserves.[1204] Vis-à-vis indigenous peoples living in

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[1195] *Ibid*.

[1196] United Nations General Assembly, Human Rights Council, *Visit to Colombia, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/57/47 (Sep. 10, 2024), para. 5.

[1197] International Work Group for Indigenous Affairs, *The Indigenous World 2025* (39th edn., 2025).

[1198] The Constitution of Colombia, 1991, arts. 246, 321, 329, 330.

[1199] *Id*. art. 63; International Work Group for Indigenous Affairs, *The Indigenous World 2024* (38th edn., 2024), p. no. 339.

[1200] International Work Group for Indigenous Affairs, *The Indigenous World 2024* (38th edn., 2024), p. no. 339.

[1201] *Future Generations v. Ministry of Environment,* T-849 (2014).

[1202] International Work Group for Indigenous Affairs, *The Indigenous World 2024* (38th edn., 2024), p. no. 339.

[1203] The Constitution, 1991, art. 332.

[1204] United Nations Economic and Social Council, *Human rights and indigenous issues, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people,* UN Doc E/CN.4/2005/88/Add.2 (Nov. 10, 2004), para. 12.

voluntary isolation, Decree No. 4633 of 2011 guarantees their right to live freely in isolation in accordance with their culture, on their ancestral territories, without being subject to interference or dispossession.[1205] Though the collective right of indigenous peoples to territory is recognised, there have been procedural delays in the granting of titles and the expansion of reserves; indigenous peoples are also often evicted from their legally constituted reserves as a result of extractive and agro-industrial megaprojects.[1206] For instance, despite the Constitutional Court of Colombia recognising the ownership of the *Embera Chami* People of the *Cañamomo Lomaprieta* reservation and the associated rights in 2021,[1207] the Colombian authorities have not taken any steps to implement the decision, and the Embera Chami People continue to be affected by mining activities undertaken on their indigenous territories by third parties.[1208]

Colombia, however, adopted the National Development Plan 2022-2026, promising to reduce delays in land titling and restore the violated individual and collective rights of indigenous peoples.[1209] Further, an agreement was concluded with the National Commission of Indigenous Territories (composed of representatives of the Colombian government and indigenous peoples) to ensure the effective occupation and enjoyment of collective territorial rights,[1210] including by establishing, expanding, consolidating, regularising and restituting indigenous reserves, in coordination with the Land Restitution Unit and the Unit for Attention and Integral Reparation.[1211] The National Commission of Indigenous Territories is mandated to prioritise the titling of the lands of indigenous peoples living in voluntary isolation so as to effectively safeguard their collective territorial rights.[1212] In the context of the internal armed conflict in Colombia, the Victims and Land Restitution Act, 2011 authorises measures for providing assistance, comprehensive redress and the restitution of land rights to indigenous peoples.[1213]

4.2.3. Self-Determination, Self-Governance, Participation, and Consultation

The Constitution stipulates that indigenous reserves are territorial entities (part of the political and

[1205] The Amazon Conservation Team, *Indigenous Land Titling Guide: Reserve Establishment and Expansion Processes in Colombia* (1st edn., 2018), p. no. 13.

[1206] International Work Group for Indigenous Affairs, *The Indigenous World 2024* (38th edn., 2024), p. no. 340.

[1207] Judgment T-530 (2016).

[1208] United Nations General Assembly, Human Rights Council, *Visit to Colombia, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/57/47/Add.1 (Sep. 10, 2024), paras. 74-75.

[1209] International Work Group for Indigenous Affairs, *The Indigenous World 2024* (38th edn., 2024), p. no. 344.

[1210] *Id*. at 341.

[1211] *Id*. at 342.

[1212] The Amazon Conservation Team, *Indigenous Land Titling Guide: Reserve Establishment and Expansion Processes in Colombia* (1st edn., 2018), p. no. 13.

[1213] United Nations General Assembly, Human Rights Council, *Visit to Colombia, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/57/47/Add.1 (Sep. 10, 2024), para. 7.

administrative structure of the state) having the autonomy to govern themselves, exercise jurisdiction, manage land and resources, and participate in national revenues.[1214] The indigenous territorial entities are to be governed by indigenous councils, in accordance with traditional indigenous systems and knowledge.[1215] The indigenous councils are empowered to monitor land use, formulate measures for socio-economic development, oversee the conservation of natural resources, cooperate in maintaining public order, and represent indigenous territorial entities before the Colombian government.[1216] For a very long time, Colombia had not enacted necessary legislation for the establishment and recognition of indigenous territories as autonomous political entities with their own legal personality,[1217] although some interim arrangements in this regard were adopted vide Decree Law No. 1953 of 2014 and Decree Law No. 632 of 2018.[1218] Acknowledging this failure, the Constitutional Court of Colombia held: "*there is no valid constitutional reason that justifies such a prolonged legislative omission related to the constitutional mandate of Article 329 concerning Indigenous Territorial Entities. Such resounding silence not only creates a legal void, but also significantly undermines the effectiveness of the constitutional territorial and governance design intended for Indigenous communities.*"[1219]

However, recently, Colombia issued Decree Law No. 488 of 2025 regulating the functioning of indigenous territories and their coordination with other territorial entities, prescribing a legal framework for the formal recognition of indigenous territorial entities with political, administrative and fiscal autonomy; especially, the right to veto projects and activities that may affect their ancestral lands.[1220] Besides such a decentralised model for self-governance, the Constitution also confers on indigenous peoples the right to elect two additional members of the Senate, subject to the system of electoral quotient,[1221] and one member of the House of Representatives from the special indigenous constituency.[1222] Indigenous peoples aspiring to be members of the Senate must, however, "*have exercised a position of traditional authority in their respective community or have been leaders of an indigenous organization*".[1223]

[1214] The Constitution, 1991, art. 361, para. 2.

[1215] *Id*. art. 329.

[1216] *Ibid*.

[1217] United Nations General Assembly, Human Rights Council, *Visit to Colombia, Report of the Special Rapporteur on the Rights of Indigenous Peoples,* UN Doc A/HRC/57/47/Add.1 (Sep. 10, 2024), para. 52.

[1218] Gordon and Betty Foundation, *The Status and Future of Rights-Based Conservation in the Amazon of Colombian and Peru* (2022), p. no. 45.

[1219] Judgment C-054 (2023).

[1220] Marzia Genovese, "Legal Pluralism in Practice: Colombia's New Framework for Indigenous Territorial Self-Government" *EJIL:Talk!* (Jul. 3, 2025), *available at:* https://www.ejiltalk.org/legal-pluralism-in-practice-colombias-new-framework-for-indigenous-territorial-self-government/ (last visited on Nov. 11, 2025)

[1221] The Constitution, 1991, art. 171, paras. 2, 4.

[1222] *Id*. art. 176, para. 4.

[1223] *Id*. art. 171, para. 5.

The Constitution also encourages the participation of indigenous peoples in the decision-making related to the exploitation of natural resources within indigenous territories.[1224] Further, the Constitutional Court of Colombia has repeatedly reiterated that prior consultation vis-a-vis administrative and legislative decisions is a fundamental right of indigenous peoples: "*prior consultation constitutes a specific guarantee of the requirements of distributive equity and participation—proper of environmental justice, in relation to ethnic groups—being a concept that takes as a starting point the paragraph of Article 330 of the Political Constitution, which establishes the state obligation to ensure the participation of indigenous communities prior to the exploitation of natural resources in their territories.*"[1225] The Constitutional Court of Colombia found that the right of indigenous peoples to prior consultation was violated when aerial spraying of coca crops was carried out over the indigenous territories in the Amazon region without consulting the concerned indigenous peoples.[1226] The Constitutional Court of Colombia arrived at a similar finding in relation to the implementation of sustainable forest management projects without dialogue with the affected indigenous peoples.[1227] Colombia has promulgated a number of decrees regulating prior consultation (though not restricted to indigenous peoples), and Presidential Directive 001 of 2010 guarantees the fundamental right of prior consultation to indigenous peoples.[1228] The National Development Plan 2022-2026 also formulated the process for prior consultations with indigenous peoples towards upholding the rights of indigenous peoples to autonomy and self-determination in the management and control over the natural resources on indigenous lands.[1229]

4.2.4. Protection of Culture and Traditions

The Constitution specifically mandates that the exploitation of natural resources in the indigenous territories must be carried out without impairing the cultural, social, and economic integrity of indigenous peoples.[1230] Colombia also passed Presidential Decree 1275 of 2024, "*establishing the norms for the management of the Indigenous territories in environmental matters and the development of the environmental powers of the Indigenous authorities and their effective coordination with other authorities*"[1231] in response to the demands of indigenous peoples and organisations for their recognition

[1224] *Id*. art. 330.

[1225] Judgment T-660 (2015).

[1226] *Organization of Indigenous Peoples of the Colombian Amazon (OPIAC) v. Presidency of the Republic*, SU-383/03 (2003).

[1227] *Grupo de Interés Público Universidad de Los Andes et. al. v. Congreso de Colombia,* C-355/07 (2008).

[1228] William Yeffer Vivas Lloreda, "Prior consultation as a fundamental right of collective ownership of indigenous, afro-descendant, rum and tribal peoples and its ineffectiveness in the protection of protected territories" 10(16) *Cathedra* 50 (2021-2022).

[1229] International Work Group for Indigenous Affairs, *The Indigenous World 2025* (39th edn., 2025), p. no. 361.

[1230] The Constitution, 1999, art. 330, para. 2.

[1231] International Work Group for Indigenous Affairs, *The Indigenous World 2025* (39th edn., 2025), p. no. 361.

as 'environmental authorities' within their ancestral territories.[1232] Towards the preservation of their natural and cultural environments for coming generations, Presidential Decree 1275 of 2024 empowers indigenous peoples to, in application of their traditional knowledge, issue regulations for the protection of their ancestral territories through the conservation of its resources, biodiversity and ecosystem, plan budgets, and decide on matters relating to land use.[1233]

Presidential Decree 1275 of 2024 also enables indigenous peoples, pursuant to their right to self-determination, to exercise control over the grant of licenses for extractive activities and projects on their ancestral lands.[1234] The guardianship right of indigenous communities over the environment has also been affirmed by the Supreme Court of Colombia in the landmark decision in *Center for Social Justice Studies et. al. v. Presidency of the Republic et. al.*, terming them 'biocultural rights': "*biocultural rights, in their simplest definition, refer to the rights that ethnic communities have to administer and exercise autonomous guardianship over their territories-- according to their own laws and customs-- and the natural resources that make up their habitat, where their culture, their traditions and their way of life are developed based on the special relationship they have with the environment and biodiversity. These rights result from the recognition of the deep and intrinsic connection that exists between nature, its resources, and the culture of the ethnic and indigenous communities.*"[1235]

4.2.5. Customary Laws and Legal Systems

The Constitution also empowers indigenous authorities to exercise jurisdiction within their territories, in accordance with their own customary laws and procedures, provided these are in conformity with the Constitution and other legislation in Colombia.[1236] However, on numerous occasions, where the decisions of indigenous courts have been in conflict with internationally recognised human rights, the Constitutional Court of Colombia has interjected.[1237] For instance, in relation to the severe corporal punishments imposed by *Nasa* authorities, the Constitutional Court of Colombia held that such excessive physical violence constituted a violation of the constitutional prohibition against cruel treatment.[1238] Recently, in the case of customary marriages of minor girls belonging to indigenous

[1232] *Id*. at 360.

[1233] Aimee Gabay, "Colombia decree recognizes Indigenous people as environmental authorities" *Mongabay* (Oct. 3, 2025), *available at:* https://news.mongabay.com/2024/10/colombia-decree-recognizes-indigenous-people-as-environmental-authorities/ (last visited on Nov. 11, 2025).

[1234] *Ibid*.

[1235] *Center for Social Justice Studies et. al. v. Presidency of the Republic et. al.*, T-622/16 (2016).

[1236] The Constitution, 1991, art. 246.

[1237] Sebastian Machado Ramírez, "Legal Pluralism in Practice? The Gaps and Challenges of Colombia's Indigenous Territorial Decree" *Voelkerrechtsblog* (Jul. 27, 2025), *available at:* https://voelkerrechtsblog.org/legal-pluralism-in-practice/ (last visited on Nov. 11, 2025).

[1238] *Paez Indigenous Community Case*, Judgment T-523/97 (1997).

communities, the Constitutional Court of Colombia ruled that all such civil marriages and unions involving minors were null and void, for being in violation of children's rights and the protections against forced marriages.[1239]

4.3. Brazil

4.3.1. Constitutional Recognition

Brazil is home to over 266 indigenous peoples, including several isolated communities, predominantly concentrated in the Amazon region,[1240] who are referred to as "*Indians*" and protected by the Constitution.[1241]

4.3.2. Usage of Territories, Forests, and Natural Resources

The Constitution stipulates that 'Indians' shall have "*their original rights to the lands they traditionally occupy*".[1242] The 'lands traditionally occupied' are broadly defined as "*those on which [the Indians] live on a permanent basis, those used for their productive activities, those indispensable for the preservation of environmental resources necessary for their well-being and those necessary for their physical and cultural reproduction, according to their uses, customs and traditions*".[1243] The Constitution also prescribes that such traditionally occupied lands are inalienable and nontransferable, and the rights thereto are unaffected by the statute of limitations.[1244] Accordingly, indigenous peoples are entitled to the permanent possession of their traditionally occupied lands and to exercise exclusive usufruct over the soil, rivers and lakes therein.[1245] Except in national public interest, the occupation, dominion, and possession of traditionally occupied lands by the Brazilian government are null and void.[1246] Indigenous peoples are thereby safeguarded against the exploitation of natural resources occurring on their traditionally occupied lands, and dispossession of or forced removal therefrom, except on account of a catastrophe, epidemic, or in the interest of national sovereignty, in which cases they must be returned immediately to their traditionally occupied lands upon the risks ceasing.[1247]

[1239] *Nullity of civil marriages and unions involving minor girls in indigenous communities,* Judgment C-039/25 (2025).
[1240] International Work Group for Indigenous Affairs, *The Indigenous World 2024* (38th edn., 2024) p. no. 320.
[1241] The Constitution of the Federative Republic of Brazil, 1988, title VIII – the Social Order, ch. VIII – Indians.
[1242] *Id*. art. 231.
[1243] *Id*. art. 231, para. 1.
[1244] *Id*. art. 231, para. 4.
[1245] *Id*. art. 231, para. 2.
[1246] *Id*. art. 231, para. 6.
[1247] *Id*. art. 231, para. 5.

4.3.3. Title to Ancestral Lands

The Constitution obligates the Brazilian government to geographically demarcate and designate ownership of the lands traditionally occupied by indigenous peoples, as well as "*to protect and ensure respect for all their property*".[1248] The National Foundation of Indigenous Peoples (FUNAI) under the Ministry of Justice is responsible for the delineation of traditionally occupied lands.[1249]

Pertinently, in a landmark decision, in relation to a dispute related to the titling of traditionally occupied lands between the Santa Catarina State and the Xokleng People, the Supreme Court of Brazil rejected the '*marco temporal*' doctrine, originally proposed by the Supreme Court of Brazil in the *Raposa/Serra do Sol* case in 2009.[1250] The '*marco temporal*' doctrine dictates that indigenous peoples have a right to the title of their traditionally occupied lands only if they were physically present on such territory on the day the Constitution was enacted, i.e., 5 October 1988.[1251] Since a number of indigenous peoples had been historically displaced from their ancestral lands and did not have possession as of this cut-off date, their legitimate claims for territorial demarcation would be invalid per the '*marco temporal*' doctrine.[1252] Although the Supreme Court of Brazil sought to protect the land rights of such indigenous peoples by declaring the '*marco temporal*' doctrine unconstitutional, the National Congress immediately proceeded to legislatively entrench it vide Law 14.701 of 2023 despite a presidential veto.[1253]

The constitutional validity of Law 14.701 of 2023 was subsequently challenged before the Supreme Court of Brazil.[1254] However, the Supreme Court of Brazil refused to suspend the application of Law 14.701 of 2023 until ruling on its merits, instead directing mediation with indigenous peoples in the interim, under the aegis of the *ad hoc* Special Conciliation Commission, comprising representatives of

[1248] *Id*. art. 231.

[1249] María Lourdes Alcántara, "Serious Deterioration of Human Rights and Indigenous Rights Conditions in Brazil" *IWGIA* (Mar. 14, 2019), *available at*: https://iwgia.org/en/brazil/3320-serious-deterioration-of-human-rights-and-indigenous- (last visited on Oct. 6, 2025)

[1250] *Raposa Serra do Sol*, *ADI 3239* (2009); Andrea Carvalho, "Indigenous Peoples Secure Decisive Victory in Brazil" *Human Rights Watch*, *available at:* https://www.hrw.org/news/2023/09/25/indigenous-peoples-secure-decisive-victory-brazil (last visited on Oct. 6, 2025).

[1251] International Work Group for Indigenous Affairs, *The Indigenous World 2024* (38th edn., 2024), p. no. 320; Albert K. Barume, *Brazil must abandon "Marco Temporal" doctrine once and for all, says UN expert*, OHCHR (Jun. 11, 2025).

[1252] Constance Malleret, "Controversial Brazil Law Curbing Indigenous Rights Comes into Force" *The Guardian*, Dec. 28, 2023.

[1253] International Work Group for Indigenous Affairs, *The Indigenous World 2024* (38th edn., 2024), p. no. 323; Francisco Cali Tzay, *Brazil must protect Indigenous Peoples' lands, territories and resources, says Special Rapporteur*, OHCHR (Jul. 11, 2024).

[1254] Francisco Cali Tzay, *Brazil must protect Indigenous Peoples' lands, territories and resources, says Special Rapporteur*, OHCHR (Jul. 11, 2024).

the Brazilian government, agribusinesses, and indigenous peoples.[1255] As the indigenous representatives were in the minority and the Special Conciliation Commission was allowed to make decisions based on majority votes (even in the absence of participation of the indigenous representatives), they later withdrew from the mediation process.[1256] In an unprecedented move, the Supreme Court of Brazil further introduced a bill to constitutionally enshrine the '*marco temporal*' doctrine as well as take away the veto power of indigenous peoples with respect to construction, development and exploitation on traditionally occupied lands where there is "*no technical and locational alternative*".[1257]

4.3.4. Protection of Culture and Traditions

The Constitution protects indigenous culture by stipulating that 'Indians' shall have "*their social organisation, customs, languages, creeds and traditions recognized*".[1258] Further, the Constitution secures the right of indigenous peoples to use their own native languages and learning procedures in education.[1259] The Constitution also protects the expressions of indigenous culture.[1260]

Brazil has also adopted a number of institutional measures for linguistic and cultural preservation, including offering indigenous language lessons, documenting indigenous traditions, repatriating indigenous artefacts (primarily from France, Italy and Portugal), and translating Brazilian laws into native languages.[1261] In 2024, in addition to policies introduced for the sustainable economic development of indigenous communities, Brazil introduced the 'Indigenous Seal' for certifying that a particular product (agricultural, artisanal or extractive) was cultivated or harvested by an indigenous individual on their ancestral lands, and indicates the ethnicity of the producer and the indigenous territory from which it originates.[1262]

4.3.5. Participation and Consultation

The Constitution guarantees to the indigenous peoples the right to be consulted in the utilisation of water resources and the exploitation of minerals on indigenous lands.[1263] The Constitution further

[1255] Daula Vargas, ""A Luta Continua!" Brazil's Indigenous Peoples Resist Attacks on Their Rights" *Amazon Watch*, Oct. 31, 2024.

[1256] Francisco Cali Tzay, *Brazil must protect Indigenous Peoples' lands, territories and resources, says Special Rapporteur*, OHCHR (Jul. 11, 2024).

[1257] International Work Group for Indigenous Affairs, *The Indigenous World 2024* (38th edn., 2024), p. no. 326.

[1258] The Constitution, 1988, art. 231.

[1259] *Id*. art. 210, para. 2.

[1260] *Id*. art. 215, para. 1.

[1261] Sônia Guajajara, "Brazil's First Minister of Indigenous Peoples" *Chandler Institute of Governance* (Sept. 25, 2023), *available at:* https://www.chandlerinstitute.org/governancematters/brazils-first-minister-of-indigenous-peoples (last visited on Sep. 25, 2025).

[1262] *Ibid*.

[1263] The Constitution, 1988, art. 231, para. 3.

grants to indigenous peoples and their organisations the legal capacity to sue to defend their rights, and authorises the Public Prosecutor to intervene on behalf of indigenous peoples in all pertinent cases.[1264]

In 2022, Brazil significantly revamped its indigenous policy to ensure that indigenous peoples are not only heard but also play a crucial role in the decision-making related to their lives and traditional territories.[1265] The Ministry of Indigenous Peoples was established in 2023, tasked with addressing the special needs of indigenous peoples, protecting their rights, and safeguarding their autonomy, cultures and traditions.[1266] Further, indigenous leaders were appointed to strategic positions, including at the FUNAI, thus strengthening the direct participation of indigenous peoples in policymaking, leveraging indigenous knowledge and promoting social justice.[1267] Further, Brazil also revived the National Council for Indigenous Policy (CNPI), a participatory and consultative body comprising 30 representatives, each of the Brazilian government and indigenous peoples, tasked with discussing, formulating and reviewing public policies targeting indigenous peoples, and supervising their implementation.[1268] The indigenous representatives of the CNPI are elected by the indigenous peoples from each State.[1269]

[1264] *Id*. art. 232.

[1265] International Work Group for Indigenous Affairs, *The Indigenous World 2024* (38th edn., 2024), p. no. 321.

[1266] *Ibid*.

[1267] *Ibid*.

[1268] Sônia Guajajara, "Brazil's First Minister of Indigenous Peoples" *Chandler Institute of Governance* (Sept. 25, 2023), *available at:* https://www.chandlerinstitute.org/governancematters/brazils-first-minister-of-indigenous-peoples (last visited on Sep. 25, 2025).

[1269] *Ibid*.

Annexure C: Suggested Further Readings

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CHAPTER V: CONCLUSION

This Reference Manual seeks to provide a comprehensive and critical examination of the legal, constitutional, and institutional frameworks that safeguard the rights of indigenous peoples, both at the international and national levels, with special focus on India. Towards this objective, this Reference Manual delineates the international standards that have evolved over time, regulating the protection of indigenous peoples, and endeavours to situate India's approach within the global as well as comparative landscapes of select jurisdictions in the Nordic, Oceania, North American, and South American regions. In this process, this Reference Manual addresses themes relevant to the survival, dignity, and advancement of indigenous peoples, including self-determination, self-governance, participation, and consultation, title to ancestral lands, usufruct over traditional territories, forests, and resources, preservation of cultural practices, language, and religion; acceptance for customary laws and juridical systems, and non-discrimination and affirmative action.

This Reference Manual is firmly founded in the acknowledgement of the historical injustices that have shaped the lived realities of indigenous peoples across the world. Despite being the original inhabitants of their territories and custodians of the natural environment, indigenous peoples have long been subjected to systemic marginalisation, dispossession, and cultural erasure, as a result of the legacies of colonisation, conquest, settlement, and/or occupation. As a consequence, the inherent rights of indigenous peoples to their ancestral lands, sovereignty, and traditional way of life have been largely disregarded, reducing indigenous peoples to a community without agency over matters that affect them. The imposition of foreign governance structures, legal norms and mechanisms, and lifestyles, as well as the usurpation of their traditional territories, specifically aimed at 'assimilating' or 'integrating' indigenous peoples into the 'mainstream' society and forcibly 'modernising' them, has, in actuality, led to their exclusion, 'othering', and even the gross violation of their human rights.

In light of the foregoing, this Research Manual traces the evolution of international legal instruments, which, in the early years, although attempting to guarantee indigenous rights, also propagated problematic conceptualisations of indigenous peoples as being at a "*less advanced stage*" of development, reflecting the prevailing attitudes of their time. Gradually, after decades of advocacy by indigenous leaders and groups, there has been a crucial shift from the outdated paternalistic model to a more comprehensive, broader rights-based framework that affirms the autonomy, honour, and distinctiveness of indigenous peoples. Central to this transformation are the establishment of self-identification as the primary criterion for defining one's indigenous identity, the unequivocal recognition of their collective rights to their lands, territories, and resources, respect for self-determination, the preservation of cultural and linguistic identity, the right to meaningful participation in decisions, and secure tenure over ancestral lands and resources.

This global transformation is mirrored, albeit through their own unique constitutional, legislative, and institutional measures, in the domestic systems of most national jurisdictions. With a spotlight on India, this Reference Manual chronicles the centuries of oppression that tribal communities have been subjected to, demonstrating that their characterisation as those 'inherently deviant' was not merely a by-product of the British colonial rule, but had been systematically entrenched in the ancient Indian psyche. The subjugation of tribal communities, however, intensified under British colonial rule, which disrupted their traditional symbiotic relationship with nature. The British Indian State enacted legislations such as the Criminal Tribes' Acts, 1871, 1911 and 1924, thus institutionalising pre-existing prejudices by branding entire tribal communities as criminals and subjecting them to systematic registration, surveillance, and control. The creation of separate administrative divisions under the Scheduled Districts Act, 1874 and the successive Government of India Acts, 1919 and 1935, for regions predominantly inhabited by tribal communities further led to their isolation from mainstream society. This approach, in practice, consolidated colonial control over resource-rich tribal regions and treated their inhabitants as distinct, peripheral subjects to be governed and not as citizens with inherent rights.

The foregoing colonial legacy profoundly shaped the post-independence discourse regarding the manner in which tribal communities ought to be constitutionally safeguarded. The interventions of prominent tribal leaders like Jaipal Singh Munda, who, in the Constituent Assembly Debates, widely criticised the colonial oppression of tribal communities and emphasised their right to be "*treated like every Indian*", were crucial in ensuring that the Constitution of India, 1950, firmly enshrined the recognition and protection of tribal communities. The Constitution of India, 1950 designates (certain but not all) tribal communities as 'Scheduled Tribes' under Article 366(25), a distinct legal category entitled to special guarantees. These not only include the universal rights to equality and non-discrimination under Articles 14, 15, and 17, but also specific enabling provisions for reservations in education and public employment, which have been judicially interpreted not as an exception to equality but as a fundamental instrument for its realisation. Political representation is also secured through the reservation of electoral seats. Recognising the critical importance of autonomy over land and resources, the Fifth and Sixth Schedules of the Constitution institutionalise mechanisms for self-governance and autonomy in regions with significant tribal populations. This Reference Manual also underscores the crucial role played by the judiciary, by ensuring that the fundamental and constitutional rights of the Scheduled Tribes are effectively enforced and do not remain mere symbolic commitments on paper.

This Reference Manual further maps the legislative framework that aids in the implementation of the constitutional promises of equality, justice, and fairness. The PoA Act, 1989, provides a potent legal instrument against the ill-treatment and violence that members of Scheduled Tribes are often subjected to. The PESA, 1996 operationalises the principle of self-governance by recognising that meaningful

autonomy must begin at the community level, especially in regions where tribal life is deeply interwoven with local land, customs, and traditions. The FRA, 2006 vests rights relating to the occupation, use and exploitation of forests on Scheduled Tribes and OTFDs. Finally, statutes such as the LARR Act, 2013, include special provisions that mandate consent and enhance protections for Scheduled Tribes in cases of land acquisition. Together, these enactments, along with the judicial precedents stemming therefrom, reflect a comprehensive attempt to move beyond mere integration and build a framework that protects rights, preserves identity, and promotes autonomy.

The latter part of this Reference Manual documents the insights gleaned from the comparative analysis of the distinct ways in which indigenous peoples are recognised and protected within their respective domestic frameworks. In the Nordic countries of Norway, Sweden and Finland, the rights of the indigenous Sámi people have been strengthened through constitutional recognition and the establishment of Sámi Parliaments, although their powers remain largely consultative. Across the Oceania region, indigenous-State relations present a sharp contrast. Whereas in Aotearoa (New Zealand), the relationship between the state and the indigenous Māori is mediated through the Treaty of Waitangi, creating a unique space for co-governance and the recognition of Māori customary law, Australia has struggled with granting federal constitutional recognition to the Aboriginal and Torres Strait peoples.

Meanwhile, North America offers a model grounded in the concepts of inherent sovereignty and government-to-government relationships. In Canada, the Constitution Act, 1982, explicitly recognises and affirms existing "aboriginal and treaty rights" of the First Nations, Inuit, and Métis peoples, thereby giving rise to a dual system of historical and modern treaties that define rights to land, resources, and self-government. Similarly, the United States federally recognises certain tribes as "domestic dependent nations" with inherent powers of self-government, although this sovereignty is subject to the plenary power of the federal Congress. In South America, the Constitutions of countries such as Ecuador and Colombia are notable for their progressive recognition of a plurinational state, indigenous justice systems, and the rights of indigenous peoples with respect to nature. The Constitution of Brazil also provides strong protections for indigenous lands; however, these rights have come under severe threat, exemplified by the political and judicial conflict regarding the '*marco temporal*' doctrine.

The examination of these models reveals certain patterns: countries making meaningful progress in terms of indigenous rights have granted strong non-dilutable safeguards, mostly institutionalised as constitutional guarantees. Additionally, land and resource rights consistently emerge as the cornerstone of genuine indigenous autonomy. Without secure control over ancestral territories, other rights remain fragile. Seen through this lens, this Reference Manual's compilation of the international, Indian, and comparative perspectives on the recognition and protection of indigenous rights serves more than a

catalogue. It raises several pertinent questions that necessitate further critical thought: How to safeguard autonomy without isolating indigenous peoples? How to ensure genuine participation? Fundamentally, how to transform these rights into lived realities for the indigenous people? The insights offered by this Reference Manual reinforce a common message: any framework guaranteeing indigenous rights must necessarily be built on respect, agency and genuine ability of indigenous peoples to shape their own futures, marking a clear break from the outdated integrationist and assimilationist approaches.