



Original Article

Protecting Tribal Rights in the Context of Displacement: An Analysis of Constitutional and Legal Safeguards in India

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Manuscript ID:

IJAAR-130129

ISSN: 2347-7075

Impact Factor – 8.141

Volume - 13

Issue - 1

September- October 2025

Pp. 202 - 211

Submitted: 18 Sept 2025

Revised: 24 Oct 2025

Accepted: 25 Oct 2025

Published: 31 Oct 2025

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Quick Response Code:



Website: <https://ijaar.co.in/>



DOI:
10.5281/zenodo.21057756

DOI Link:
<https://doi.org/10.5281/zenodo.21057756>



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Abstract:

Development-induced displacement has disproportionately affected tribal communities in India, resulting in the loss of land, livelihood, cultural identity, and social security. Although the Constitution of India provides several safeguards for Scheduled Tribes through Articles 15(4), 46, the Fifth and Sixth Schedules, and the Forest Rights Act, 2006, the effective realization of these protections remains a significant challenge. This paper critically examines the constitutional and legal framework governing the rights of displaced tribal communities and evaluates its effectiveness in addressing issues of displacement, rehabilitation, and social justice. Through an analysis of legislative provisions, judicial decisions, and contemporary challenges, the study highlights the gap between constitutional guarantees and ground realities. It argues that stronger implementation mechanisms, greater community participation, and a rights-based approach to rehabilitation are essential to ensuring constitutional justice for displaced tribal communities amid ongoing development initiatives.

Keywords: Tribal Communities, Displacement, Constitutional Safeguards, Forest Rights Act, Rehabilitation, Social Justice.

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How to cite this article:

Akash Bramhane¹ & Dr. R. L. Bhadane². (2025). Protecting Tribal Rights in the Context of Displacement: An Analysis of Constitutional and Legal Safeguards in India. *International Journal of Advance and Applied Research*, 13(1), 202 - 211.

<https://doi.org/10.5281/zenodo.21057756>



Introduction:

The displacement of tribal communities, often caused by large-scale development projects such as dams, mining operations, urbanization, and infrastructure expansion, has emerged as one of the most significant socio-political challenges in contemporary India. Tribal populations, who constitute approximately 8.6% of the country's total population (Census of India, 2011), are traditionally tied to their land, culture, and natural resources, which serve not only as a source of economic sustenance but also as the foundation of their identity and social fabric. Displacement of these communities from their ancestral lands can lead to the loss of their primary means of livelihood, the destruction of cultural practices, and severe psychological and social trauma (Cernea, 1997; Scudder, 2005; Fernandes, 2007). Despite being the most marginalized section of society, these communities often face the twin challenges of legal deprivation and state indifference, which perpetuate cycles of poverty and disempowerment (Xaxa, 2008; Panning Commission, 2008). Development-induced displacement has disproportionately affected tribal communities in India because most large infrastructure and resource extraction projects are located in regions rich in natural resources, which are also predominantly inhabited by Scheduled Tribes. Studies indicate that although Scheduled Tribes constitute less than 9% of India's population, they account for a significantly larger proportion of those displaced by dams, mines, industries, and wildlife conservation

projects (Fernandes, 2007). The displacement process often results in landlessness, unemployment, food insecurity, social disintegration, and marginalization, thereby exacerbating existing socio-economic vulnerabilities (Cernea, 1997).

In India, the Constitution provides a comprehensive framework for the protection and advancement of Scheduled Tribes (STs) through provisions such as Articles 15(4), 46, and the Fifth and Sixth Schedules. These safeguards aim to promote the educational, economic, social, and political welfare of tribal communities while protecting them from exploitation and marginalization. In addition, legislation such as the Forest Rights Act 2006 seeks to recognize and secure the land and forest rights of tribal communities, particularly those affected by development projects and forest policies. Despite these constitutional and statutory protections, their implementation has often remained inadequate due to administrative inefficiencies, bureaucratic delays, lack of awareness, and competing commercial interests in tribal lands (Xaxa, 2008; Ministry of Tribal Affairs, 2021).

As a result, many displaced tribal communities continue to face challenges such as loss of livelihood, inadequate compensation, ineffective rehabilitation, and erosion of their cultural identity (Fernandes, 2007; Xaxa, 2008). The displacement of tribal populations frequently disrupts their traditional relationship with land and natural resources, leading to social disintegration and economic insecurity. These persistent



challenges reveal a significant gap between constitutional promises and their realization in practice. Against this backdrop, the present study critically examines the effectiveness of constitutional safeguards in addressing the issues faced by displaced tribal communities and explores the legal, social, and policy reforms necessary to ensure meaningful protection of their rights and interests.

The challenges faced by displaced tribal communities extend beyond legal and economic concerns to issues of cultural preservation, identity, and social justice. Their struggle to protect ancestral lands, traditional livelihoods, and community rights highlights the need for stronger implementation of constitutional safeguards. This paper critically examines the effectiveness of existing constitutional and legal provisions, evaluates the impact of displacement on tribal communities, and explores judicial and policy measures necessary to ensure their protection, rehabilitation, and access to justice.

Objectives:

1. To examine the constitutional and legal provisions available for the protection of displaced tribal communities in India.
2. To analyse the socio-economic, cultural, and legal challenges faced by displaced tribal communities.
3. To evaluate the effectiveness of constitutional safeguards, judicial interventions, and rehabilitation policies in protecting their rights.

Methodology

The researcher has used a descriptive research design. The present research paper is based on secondary data, which involves the compilation of existing data sources from government reports, books, and research articles.

Concept of Tribal Displacement?

Tribal displacement refers to the forced relocation or uprooting of indigenous or tribal communities from their ancestral lands (Cernea, 1997; Fernandes, 2007) and territories due to external factors like development projects, urbanization, industrial activities, natural resource extraction, conservation efforts, or government policies. Tribal communities, who are often deeply connected to their land for cultural, spiritual, and economic reasons, experience significant disruption when displaced from these areas. Tribal displacement is not merely a physical relocation from one place to another; it involves the disruption of a community's cultural identity, social institutions, and traditional knowledge systems. Tribal societies maintain a unique relationship with forests, rivers, and common resources, which form the basis of their cultural and spiritual life. Consequently, displacement often leads to the loss of collective memory and traditional governance structures, making rehabilitation a complex challenge that extends beyond monetary compensation (Xaxa, 2008).

According to the Ministry of Tribal Affairs, land and forest resources constitute



the primary source of livelihood for a majority of tribal households. Therefore, the loss of access to these resources frequently results in long-term economic insecurity and increased dependence on wage labour and government welfare schemes (Ministry of Tribal Affairs, 2021).

This displacement can occur for various reasons, including:

1. **Development Projects:** Large-scale infrastructure projects such as dams, highways, and industrial zones that require the acquisition of tribal lands (Fernandes, 2007; Baviskar, 2004).
2. **Resource Extraction:** Mining, logging, and other natural resource extraction activities on tribal land often led to the forced removal of tribal people (Padel & Das, 2010; Xaxa, 2008).
3. **Urbanization:** As cities expand, tribal lands are sometimes taken to make way for urban development (Baviskar, 2004).
4. **Conservation and Environmental Policies:** The establishment of national parks, wildlife reserves, or forest conservation areas often displaces tribal communities who depend on the land for their livelihood (Rangarajan & Shahabuddin, 2006).

The term highlights the specific vulnerability of tribal communities, as their livelihoods, culture, and identity are often tightly tied to the land they inhabit. The displacement of these communities not only disrupts their economic base but also threatens their social structure, cultural

practices, and way of life (Roy Burman, 2003; Xaxa, 2008). Tribal displacement often leads to loss of access to resources, such as land, forests, and water, and can result in economic hardship, cultural erosion, social isolation, and political disenfranchisement.

Constitutional and Legal Safeguards for Tribal Communities

In India, the Constitution provides several provisions to protect the rights of tribal communities, especially in the context of displacement caused by development projects, land acquisition, and other external factors. While these provisions aim to safeguard the cultural, economic, and political interests of the Scheduled Tribes (STs), the effectiveness of their implementation in addressing displacement-related challenges has often been questioned. Below are some of the key constitutional provisions and legal safeguards meant to protect tribal communities in the context of displacement:

1. Article 46 of the Constitution of India directs the State to promote the educational and economic interests of Scheduled Tribes and other weaker sections of society while protecting them from social injustice and exploitation (Constitution of India, Art. 46). Although this provision does not specifically address displacement, it serves as an important constitutional foundation for the welfare and development of tribal communities, including those affected by development-induced displacement. As a Directive Principle of State Policy, Article



46 reflects the constitutional commitment to substantive equality by encouraging affirmative measures for the advancement of Scheduled Tribes. While non-justiciable in nature, it has significantly influenced legislative policies and judicial interpretations aimed at promoting social justice and reducing socio-economic inequalities faced by marginalized communities (Basu, 2021).

2. Article 15 (4) - Special Provisions for Advancement of Backward Classes- allows the state to make special provisions for the advancement of socially and educationally backward classes, including Scheduled Tribes. This provision is crucial in the context of displacement, as it allows the government to implement welfare measures such as reservation in education and employment, as well as rehabilitation programs for displaced tribal populations (Basu, 2021; Jain, 2018).

3. Article 19 (5) - Protection of Interests of Scheduled Tribes- grants fundamental rights to all Indian citizens (including the right to move freely and settle in any part of India), and it also allows the state to impose restrictions in the interests of tribal communities. This article is important in protecting tribal land and resources from non-tribal settlers or external commercial entities (Seervai, 2013).

4. The Fifth Schedule of the Constitution applies to Scheduled Areas, predominantly inhabited by tribal communities, and provides for their administration through Tribal Advisory Councils and special regulatory measures. It seeks to protect tribal

lands and resources from alienation and exploitation by non-tribals. The Sixth Schedule, on the other hand, provides for autonomous districts and regional councils in certain tribal areas of the North-Eastern States, enabling a greater degree of self-governance. Together, these Schedules reflect the constitutional recognition of tribal autonomy, self-governance, and cultural preservation. They aim to safeguard tribal customs, traditions, and control over natural resources while ensuring participation in democratic governance. Effective implementation of these provisions is crucial for protecting tribal interests and minimizing conflicts arising from land acquisition and development projects in tribal regions (Xaxa, 2014).

5. Article 366 (25) - defines the term Scheduled Tribes, providing clarity on who qualifies for special constitutional protections (Basu, 2021). By recognizing the unique status of these communities, this provision underpins the various protections granted to them, including those in the case of displacement and land alienation.

6. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013- specifically addresses issues of land acquisition, compensation, and rehabilitation for all displaced individuals, including tribal communities. The Act provides for fair compensation for land acquired for public purposes and mandates the rehabilitation of displaced persons, with special provisions for Scheduled Tribes. It aims to ensure that tribal communities receive adequate



compensation, and their rehabilitation is done in a manner that respects their cultural and social needs.

7. Article 338A - National Commission for Scheduled Tribes (NCST)- The creation of the National Commission for Scheduled Tribes (NCST) under Article 338A serves as a statutory body to protect and promote the welfare of Scheduled Tribes, including addressing issues related to displacement. The Commission monitors the implementation of policies and laws designed to protect tribal communities and can investigate issues related to displacement and rehabilitation.

Rehabilitation and Resettlement Framework for Displaced Tribal Communities:

India has adopted various legislative and policy measures to address the rehabilitation and resettlement of displaced tribal communities. These measures seek to ensure fair compensation, protection of land rights, community participation, and preservation of tribal livelihoods and cultural identity.

1. The Land Acquisition, Rehabilitation and Resettlement (LARR) Act, 2013:

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act (LARR Act), 2013, is one of the most significant pieces of legislation aimed at ensuring fair treatment to individuals, including Scheduled Tribes, displaced by development projects. The LARR Act, 2013, provides special safeguards for Scheduled Tribes by

requiring community consent for certain land acquisitions, ensuring fair compensation, mandating rehabilitation and resettlement measures, and respects their cultural and social needs (Rao, 2015). The Act recognizes the vulnerability of tribal communities and seeks to minimize the adverse effects of displacement. However, implementation challenges such as delays in compensation and inadequate rehabilitation continue to persist.

2. The Forest Rights Act (FRA), 2006

The Forest Rights Act, 2006, recognizes the customary and community forest rights of Scheduled Tribes and seeks to prevent their displacement without due recognition of these rights. The Supreme Court in *Orissa Mining Corporation v. Ministry of Environment and Forests* (2013) reinforced the role of Gram Sabhas in protecting tribal cultural and religious interests.

Furthermore, the Supreme Court in the *Niyamgiri* case recognized the importance of Gram Sabha consent in determining matters affecting tribal religious and cultural rights, thereby reinforcing the democratic spirit of the FRA (*Orissa Mining Corporation v. Ministry of Environment and Forests*, (2013) 6 SCC 476).

While the FRA is a crucial tool for ensuring land rights and preventing forced displacement, its implementation has faced challenges such as delays in the recognition of rights and a lack of awareness among tribal communities.



3. National Rehabilitation and Resettlement Policy, 2007:

The National Rehabilitation and Resettlement Policy (NRRP), 2007, outlines a framework for addressing the displacement and rehabilitation needs of all communities, including Scheduled Tribes, who are displaced due to infrastructure and development projects. The National Rehabilitation and Resettlement Policy, 2007, emphasizes land-based rehabilitation, preservation of socio-cultural identity, and community participation in the resettlement process. However, its effectiveness largely depends upon proper implementation by state authorities.

4. The Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA):

The PESA Act, 1996, provides a framework for the decentralized governance of tribal areas, allowing Scheduled Tribes to have more control over land and resources. This includes powers to approve or disapprove of development projects that affect tribal areas, including displacement-related issues. PESA, 1996, empowers Gram Sabhas in Scheduled Areas to participate in decisions concerning land and natural resources. By strengthening local self-governance, the Act seeks to prevent arbitrary land acquisition and the displacement of tribal communities.

5. Judicial Interventions and Public Interest Litigations (PILs):

Indian courts have consistently emphasized that development cannot be pursued at the expense of fundamental rights and human dignity. In *Samatha v. State of*

Andhra Pradesh (1997) 8 SCC 191, the Supreme Court held that tribal lands in Scheduled Areas cannot be transferred to non-tribals for mining purposes, thereby affirming the constitutional objective of protecting tribal resources. *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664 case highlighted the need to balance economic development with the protection of the rights and welfare of displaced populations. Similarly, in *Banwasi Seva Ashram v. State of Uttar Pradesh* (1986) 4 SCC 753, the Court stressed the need for adequate rehabilitation of displaced tribal populations.

Judicial interventions have played a vital role in balancing developmental objectives with the constitutional mandate of social justice. Nevertheless, scholars argue that litigation alone cannot resolve the structural causes of tribal displacement unless supported by effective administrative implementation and community participation (Upendra Baxi, 1985).

Challenges in the Implementation of Constitutional Safeguards:

Despite the existence of constitutional and statutory safeguards for Scheduled Tribes, their effective implementation remains a significant challenge. The gap between legal provisions and ground realities has contributed to the continued displacement and marginalization of tribal communities.



1. Lack of Awareness among Tribal Communities:

A major obstacle to the realization of tribal rights is the limited awareness of constitutional safeguards and legal entitlements among tribal populations. Many tribal communities remain unaware of protections available under the Forest Rights Act, 2006, PESA, and the LARR Act, 2013. Low literacy levels, geographical isolation, and inadequate dissemination of information often prevent them from effectively asserting their rights (Ministry of Tribal Affairs, 2021).

2. Administrative and Bureaucratic Hurdles:

The implementation of tribal welfare laws is frequently affected by administrative inefficiency, bureaucratic delays, and poor coordination among government agencies. The processes relating to recognition of land rights, compensation, and rehabilitation are often complex and time-consuming. Consequently, many eligible beneficiaries face difficulties in accessing the protections guaranteed under law (Planning Commission, 2008).

3. Inadequate Rehabilitation and Resettlement:

Although laws such as the LARR Act, 2013, and the National Rehabilitation and Resettlement Policy, 2007, provide for compensation and rehabilitation, these measures often fail to address the broader social, cultural, and economic consequences of displacement. Monetary compensation alone cannot compensate for the loss of traditional livelihoods, community networks,

and cultural identity (Cernea, 1997; Fernandes, 2007).

4. Land Alienation and Resource Exploitation:

Tribal communities continue to face land alienation due to mining, industrialization, infrastructure development, and commercial exploitation of natural resources. Despite constitutional safeguards and judicial interventions, tribal lands are often acquired without meaningful consultation or informed consent, threatening their traditional relationship with land and forests (Xaxa, 2008).

5. Weak Enforcement of Protective Laws:

The effectiveness of constitutional safeguards largely depends on their enforcement. However, weak monitoring mechanisms, lack of accountability, political interference, and limited institutional capacity often hinder the implementation of protective laws. As a result, legal protections that exist on paper do not always translate into effective protection in practice (Basu, 2021; Xaxa, 2014).

These challenges underscore the need for stronger institutional accountability, greater community participation, improved legal awareness, and effective enforcement of constitutional safeguards to ensure meaningful protection of displaced tribal communities.

Conclusion:

The Constitution of India provides a strong legal framework for the protection of Scheduled Tribes through provisions such as Articles 15(4), 46, and 338A, the Fifth and



Sixth Schedules, the Forest Rights Act, 2006, PESA, and the LARR Act, 2013. These safeguards aim to protect the educational, economic, cultural, and land rights of tribal communities and promote their overall welfare. However, despite these constitutional and statutory protections, their implementation has often been inadequate, resulting in the continued displacement and marginalization of tribal populations (Xaxa, 2014)

Development-induced displacement has exposed tribal communities to numerous challenges, including loss of livelihood, cultural erosion, inadequate rehabilitation, and limited participation in decision-making processes (PESA Act, 1996; Xaxa, 2014). Although judicial interventions have strengthened the protection of tribal rights, a significant gap remains between constitutional guarantees and their realization in practice.

Therefore, ensuring constitutional justice for displaced tribal communities requires more than the existence of protective laws. It demands effective implementation, stronger institutional accountability, meaningful participation of Gram Sabhas, greater awareness of legal rights, and culturally sensitive rehabilitation policies (PESA Act, 1996). A rights-based and inclusive approach to development is essential to balance economic progress with the protection of tribal identity, dignity, and constitutional entitlements. Only through such measures can the constitutional vision of social justice, equality, and human dignity for tribal communities be fully realized

(Xaxa, 2008; Ministry of Tribal Affairs, 2021).

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