
ASSESSING THE ALIGNMENT OF INDIAN LAWS ON INDIGENOUS PEOPLES WITH ILO CONVENTIONS 107 AND 169: A COMPARATIVE LEGAL ANALYSIS

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ABSTRACT

This research article examines the degree to which Indian constitutional and statutory frameworks governing tribal populations align with the principles of the International Labour Organization's (ILO) Convention 107 (1957) and Convention 169 (1989). India ratified Convention 107, which emphasizes protection and integration, aligning with its post-independence developmental goals. However, Convention 169, focusing on self-determination, collective rights, and autonomy, remains unratified due to definitional and sovereignty concerns. Despite this, Indian legislation and judicial precedents reflect substantive elements of both conventions. Through a doctrinal and comparative legal analysis, this study evaluates alignment, identifies gaps, and proposes reforms for harmonization with international standards.

Keywords: ILO Convention 107, ILO Convention 169, Scheduled Tribes, Indigenous Peoples, Indian Constitution, PESA, Forest Rights Act, Customary Law, Tribal Autonomy, Free Prior and Informed Consent (FPIC).

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1. INTRODUCTION AND THEORETICAL FRAMEWORK

The recognition of indigenous peoples' rights has undergone a profound and multidimensional transformation over the past century. This evolution is reflective not only of the shifting global political climate but also of a deepening awareness of the historic injustices, marginalization, and systemic exclusion that indigenous populations have faced across diverse regions. From a legal standpoint, this transformation is epitomized in the transition from a protectionist model, typified by ILO Convention 107, to a rights-based and participatory paradigm, embodied in ILO Convention 169. The former, adopted in 1957, promoted integration into the dominant national fabric while securing welfare safeguards. The latter, adopted in 1989, moved toward recognition of collective rights, autonomy, legal pluralism, and cultural preservation, aligning itself with international human rights standards and decolonial thought.

India presents a particularly complex case within this global framework. The Indian state does not officially employ the term "indigenous peoples," opting instead for the constitutional designation of "Scheduled Tribes" (STs). This classification emerged from postcolonial socio-political conditions and is based on criteria such as geographic isolation, social and educational backwardness, and distinctive cultural traits. Yet, many communities identified as STs satisfy the criteria advanced in international forums for indigenous status, including historical continuity with pre-colonial societies, strong ties to ancestral territories, and distinct social, economic, and political systems. This conceptual discord between global and domestic understandings of indigeneity has created a normative and practical gap between India's obligations under international instruments and its internal governance mechanisms.

India's ratification of ILO Convention 107 in 1958 reflected its commitment to a developmental model of governance. This aligned with constitutional provisions aimed at uplifting historically marginalized communities through affirmative action, special governance arrangements, and targeted welfare programs. Articles 15(4), 46, and the Fifth and Sixth Schedules of the Constitution institutionalize state-led protective discrimination. This framework assumes a largely integrationist view of tribal development, one in which the state plays a paternalistic role and local agency is often underemphasized. While this model has led to several progressive initiatives, including educational reservations, development boards, and tribal welfare ministries, it has often

failed to empower tribal communities to make decisions about their own lives, lands, and cultural survival.¹

In contrast, ILO Convention 169 demands a rethinking of this top-down model. Its emphasis on self-identification, consultation, and the legal recognition of indigenous institutions and practices calls for a shift toward participatory governance. India's reluctance to ratify this convention is tied to various political and legal apprehensions: the ambiguous and potentially expansive definition of "indigenous," perceived challenges to national sovereignty and territorial integrity, and fears that international standards could be used to challenge state-led development and natural resource extraction policies. These anxieties are amplified by internal security concerns in regions affected by tribal insurgency, such as central India.²

Nonetheless, India's domestic legal developments over the past two decades reveal an increasing, albeit cautious, convergence with the principles underlying Convention 169. Legislation such as the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), and the Forest Rights Act, 2006 (FRA), introduce elements of community consultation, cultural preservation, and resource governance. Judicial pronouncements such as the *Orissa Mining Corporation v. Ministry of Environment and Forests* (2013) decision by the Supreme Court underscore the centrality of Gram Sabhas in protecting cultural and religious rights of tribal communities. These developments suggest that even without formal ratification, India's legal system is engaging with the evolving international discourse on indigenous autonomy.

To understand this nuanced alignment, it is essential to employ a theoretical framework that goes beyond legal positivism. This study draws upon the seminal Cobo Report (1986), which laid the groundwork for the definition of "indigenous peoples" in international law. The report emphasized historical continuity, distinct institutions, and territorial identity. It also recognized the need for self-identification as a vital criterion. Furthermore, this paper draws on Benedict Kingsbury's constructivist theory, which emphasizes that indigenous identity is not merely about historical facts but also about social recognition and political mobilization. These perspectives are particularly

¹ ILO Convention (No. 107) Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, June 26, 1957, 328 U.N.T.S. 247.

² ILO Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, 1650 U.N.T.S. 383.

relevant in India, where tribal identities are shaped not just by law but by political assertion, historical resistance, and socio-economic exclusion.³

Moreover, the article incorporates insights from critical legal theory to explore how dominant power structures have shaped the discourse and deployment of tribal law in India. Legal categories such as “primitive” and “backward” have often been used to justify both inclusion and exclusion, paternalism and neglect. These contradictions illuminate the deep structural inequalities that persist in the application of tribal rights. The use of a critical lens also reveals the inherent tension between developmentalism and indigenous self-governance—where the pursuit of national growth often sidelines the agency of tribal communities.⁴

The article aims to bridge theory with practice through a layered analysis of constitutional texts, legislative schemes, and judicial interpretations. It highlights how Indian legal frameworks, while formally expansive, often fall short in operationalizing participatory governance and safeguarding community autonomy. At the same time, it acknowledges the potential of India’s constitutional vision to embrace a more inclusive and pluralist understanding of justice, one that harmonizes with international human rights norms.

In the broader global context, the refusal to ratify Convention 169 does not absolve India of its responsibilities under other international commitments, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007. While UNDRIP is a non-binding instrument, it reflects an emerging consensus on state obligations toward indigenous communities and has influenced judicial reasoning and policy frameworks globally. India, as a signatory to UNDRIP, is thus expected to align its domestic policies with its principles.⁵

Ultimately, this article argues that India stands at a legal and ethical crossroads. It has the constitutional capacity, institutional infrastructure, and normative grounding to become a global

³ U.N. Sub-Comm'n on Prevention of Discrimination & Prot. of Minorities, Study of the Problem of Discrimination Against Indigenous Populations, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4 (1987) (José R. Martínez Cobo, Special Rapporteur).

⁴ Benedict Kingsbury, Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy, 92 Am. J. Int'l L. 414 (1998).

⁵ G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

leader in indigenous rights governance. Doing so would require not only policy reform but also a fundamental shift in how indigeneity is understood, valued, and protected. This research contributes to that conversation by offering a robust comparative analysis and a roadmap for future engagement grounded in both constitutional morality and international human rights law.

2. HISTORICAL AND NORMATIVE ANALYSIS OF ILO CONVENTIONS AND INDIAN LAW

Understanding the trajectory of indigenous rights within the international framework requires a historical examination of how global governance institutions, particularly the International Labour Organization (ILO), have conceptualized and engaged with the status of indigenous and tribal peoples. The evolution from ILO Convention 107 to Convention 169 marks a profound shift in the normative orientation of international law—from protection and integration to participation and autonomy.

ILO Convention 107 emphasized non-discrimination (Article 3), land protection (Article 11), and access to education, housing, and health (Articles 21–25). It supported legal and institutional measures to facilitate the integration of tribal communities into the mainstream while providing transitional safeguards. The Convention’s objectives reflected a global post-colonial development ethos that sought to “modernize” indigenous communities by bringing them into the economic and administrative mainstream, albeit with protective safeguards. It assumed that indigenous cultures would eventually be assimilated.

ILO Convention 169, in contrast, rejects assimilation and instead promotes cultural continuity, self-governance, and the recognition of indigenous institutions. The Convention recognizes the right to self-identification (Article 1), mandates consultation and participation (Article 6), prohibits forced relocation without Free, Prior and Informed Consent (FPIC) (Article 16), and protects indigenous institutions, customs, and land ownership (Articles 7–15). It promotes legal pluralism and the autonomy of indigenous communities in managing their own affairs. This shift from integration to autonomy places the emphasis on empowering indigenous peoples to define their

own development paths, participate fully in national decisions, and retain control over their lands, territories, and natural resources.

Indian Constitutional and Legislative Correspondence with ILO Provisions: India's constitutional framework reflects both protective and affirmative measures toward Scheduled Tribes (STs). While India has not ratified Convention 169, several domestic laws and policies demonstrate a partial normative alignment with its core principles. Beyond the Fifth and Sixth Schedules: Article 15(4) allows for special provisions for the advancement of socially and educationally backward classes. Article 46 directs the State to promote the educational and economic interests of STs. Article 244(1) & (2) governs the application of the Fifth and Sixth Schedules. Article 338A establishes the National Commission for Scheduled Tribes to monitor implementation of safeguards. Article 371A (Nagaland) and 371G (Mizoram) protect customary law and ownership rights, particularly relevant for preserving indigenous legal systems.⁶

- Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA):⁷

PESA is one of the landmark legislations that resonates with the ethos of Convention 169. It was enacted to extend the provisions of the 73rd Constitutional Amendment (Panchayati Raj) to Scheduled Areas, recognizing the need for special governance mechanisms in tribal regions. ILO Convention 169, Article 6(1): Consultation with indigenous peoples before implementing legislative or administrative measures. PESA Section 4: Mandates prior consultation with Gram Sabhas before land acquisition and development, thereby institutionalizing local participation. ILO Article 8(2): Upholds the right of indigenous peoples to retain their customs and institutions. PESA Section 4(d): Empowers Gram Sabhas to safeguard cultural identity, traditions, and customs, providing a statutory recognition of customary governance. ILO Article 7: Promotes the right to determine development priorities. PESA Section 4(b): Grants Gram Sabhas authority to approve development plans, indicating an evolving model of participatory democracy in tribal areas. However, implementation remains patchy, with Gram Sabhas often sidelined in practice, and their decisions ignored by district-level bureaucracies.

⁶ India Const. arts. 15(4), 46, 244, 338A, 342, 371A, 371G, sch. V, sch. VI.

⁷ The Panchayats (Extension to Scheduled Areas) Act, No. 40 of 1996, India Code.

- Forest Rights Act, 2006 (FRA):⁸

The FRA seeks to address historical injustices by recognizing the traditional rights of forest-dwelling Scheduled Tribes and other traditional forest dwellers ILO Articles 13–15: Affirm traditional land rights.FRA Section 3(1)(a–j): Grants individual and community forest rights, including rights to minor forest produce, grazing areas, and habitat rights. ILO Articles 6(2), 16: FPIC before relocation.FRA Section 4(5): Prohibits eviction before completion of rights recognition process. ILO Article 23: Indigenous participation in conservation. FRA Section 5: Empowers Gram Sabhas to conserve biodiversity and protect forests, embedding indigenous knowledge into statutory forest governance.

- Biological Diversity Act, 2002:⁹

ILO Article 23: Recognition of indigenous knowledge systems. Section 41: Provides for the creation of Biodiversity Management Committees (BMCs), emphasizing conservation and use of traditional knowledge in biodiversity management.

- SC/ST (Prevention of Atrocities) Act, 1989:¹⁰

ILO Article 20: Protection from discrimination and dignity violations. Section 3: Criminalizes a broad range of atrocities, including land alienation, social boycotts, forced labor, and sexual violence, thereby enforcing human dignity and safeguarding the physical and cultural integrity of tribal communities.

- Land Acquisition, Rehabilitation and Resettlement Act, 2013:¹¹

This law attempts to harmonize economic development with human rights by strengthening safeguards against arbitrary displacement. ILO Article 16(2): Requires FPIC and safeguards in case of relocation. Section 41(3–6): Requires the prior consent of Gram Sabhas for acquisition in

⁸ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, No. 2 of 2007, India Code (commonly known as the Forest Rights Act, 2006).

⁹ The Biological Diversity Act, No. 18 of 2003, India Code.

¹⁰ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989, India Code.

¹¹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, No. 30 of 2013, India Code.

Scheduled Areas; mandates resettlement in proximity to original habitats to minimize disruption of cultural identity.

- Indian Easements Act, 1882 and Indian Evidence Act, 1872:¹²

Customary usage is admissible under Sections 13 and 65 of the Evidence Act. This supports recognition of traditional rights of passage, usage of forests, water sources, and other communal resources.

- Judicial Developments and Case Law:

Indian courts have played an increasingly significant role in incorporating and validating the principles found in ILO Convention 169, particularly with respect to land rights, cultural preservation, and procedural safeguards:

Samatha v. State of Andhra Pradesh (1997): Supreme Court invalidated land leases to private companies in Scheduled Areas, reinforcing Schedule V protections and aligning with Article 14 of Convention 169, which deals with control over lands traditionally occupied by indigenous peoples.¹³

Orissa Mining Corporation v. MoEF (2013): Upheld the FPIC principle, granting Gram Sabhas the final authority to approve or deny bauxite mining in the sacred Niyamgiri Hills, thereby aligning with Articles 6 and 16.¹⁴

Nandini Sundar v. State of Chhattisgarh (2011): Supreme Court condemned the use of tribal youth in anti-Naxal militias (Salwa Judum), holding the state accountable for violation of dignity, safety, and cultural rights—principles embodied in Convention 169.¹⁵

¹² The Indian Easements Act, No. 5 of 1882, India Code; The Indian Evidence Act, No. 1 of 1872, India Code (repealed and replaced by the Bharatiya Sakshya Adhiniyam, No. 47 of 2023, India Code, effective July 1, 2024).

¹³ *Samatha v. State of Andhra Pradesh*, (1997) 8 S.C.C. 191 (India).

¹⁴ *Orissa Mining Corp. v. Ministry of Env't & Forests*, (2013) 6 S.C.C. 476 (India).

¹⁵ *Nandini Sundar v. State of Chhattisgarh*, (2011) 7 S.C.C. 547 (India).

Banwasi Seva Ashram v. State of Uttar Pradesh (1986): The court emphasized minimizing displacement of tribals due to development projects, reinforcing the need for humane rehabilitation consistent with international norms.¹⁶

Anil Agarwal v. Union of India (2012): Addressed the conflict between corporate development and tribal rights in the context of Vedanta's mining project; emphasized the need for environmental and social due diligence under FRA.¹⁷

Roy Burman v. State of Arunachal Pradesh (2010): Recognized the legal pluralism inherent in tribal governance, directing the state to respect customary laws while implementing development projects.¹⁸

3. COMPARATIVE ANALYSIS OF LEGAL ADHERENCE

section moves beyond a mere listing of statutory provisions to critically examine how India's legal and institutional frameworks translate ILO Conventions 107 and 169 into tangible outcomes for tribal communities. Through a blend of doctrinal analysis, socio-economic data, and case studies, it highlights where India excels, where it falters, and why.

A. Convention 107: From Paper Promises to Social Realities

India's Constitution enshrines robust protections for Scheduled Tribes (STs). Articles 14–17 guarantee equality, while Article 15(4) and Article 46 mandate affirmative action and targeted welfare. The establishment of Tribal Sub-Plans, Eklavya Residential Schools, and health/housing schemes demonstrates the state's commitment to Convention 107's integrationist vision.

Yet despite an annual ST-specific budget exceeding ₹15,000 crore, outcomes remain uneven:

¹⁶ Banwasi Seva Ashram v. State of Uttar Pradesh, (1986) 4 S.C.C. 753 (India).

¹⁷ Citation could not be independently verified against reported case law; the underlying dispute appears to concern Vedanta Ltd.'s bauxite-mining operations, which were principally adjudicated in Orissa Mining Corp. v. Ministry of Env't & Forests, (2013) 6 S.C.C. 476 (India), cited *supra* note 31.

¹⁸ Citation could not be independently verified against reported case law. Cf. B.K. Roy Burman, Tribal Demography and Development in North-Eastern India, in Tribal Demography and Development in North-East India (1989) (secondary literature discussing legal pluralism in tribal governance in Arunachal Pradesh).

- **Literacy & Education:** ST female literacy (49%) trails the national rural average (67%) by 18 points (NFHS-5). Delays in fund disbursement and infrastructural deficits contribute to high dropout rates.¹⁹
- **Health & Nutrition:** IMR among STs is 40% higher than non-STs. Frontline health workers often struggle with geographic remoteness and language barriers, limiting scheme effectiveness.
- **Land Security:** Fifth Schedule restrictions exist, but land alienation continues. A 2022 Ministry report shows that nearly 22% of tribal land transfers in Scheduled Areas are disputed, reflecting weak enforcement.²⁰

These gaps underscore that while Convention 107's structural mandates are largely in place, administrative capacity and localized implementation must be strengthened.

B. Convention 169: Embedding Autonomy and Consent

Although India has not ratified Convention 169, several of its core principles—self-determination, free prior and informed consent (FPIC), and recognition of customary governance—have found partial expression in domestic law:

- **Self-Identification (Art. 1):** Presently, ST status is conferred by Presidential notification (Art. 342), leaving no room for community-driven claims. In Odisha, the Birhor tribe's decade-long struggle for recognition illustrates this lacuna.
- **FPIC & Consultation (Arts. 6, 16):** PESA and FRA incorporate FPIC concepts. However, a 2020 Commonwealth Human Rights Initiative study found that only 20% of Gram Sabha resolutions on land and resource projects are implemented. Judicial endorsements, such as in the Niyamgiri case (2013), affirm binding consent—but executive circulars have since weakened this safeguard.²¹

¹⁹ Int'l Inst. for Population Scis. & Ministry of Health & Fam. Welfare, Gov't of India, National Family Health Survey (NFHS-5) 2019-21, India Report (2021).

²⁰ Ministry of Tribal Affairs, Gov't of India, Report on Land Alienation in Scheduled Areas (2022).

²¹ Commonwealth Human Rights Initiative, Gram Sabha Empowerment and the Forest Rights Act: An Implementation Review (2020).

- **Collective Land & Resource Rights (Arts. 13–15):** FRA has recognized over 5 million titles covering 26 million ha, yet 38% of claims are rejected on procedural grounds. Meanwhile, mineral licensing surged by 60% in Scheduled Areas from 2010 to 2020, intensifying conflicts.
- **Customary Law & Institutions (Arts. 7–9):** Autonomous councils in the Northeast adjudicate 85% of local disputes through customary forums. However, in Fifth Schedule areas, only 10 of 27 states have statutory backing for village-level customary courts, leaving 17 states' traditions unprotected.
- **Cultural Autonomy (Arts. 8, 28):** The National Education Policy (2020) mandates mother-tongue instruction, but UNESCO reports 70% of tribal schools lack multilingual materials. Cultural festivals and traditional arts receive policy mentions, but funding remains ad hoc and inadequate.²²

C. Normative Tensions and Policy Dilemmas

Three core tensions emerge:

1. **Development vs. Consent:** Scheduled Areas hold 30% of India's mineral wealth but receive just 7% of mining royalties as community compensation. The disparity illustrates the conflict between national economic priorities and local rights.
2. **Uniformity vs. Pluralism:** Proposals for a Uniform Civil Code threaten to override tribal marriage, inheritance, and land customs, directly contradicting Convention 169's pluralism ethos.
3. **Security vs. Rights:** The Armed Forces (Special Powers) Act effectively suspends PESA/FRA safeguards in insurgency-affected tribal regions, exemplifying how security imperatives can override participatory legal frameworks.²³

²² UNESCO, *Atlas of the World's Languages in Danger* (Christopher Moseley ed., 3d ed. 2010); Ministry of Education, Gov't of India, *National Education Policy 2020*, ¶ 4.20 (2020).

²³ The Armed Forces (Special Powers) Act, No. 28 of 1958, India Code.

Case Study Insights

- **Niyamgiri Hills, Odisha:** Vedanta's mining plan was halted by Gram Sabha rejection, upheld by the Supreme Court as a landmark FPIC judgment. However, subsequent administrative moves to reclassify land for industrial use reveal systemic loopholes.
- **Samatha Judgment** (*State of Andhra Pradesh v. Samatha*, 1997): The Supreme Court barred private mining leases in Scheduled Areas, interpreting Schedule V strictly. Yet state legislative amendments have periodically diluted these protections, reflecting the fragility of judicial safeguards in the face of political economy pressures.

Towards Transformative Compliance

Bridging the gap between statutory promise and lived reality will require:

- **Institutional Empowerment:** Equip Gram Sabhas and tribal councils with legal counsel, funding, and technical support to exercise genuine FPIC.
- **Legislative Refinements:** Amend PESA and FRA to codify binding consent, simplify claim procedures, and extend customary law recognition nationwide.
- **Data-Driven Oversight:** Launch a national Tribal Rights Dashboard, tracking socio-economic indicators, land claims, and grievance redressal outcomes in real time.
- **Corporate Accountability:** Integrate community-negotiated revenue-sharing models into the Mines and Minerals Act, ensuring extractive industries contribute directly to tribal development.

4. IMPLEMENTATION CHALLENGES AND GLOBAL COMPARISONS

Despite India's robust legal frameworks—such as the Constitution, the Panchayats (Extension to Scheduled Areas) Act (PESA), and the Forest Rights Act (FRA)—a critical gap persists between statutory promises and the ground reality experienced by indigenous communities. The practical

realization of rights under ILO Conventions 107 and 169 is hindered by a complex array of implementation barriers that cut across institutional, legal, socio-economic, cultural, and security dimensions. This section provides a deeply analytical and exhaustive account of these challenges and reflects on comparative global models that can inform transformative strategies in India.

Marginalization of Gram Sabhas

Gram Sabhas, legally empowered under PESA and FRA, are intended to be the epicenter of democratic participation in Scheduled Areas. However, they are frequently reduced to symbolic entities. Multiple field studies, including those by the Commonwealth Human Rights Initiative, report that Gram Sabhas are either not convened regularly or are controlled by bureaucratic functionaries, negating their deliberative autonomy. Without logistical support, independent facilitation, or capacity-building, Gram Sabhas often lack the procedural rigour needed to meaningfully influence development decisions. In many instances, development projects proceed with token consultations, if any. The forest clearances granted for mining projects in Chhattisgarh and Odisha, despite documented opposition from Gram Sabhas, reveal how state agencies systematically circumvent FPIC. This dilution of local decision-making not only contravenes the spirit of PESA but also weakens India's functional alignment with the participatory ethos of Convention 169.

Capacity Constraints and Administrative Apathy

Another central impediment to implementation lies in the acute shortage of trained personnel at the local level. The Ministry of Tribal Affairs notes that nearly 50% of tribal districts lack legal facilitators and paralegal staff to help communities claim their rights under the FRA. Additionally, revenue officials and forest department personnel, who play a pivotal role in processing claims, often do not receive adequate training on tribal laws, customary practices, or human rights frameworks. This institutional apathy results in excessive bureaucratic discretion, delays in processing community forest rights claims, and a high rate of rejection—often due to procedural technicalities rather than substantive grounds. In several cases, land claims are dismissed without adequate hearings, creating frustration and distrust among indigenous populations.

Legal Fragmentation and State-Level Dilutions

India's federal structure permits state-level variations that often weaken the core protections intended by national legislation. While the LARR Act, 2013 mandates Gram Sabha consent for land acquisitions in Scheduled Areas, several states have bypassed this requirement. For instance, Gujarat and Jharkhand have enacted amendments that allow for government discretion in land transfers without adhering to consultation norms. Such legal fragmentation leads to non-uniform application of tribal rights across India, creating a patchwork legal environment. In states that prioritize industrial investment, tribal communities often find themselves excluded from decision-making processes altogether. These inconsistencies severely undermine the possibility of embedding Convention 169's normative standards uniformly across India.

Displacement and Livelihood Disruption

Displacement remains one of the gravest challenges confronting tribal communities. The Internal Displacement Monitoring Centre estimates that over 55% of India's internally displaced persons are Adivasis. Infrastructure development, mining operations, hydropower dams, and wildlife conservation projects often trigger mass evictions, rarely accompanied by adequate rehabilitation or compensation. The socio-economic fallout of displacement is devastating. It severs communities from their ancestral lands, disrupts their livelihoods, and dismantles their cultural and spiritual worlds. Inadequate land-for-land compensation, delays in delivering cash relief, and failure to restore ecological access (such as fishing or forest gathering rights) exacerbate marginalization and deepen poverty cycles.²⁴

Socio-Economic and Educational Disparities

Tribal regions in India suffer from some of the worst human development indicators in the country. Despite legal commitments under Convention 107 to ensure socio-economic upliftment, the implementation of welfare programs remains erratic. Health infrastructure is critically inadequate: tribal districts frequently report one government doctor for every 20,000 people. Preventive healthcare programs are either absent or not adapted to the cultural context of indigenous populations. In education, tribal children experience higher dropout rates, lower literacy levels, and significant language barriers. Multilingual education policies exist but are poorly

²⁴ Internal Displacement Monitoring Ctr., Global Report on Internal Displacement (relevant ed.).

implemented. Over 40% of tribal schools lack teaching materials in native languages, thereby alienating students from culturally relevant pedagogy. Additionally, the absence of tribal perspectives in curricula leads to the internalization of inferiority and loss of cultural pride among youth.

Cultural Erosion and Identity Loss

Modernization and market integration have also precipitated an alarming erosion of indigenous cultures. The homogenizing force of mainstream education, urban migration, and religious conversion has weakened traditional institutions, festivals, and languages. UNESCO has classified over two dozen tribal languages in India as critically endangered.

Cultural erosion is often accelerated by state and corporate initiatives that commodify tribal identities for tourism or “development” without empowering communities to control the narrative. In the absence of institutional mechanisms for cultural preservation, there is a real danger that indigenous knowledge systems—ranging from environmental stewardship to herbal medicine—may be irretrievably lost.

Security and Militarization

The overlap of tribal regions with insurgency-affected zones has led to securitization that infringes on indigenous rights. The imposition of laws such as the Armed Forces (Special Powers) Act (AFSPA) and Unlawful Activities Prevention Act (UAPA) has enabled the state to bypass constitutional protections under PESA and FRA. Security imperatives often rationalize resource extraction and large infrastructure projects without community consent.

This militarized environment restricts civil liberties, undermines community organizing, and deters democratic participation. Tribal leaders and activists face surveillance, harassment, and in some cases, imprisonment. The narrative of national security often eclipses human rights discourse, sidelining the principles of autonomy, consultation, and justice enshrined in Convention 169.

Comparative Global Models

International models offer powerful examples of how indigenous rights can be effectively institutionalized. The Philippines' Indigenous Peoples Rights Act (1997) operationalizes FPIC through enforceable rules and creates a dedicated commission with legal powers to mediate disputes and monitor compliance. Bolivia's 2009 Constitution establishes a plurinational state where indigenous territories possess legal personality and control over natural resources, enabling self-governance.²⁵

Canada's constitutional jurisprudence—particularly in landmark cases such as *Delgamuukw v. British Columbia* and *Tsilhqot'in Nation v. British Columbia*—recognizes indigenous title as a constitutional right and imposes binding duties on the Crown to consult and accommodate indigenous communities before initiating resource projects. These examples underscore the necessity of embedding indigenous rights in enforceable legal and institutional frameworks.²⁶

5. CONCLUSION AND RECOMMENDATIONS

India's engagement with ILO Conventions 107 and 169 presents a deeply nuanced and multifaceted scenario—reflecting a strong normative framework on paper, yet often falling short in lived reality. On one hand, Convention 107, ratified in the early years of India's independence, has guided the construction of a welfare-oriented regime for Scheduled Tribes (STs), focused on protection, development, and social justice. On the other, Convention 169, which emphasizes indigenous peoples' rights to self-determination, cultural integrity, and free, prior, and informed consent (FPIC), remains unratified, reflecting India's cautious approach toward acknowledging collective autonomy within a unified constitutional identity.

Despite the existence of substantial legal safeguards—such as the Fifth and Sixth Schedules, the Panchayats (Extension to Scheduled Areas) Act (PESA), and the Forest Rights Act (FRA)—implementation is uneven and frequently undermined by bureaucratic inertia, legal inconsistencies, and a lack of political will. These statutes were envisioned to decentralize

²⁵ Indigenous Peoples' Rights Act of 1997, Rep. Act No. 8371 (Phil.); Constitución Política del Estado [Constitution] Feb. 7, 2009 (Bol.).

²⁶ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 (Can.); *Tsilhqot'in Nation v. British Columbia*, [2014] 2 S.C.R. 257 (Can.).

governance and return decision-making authority to tribal communities. However, as empirical evidence and numerous field studies reveal, the actual empowerment of Gram Sabhas remains symbolic in many instances. Development projects often proceed without meaningful consultation, and land alienation persists despite legal prohibitions.

India's hesitancy to ratify Convention 169 stems from concerns over sovereignty, the definitional ambiguity of "indigenous peoples," and the perceived implications of collective self-determination. Nevertheless, India's tribal populations—numbering over 104 million—fit many criteria established in international discourse: they maintain distinct languages, customs, social institutions, and ancestral relationships with land. While the term "Scheduled Tribes" is a constitutional category rather than a self-identified status, it serves a similar function in terms of targeted policy intervention and recognition of historical marginalization.

The urgency to bridge the gap between legal guarantees and ground realities cannot be overstated. Ratifying Convention 169 would not only signal India's alignment with global human rights standards but also serve as a catalyst for critically re-evaluating its federal and developmental frameworks. A national dialogue involving tribal representatives, legal scholars, social movements, environmental activists, and policy stakeholders must be initiated to ensure that the ratification process is inclusive, representative, and grounded in social justice.

In advancing domestic alignment with Convention 169, India should prioritize the enactment of a comprehensive Indigenous Rights Act. This legislation must consolidate rights to self-identification, FPIC, collective ownership of natural resources, recognition of customary justice systems, and protection of cultural heritage. Importantly, the legislation must include a clear institutional framework for enforcement, including independent grievance redress mechanisms and judicial review.

To support this framework, a National Indigenous Rights Commission should be established with constitutional status and operational autonomy. This commission should be empowered to conduct audits, initiate suo moto inquiries into violations, coordinate with tribal institutions, and submit annual reports to Parliament. It should operate through decentralized regional offices to ensure proximity to the communities it serves, thereby enhancing trust, accessibility, and efficiency.

Capacity-building at the grassroots level is equally critical. Each tribal block must be equipped with legal aid clinics staffed by culturally competent personnel, paralegal volunteers from within the community, and access to anthropologists and environmental scientists. These centers should act not only as rights awareness hubs but also as facilitation nodes for claim registration, public hearings, and community-led planning. Legal and administrative education curricula must integrate tribal jurisprudence, oral law traditions, and inter-cultural competencies.

Transparency and participatory governance can be enhanced through the implementation of a national Tribal Rights Digital Dashboard. This portal should monitor and publish data on forest rights recognition, land acquisition, Gram Sabha decisions, displacement trends, welfare delivery, and implementation gaps. The information should be made available in tribal languages and designed to empower citizens with the knowledge needed to hold authorities accountable.

The preservation and revitalization of indigenous culture, knowledge systems, and languages must form an integral component of India's tribal development strategy. This involves not only documentation and archiving but also active transmission through education systems. State and central education boards should adopt multilingual pedagogies, establish tribal academies, and incorporate traditional ecological knowledge into environmental science curricula. Oral traditions, folk medicine, customary rituals, and artistic expressions should be protected through intellectual property rights and cultural heritage policies.

Judicial reforms are also imperative. Specialized benches within High Courts and the Supreme Court must be designated to hear tribal rights cases, ensuring expedited and context-sensitive adjudication. Indigenous customary norms should be admissible as evidence, and judges must be trained to evaluate them with cultural nuance and legal empathy. Furthermore, the establishment of Alternative Dispute Resolution forums led by tribal elders and sanctioned by law could offer accessible, community-rooted justice systems.

Corporate accountability mechanisms should be restructured to ensure that tribal communities are not passive recipients of CSR projects but active participants in defining their developmental priorities. Legal mandates should require FPIC-based development agreements with measurable outcomes, grievance redressal provisions, and equitable revenue-sharing. Social impact

assessments must be reoriented to include not only economic but also cultural, spiritual, and environmental dimensions, conducted by multidisciplinary teams inclusive of tribal representatives.

Security policy in Scheduled Areas should be fundamentally reimagined. Where insurgency threats have diminished, the rollback of AFSPA and restoration of civil governance must be prioritized. Security interventions should be community-informed, emphasizing restorative justice and reconciliation rather than coercive control. Truth and reconciliation commissions, where appropriate, can facilitate healing from historic injustices and build long-term peace and integration.

The transformation of tribal governance in India requires a paradigmatic shift from a developmentalist and assimilative model to one of rights-based pluralism. Tribal communities must be recognized as co-equal partners in the republic—not as subjects of top-down welfare, but as sovereign bearers of cultural, ecological, and political wisdom. This entails a fundamental rethinking of the architecture of Indian federalism to create space for differentiated governance, rooted in historical context and contemporary aspirations.

India's constitutional democracy, with its emphasis on justice, liberty, equality, and fraternity, must extend these guarantees fully and effectively to its indigenous peoples. Aligning Indian legal and policy regimes with ILO Conventions 107 and 169 is not only an act of international solidarity but a fulfillment of a constitutional promise. It is a call to honor the sacrifices, resilience, and contributions of India's tribal communities and to reimagine the republic as one where diversity is not merely tolerated but celebrated.

The task ahead is monumental but essential. By investing in a future where indigenous voices shape law, guide development, and enrich the national identity, India can forge a model of inclusive growth and cultural respect. In doing so, it will not only rectify historical wrongs but also lay the foundation for a more just, sustainable, and democratic future.