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CONSTITUTIONAL SILENCES THROUGH LOCAL GOVERNANCE

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ABSTRACT

In this article, the authors analyze the so-called "constitutional silences" that undermine tribal self-governance in the Fifth Schedule regions of India by placing them outside the core structure of the Panchayati Raj and making them dependent on the statutory procedure. The paper begins by identifying the loopholes in Articles 243M and 244, which grant the executive broad powers over Scheduled Areas without ensuring of autonomy of the Gram Sabha. Following a review of the Panchayats (Extension to Scheduled Areas) Act, 1996, and the Forest Rights Act, 2006, the paper examines the landmark cases like Samatha (1997) and Orissa Mining Corp. (2013), to demonstrate how judicial bodies have upheld tribal land claims by relying on statutes rather than constitutional requirements.

The empirical case studies of Hasdeo Arand and the Pathalgadi movement indicate that state governments habitually bypass Gram Sabha resolutions within the resource-endowed areas to the detriment of participatory democracy. The paper bases its argument on the comparative international standards, such as Free, Prior, and Informed Consent (FPIC) in UNDRIP and the Indigenous Peoples' Rights Act (IPRA) in the Philippines, advocating the elevation of tribal consent to constitutional status. This could be achieved by introducing specific amendments to Articles 244 and 243G or by enacting PESA into the Constitution. The study suggests mandatory Gram Sabha consent in land acquisition, uniform national PESA regulations, the institutional reinforcement of village assemblies, as well as conformity to international indigenous rights norms. By making Gram Sabha consent an enforceable right, India can transform aspirational protections into enforceable guarantees of justice, dignity, and local self-governance.

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INTRODUCTION

The Constitution and laws of India contain some significant silences regarding the autonomy of tribal areas under the Fifth Schedule, creating loopholes that limit the autonomy of the Gram Sabha. Article 243M of the Constitution expressly excludes the Scheduled Areas from the Part IX provisions on Panchayati Raj[3]. Furthermore, Article 244 vests the Governor of a Fifth Schedule state with extensive powers [4](e.g., to issue public notifications and give directions) but fails to provide an explicit guarantee of tribal self-governance.

Directive Principles, such as Article 46, require the State to safeguard the interests of the Scheduled Tribes, which, however, is non-justiciable and entrusts the de facto implementation to ordinary statutes[5]. To address these gaps, Parliament enacted the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), which largely extended the spirit of Part IXA into Fifth Schedule areas. [6]Nevertheless, the lack of explicit constitutional status for tribal local government has allowed the state and federal governments to bypass or undermine tribal rights. Consequently, the encroachment by the states on tribal lands, minerals, forests, and resources is common.

The focal issue in this paper is that the constitution of India does not grant any express or enforceable provisions of tribal self-rule or mandatory consent requirements in Scheduled Areas. This vacuum facilitates encroachment of the states into the tribal land and mineral rights, as in Hasdeo Arand (Chhattisgarh) and Niyamgiri (Odisha). This study examines how the legal ambiguities and statutory restrictions, coupled with the absence of constitutional entrenchment, have contributed to the impediment of tribal self-rule in the context of PESA. It concludes by recommending legal and constitutional amendments to empower Gram Sabhas, make tribal development subject to mandatory consent, and strengthen participatory democracy in tribal regions.

[3] INDIA CONST., art. 243 M.
[4] INDIA CONST., art. 244.
[5] INDIA CONST., art. 46.
[6] Panchayats (Extension to Scheduled Areas) Act, 1996, No. 40, Acts of Parliament (India).

UNINTENDED EXCLUSION

A. FIFTH SCHEDULE AND PROVISIONS IN THE CONSTITUTION.

The Scheduled Areas and Scheduled Tribes are regulated by the Fifth Schedule of the Constitution (Articles 244-244A). However, this schedule is largely silent on the direct devolution of power to the tribal communities. Ideally, the Constitution envisages "protective governance" of such regions by governors and special laws, and not tribal autonomy. [7]

Specifically, the Fifth Schedule areas are excluded from Part IX (Panchayats) of Article 243M, meaning the general scheme of Panchayati Raj does not automatically apply. Instead, Article 244(1) serves as a guideline, suggesting that governance issues in Scheduled Areas within non-Northeast states are to be addressed by parliament through specific legislation. This "constitutional silence" created a necessity for a special statute - the PESA Act. It is noteworthy that while Article 244(1) provides the Union executive with the authority to issue directions to states regarding the administration of Scheduled Areas, it makes no mention of tribal consent rights or Gram Sabha powers.

Beyond these specific provisions, the Constitution establishes general affirmative duties. The Preamble promises justice, liberty, equality, and dignity to tribals. Article 46 (a Directive Principle) reinforces this by directing the State to safeguard [Scheduled Tribes] against social injustice and all forms of exploitation, while Articles 15-17 provide prohibitive protection against discrimination[8]. There is, however, no basic right that expressly guarantees tribal self-rule, community land rights, and group sovereignty. The Sixth Schedule (of some of the Northeast tribal areas) provides autonomous district/region councils, which exercise legislative and executive powers, but areas under the Fifth Schedule do not. This "constitutional silence" implies that the governance of Fifth Schedule areas by tribalism is not based on justiciable constitutional requirements but only on PESA and other laws of that nature. This renders Gram Sabhas in Fifth Schedule areas to be at the mercy of state executive dispensation and not a constitutional right.

B. THE PESA ACT, 1996

The Panchayats (Extension to Scheduled Areas) Act (PESA) was enacted to address the omission under Part IX in 1996 (commencing 24 December 1996). PESA also applies Part IX provisions to

[7] INDIA CONST., art. 244A.
[8] INDIA CONST., art. 15.

Fifth Schedule areas, albeit with specific modifications to protect tribal interests. The important aspects of it are:

(i) The determination of Gram Sabha and Gram Panchayat composition based on traditional community structures.

(ii) Granting Gram Sabhas authority over local resources and traditional customs;

(iii) Requiring states to amend their respective Panchayati Raj Acts to conform to PESA's mandates[9].

Section 3 of PESA establishes the village as the primary unit of democracy (Panchayat at every village) with Gram Sabha as the fundamental foundation of governance[10]. Most importantly, Section 4 of PESA vests the Gram Sabhas (and Panchayats) in such aspects as ownership of minor forest produce, local market control, and local resources[11]. Indicatively, Section 4(c) mandates Gram Sabha consultation in matters of land acquisition and resettlement of displaced tribal persons. Further, Section 4(m) prohibits the sale/ transfer of tribal land by prohibiting its transfer to non-tribals. Such provisions, if effectively enforced, would significantly bolster tribal independence.

Nevertheless, there exist major limitations and points of ambiguity in PESA. Section 4 contains many powers that are defined in broad terms (e.g., ownership of minor forest produce) without clear implementation guidelines.[12] Furthermore, since PESA is implemented subject to state regulations, many states have been slow or negligent in the expansion of consistent PESA regulations. Indicatively, it took years to inform PESA rules in several tribal states (Jharkhand, Odisha, Chhattisgarh, MP), and in some instances, these rules were drafted to dilute the Gram Sabha authorities. [13]Even where rules exist, enforcement remains lax. Studies indicate that while Gram Sabhas have been granted functional powers on paper, these powers are frequently ignored in practice. Even the Ministry of Panchayati Raj has characterized the implementation of PESA as a "failure" in most states.

PESA operates alongside other statutes, most notably the Forest Rights Act (FRA), 2006. The FRA fills the gaps in PESA as it acknowledges the individual and community rights to forests, and clearly states that any diversion of forest land must be authorized by Gram Sabha (via Forest Conservation

[9] A. Sharma, *A Study on Challenges and Successes of PESA Act Implementation in Rajasthan*, ShodhKosh: J. Visual & Performing Arts 612 (2024), https://doi.org/10.29121/shodhkosh.v5.i6.2024.4199.
[10] Panchayats (Extension to Scheduled Areas) Act, 1996, S. 3, No. 40, Acts of Parliament (India).
[11] Panchayats (Extension to Scheduled Areas) Act, 1996, S. 4, No. 40, Acts of Parliament (India).
[12] *Supra* Note 7.
[13] Govt. of India, Implementation Status and Gap between Provisions and Practice of the PESA Act in Andhra Pradesh, Jharkhand and Odisha (SCSTRTI report 2011).

Act clearance). [14]In the landmark case of Orissa Mining Corp. v. MoEF (Niyamgiri Case), the Supreme Court held that PESA and FRA should be interpreted jointly to safeguard the rights of a tribe[15]. However, gaps persist in the Land Acquisition Act, 2013, and Mines and Minerals laws that do not fully integrate PESA's requirements. Therefore, the statutory framework is a patchwork: while the provisions are well-written provisions on paper, statutory restrictions, overlaps, and lack of enforcement have created significant voids in tribal governance.

NOMINAL PROTECTION OF SELF- GOVERNMENT

A. SAMATHA V. ANDHRA PRADESH (1997)- LAND AND MINING

In Samatha v. State of A.P., the Supreme Court invalidated the leasing of tribal lands to the private mining and industrial firms[16]. According to the Court, all land in Scheduled Areas, regardless of whether it was government-owned or privately titled, could not be leased to non-tribal individuals to engage in commercial exploitation. The court interpreted Paragraph 5(2) of the Fifth Schedule to imply a blanket ban on any transfer of tribal land, with narrow exceptions made only for the government/scheduled co-operatives to conserve tribal livelihoods. Significantly, in its decision, the Court stated that mining in scheduled areas could occur only with an authorized mineral development corporation (owned by a State), or a tribal cooperative (at least 20% of the profits to be dedicated to social services),

This ruling reiterated that economic justice as the object of the Fifth Schedule outweighs competing commercial interests. Samatha thereby made the transfers of land in tribal areas a high threshold, but it was limited to land alienation, not blatant Gram Sabha rule. However, its reasoning represents a critical principle of Indian jurisprudence that all constitutional silence (in the case of the Transfer of Property Act) is construed so that tribal protection is determined.

[14] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2, Acts of Parliament (India).
[15] Orissa Mining Corporation v. Ministry of Environment & Forest & Ors., [2013] 6 SCR 881.
[16] Samatha v. State of Andhra Pradesh, AIR 1997 SC 3297

B. ORISSA MINING CORP. V. MOEF - GRAM SABHA RIGHTS (NIYAMGIRI)

The case of tribal rights in the Scheduled Areas was revolutionary, as the landmark case of Orissa Mining Corp. v. Ministry of Environment and Forests (2013[17]), commonly referred to as the Niyamgiri judgment, had far-reaching consequences. In this case, the Supreme Court examined the Forest Rights Act (FRA) and the PESA in the context of the alumina project in the Niyamgiri Hills of Odisha. The Court explicitly linked Article 244 (Scheduled Area protections) to the Fundamental Rights of culture and religion, aligning them with the FRA's objectives to create a holistic shield for protection of tribal dwellers. It acknowledged that the FRA was remedial legislation intended to give communities the right to forests, not just personal entitlements.

Most importantly, the Court held that the Gram Sabha plays a pivotal role in protecting tribal customary rights under the FRA and PESA. It noted that the Section 6 of the FRA gives the Gram Sabha the authority to decide the character and level of community rights[18], and that Section 4(d) of PESA requires Gram Sabhas to uphold tribal customs. In its operational directives, the Supreme Court stipulated that mining should not take place until the consent of the concerned Gram Sabhas (village assemblies) was obtained. The Court even demanded that every Gram Sabha vote (by referendum) be held on whether the Vedanta project could proceed. This effectively left the decision to the villagers. To conclude, Orissa Mining Corp. held that the Gram Sabha's decision was final and binding, and it was a radical declaration of participatory democracy in the Scheduled Areas. This was later overturned (e.g., Forest Conservation (Amendment) Act, 2023), with Gram Sabha consent to forest diversion scrapped, but at least the Supreme Court's interpretation as of 2025 remains: tribal communities should at least be consulted and given the right to determine projects in their regions.

C. FPIC - UNDRIP

In turn, the absence of an explicit constitutional mandate means that principles such as "free, prior, and informed consent" (FPIC) remain legally enforceable under specific statutes rather than the constitution itself. In contrast to the Canadian jurisprudence on Aboriginal rights (duty to consult and possible consent to Aboriginal title), the Indian Constitution does not include a blanket consent rule. As a result, the doctrine derived from case law is ambivalent. While the judgments like Samatha and

[17] *Supra* Note 13

[18] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, S.6, No. 2, Acts of Parliament (India).

Niyamgiri defend tribal lands, the courts frequently hesitate to impose external remedies (e.g., they did not resort to BFR but to FRA/PESA). In practice, executive decisions or statutes often determine many controversial projects (e.g., Hasdeo Arand coal mining), which are often greenlit through executive decisions or statutory bypass. In these instances, the judiciary typically intervenes only after the fact to investigate whether the project complied with procedural formalities, rather than enforcing a fundamental right to tribal self-determination.[19]

REALITY OF STATE ENCROACHMENT

A. HASDEO ARAND (CHHATTISGARH) – MINING VS. RIGHTS

One of the most bio-diverse Indian jungles, which is home to Adivasi communities, is the Hasdeo Arand forest, Chhattisgarh. [20]Over the past years, it has become the epicentre of the coal mining dispute. The state government gave mining and power projects without the Gram Sabha's approval. Activists and independent observers have alleged that most Gram Sabha rulings were fabricated, villagers were pressured, and environmental regulations were flouted.

The fact that there was no strict constitutional protection implied that state legislation (Coal Bearing Areas Act) and executive orders could be used to sweep aside PESA requirements of prior consent. In 2022, popular resistance in response to legal neglect occurred when the Chhattisgarh legislature finally passed a resolution to suspend new mining in Hasdeo, following popular protests. The empirical evidence from the Hasdeo case demonstrates how the state can advance resource projects by exploiting constitutional silences (no binding right to say no as per the tribe). Local autonomy was practically relegated, allowing the principle of "development" to override tribal interests.

B. NIYAMGIRI (ODISHA) - FORESTS AND FAITH

The Niyamgiri case stands as a paradigm of tribal agency. The Odisha district of Jagatsinghpur had a dozen Gram Sabhas that had a unanimous rejection of a bauxite mine project by Vedanta under

[19] Sasha Boutilier, Free, Prior, and Informed Consent and Reconciliation in Canada: Proposals to Implement Articles 19 and 32 of the UN Declaration on the Rights of Indigenous Peoples, 7 U. Western J. Legal Stud. 4 (2017).
[20] Shubhangi Derhgawen & Deepanshu Mohan, Hasdeo Arand and the Manufacturing of Tribal Consent, Frontline (Jan. 23, 2025), https://frontline.thehindu.com/environment/chhattisgarhs-hasdeo-arand-forest-corporate-nexus-environment-tribal-rights-adani-enterprises-ltd/article69104150.ece.

PESA/FRA protection.[21]The Supreme Court's mandate to honor their decision was a rejoicing of the first environmental referendum in India. It should, however, be mentioned that such success was based on a good coincidence: the religious claim of the villagers (Niyam Raja deity) and the reasonably good legal system of the FRA and PESA. Many other communities lacking this specific religious leverage have not fared as well. However, the legacy of Niyamgiri demonstrates that when Gram Sabhas invoke their rights, they can successfully defend tribal interests. It is also highlighted that legal uncertainties: the Court relied upon FRA and PESA, yet it failed to clearly state the answer to the question of whether Gram Sabha veto is a constitutional guarantee or an obligation under the statute.

C. PATHALGADI AND GRAM SABHA CLAIM (JHARKHAND)

The Pathalgadi movement in Jharkhand (since around 2016) was a claim to tribal rights, with the building of stone slabs ("pathalgadis") proclaiming local self-governance and insisting on the enforcement of PESA and other laws. [22]According to the constitution, the villagers had their Gram Sabhas, which were meant to control land and resources, which is what they asserted. The state responded by cracking down, but there was pressure to release leaders. According to scholars, the consciousness of tribals towards the legal loopholes and rights is shown in Pathalgadi: villagers invoked the constitutional provisions (e.g. Article 13(3)(a) on the customary law) and the provisions of the PESA to claim the right to autonomy. Its value that the movement has is in its grassroots confrontation to the so-called constitutional silence: it compelled state governments to consider the consent of the tribes, even though it was not officially guaranteed. This first-hand experience revitalizes the fact that in the absence of explicit legal support, tribal communities need to sometimes literally cut their rights in stone.

The current case at the Jharkhand High Court on the Pakri Barwadih coal project of NTPC highlights grave charges against the invention of Gram Sabha consent, which is a very important procedural prerequisite to acquire forest clearance under the Indian environmental and tribal rights legislation. Major challenges have been leveled against the NTPC by the petitioners, who claim that the NTPC conspired with the local authorities to commit a fraudulent Gram Sabha through the fabrication of signatures and ignoring the authentic community consultations to the disadvantage, especially to the

[21] Souvik Lal Chakraborty, The Niyamgiri Movement and the Failure to Implement Alternative Visions of Development, Austl. Inst. of Int'l Affs. (Apr. 29, 2022), https://www.internationalaffairs.org.au/australianoutlook/the-niyamgiri-movement-and-the-failure-to-implement-alternative-visions-of-development/.

[22] Amarnath Tewary, The Pathalgadi Rebellion, The Hindu (Apr. 14, 2018), https://www.thehindu.com/news/national/other-states/the-pathalgadi-rebellion/article23530998.ece.

rights of the Birhor community, who are a particularly vulnerable tribal group. The court has been dissatisfied with the evasive and incomplete nature of the government responses, such as misleading affidavits and concealed investigation results. Judicial concern in the matter is shown by the fact that the Jharkhand State Legal Services Authority (JHALSA) is a respondent, as it is raising a systemic issue regarding transparency and accountability in the consent getting. [23]

D. COMPARATIVE EXEMPLIFICATION - INTERNATIONAL NORMS

A trend towards tribal consent being recognized by law in an international perspective is visible. As an example, the Indigenous Peoples Rights Act (IPRA) of the Philippines of 1997 provides a Free, Prior, and Informed Consent (FPIC) of indigenous people on the development of ancestral lands. Although there is a problem of implementation, the law expressly grounds FPIC within national law. In Canada, the resource projects are subject to consultations with Aboriginal peoples (and, in certain cases, honor their consent), which has been developed by the courts under the impact of UNDRIP. The implementing legislation (Bill C-15, 2021) passed in Canada necessitated that federal laws be aligned with the standards of the UNDRIP. Law scholars note that in the context of the UNDRIP Article 32, the international norm is FPIC regarding the projects on indigenous territory. In comparison, India is not a UNDRIP adherent (voting against it at the global conference in 2007) and does not have any statutory FPIC standard other than the FRA/PESA. These comparative illustrations point to the backwardness of India: in India, tribal consent is codified as law or constitutional right in other nations, it is a patchwork of statutory provisions that can be easily amended or lapsed in enforcement.

CONSTITUTIONAL PERSPECTIVE

A. PARTICIPATORY DEMOCRACY AND CONSTITUTIONAL MORALITY

The fundamental question of theory is whether tribal self-rule is a constituent of India's basic structure or constitutional ethos. The Constitution entrenches the principles of democracy and the grassroots government (e.g., Directive Principles on village panchayats at Art. 40). The Preamble's commitment

[23] Vivek Avasthi, NTPC – Fake Gram Sabha Allegations, Jharkhand High Court Orders State Government To Present Details, Indian PSU (May 30, 2024), https://indianpsu.com/ntpc-fake-gram-sabha-allegations-jharkhand-high-court-orders-state-government-to-present-details/.

to social justice and dignity indicates that effective tribal involvement ought to be a major ideal. Commentators argue that constitutional morality dictates that tribal voices need protection, where not explicitly mentioned. In this respect, Gram Sabhas in Fifth Schedule areas may be viewed as a vital aspect of democracy, akin to fundamental rights. Nevertheless, the courts have not taken Gram Sabha autonomy to the next stage of justice yet. The doctrine of basic structure (according to Kesavananda Bharati) has never been followed to apply to tribal rights or even to PESA as such, and may well have difficulties in accepting group-based rights. Consequently, the standard rule remains that PESA is a legal requirement, not a basic feature that cannot be amended.

B. CONSTITUTIONAL CONVENTIONS AND POSITIVE OBLIGATIONS

Beyond written law, the presence of constitutional conventions and international obligations is involved in tribal autonomy. India is a signatory to human rights treaties (e.g., ICCPR), which presuppose the rights of minorities to culture and property. Custom and tradition are quasi-legal: Article 13(3)(a) of the Constitution offers that a law that conflicts with the customary tribal law can be declared invalid in case the dignity of the community is threatened. Though state governments have seldom referred to these conventions in favour of tribals. Participatory democracy - a principle that is being adhered to in the spirit of the thrust of the 73rd Amendment - arguably requires Gram Sabhas to be included in the decisions. The Free, Prior and Informed Consent (FPIC) theory represents an international normative convention, which is supported by UNDRIP (arts. 19, 32) and UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Lingual Minorities (UNO 1992). Although they are not law in India, they guide the arguments that Gram Sabhas must be granted binding veto power as issues of fundamental fairness.

Irrespective of these principles, the Constitution does not provide any group the right to say no or to veto state projects but only provides positive promises (e.g. DPSPs) and ordinary obligations of legislatures. This silence implies that the courts, in case of conflict, usually resort to statutory interpretation (FRA, PESA) and the necessity of striking a balance between interests. Indicatively, the Gram Sabha was regarded as a powerful controller of the Court in Niyamgiri and not as a basic right to self-determination. In addition, there is the federal distribution of power, which makes the situation more complex: natural resources are a subject of state (List II), and therefore, states tend to move on without the interference of the federal authorities, being subjected only to the laws of the central

environmental protection. Constitutional law does not provide tribals with a supranational veto - as is the case in New Zealand with the Treaty of Waitangi used in Maori rights jurisprudence - and thus, constitutional theory has to deal with the fact that tribal sovereignty is a developing norm but not a fixed rule.

RECOMMENDATIONS

To eliminate such silences and enhance the tribal self-rule, the following reforms are proposed:

The Constitution should be amended to expressly subject any land acquisition, mining lease or forest diversion in Scheduled Areas to the free, prior, and informed consent of Gram Sabhas. This would elevate what is currently a statutory protection under PESA to constitutional guarantees. Such an amendment should mandate that there can be no sale of tribal land or other resources without the resolution of the Gram Sabha, ensuring that the Part IX powers are fully applicable in areas of the Fifth Schedule.

Alternatively, or in conjunction, the 73rd and 74th Amendments should be revised to encompass Fifth Schedule areas by constitutionalizing PESA's provisions. One example would be the use of a new Part IXA specifically covering Scheduled Areas, where Article 243-NA could be introduced to provide a constitutional list of Gram Sabha powers currently found in S.4 of the PESA Act. It would avoid the erosion of legislation as any change to tribal rights would then require a formal constitutional amendment rather than mere state-level executive orders.

All applicable laws (Land Acquisition, Forest Conservation, Mines and Minerals, etc.) must be amended to make Gram Sabha provisions explicit. To harmonize the application of PESA across states, the government must develop identical national rules (as mandatory in Section 5 of PESA) to implement it. States must be incentivised (through conditional funds or judicial mandates) of PESA regulations of all topics included in Section 4 (money-lending, MFP, markets, liquor, etc.) and will need to bring local laws aligned with PESA (as with Maharashtra by making state laws up to date).

The Forest Rights Act (2006) should be revised to clearly state that Forest Clearance cannot be granted without the express consent of Gram Sabhas, rather than mere consultation. Provisions in the new Forest Conservation Act (Amendment) 2023 that weaken the Gram Sabha need to be reversed or made clear. The Gram Sabha hearings and resolutions (not token consultations) should be mandatory in all tribal regions where an industrial project is being undertaken according to the Environmental Impact Assessment (EIA) procedures.

Establishing a strong institutional presence in Gram Sabhas requires independent observers (judicial or trained officials) to preside over Gram Sabha meetings on project approvals, to make it a free and fair process (as the Supreme Court required in Niyamgiri). Giving legal assistance to Gram Sabhas, record keeping, and budget independence to operate efficiently. Encouraging the tribal representation in the administration of forests and mines (e.g., co-management committees).

Conformance to International Norms. The spirit of UNDRIP ought to be formally embraced by the legislation and the constitution of India. At least, FPIC as a principle should be streamlined and implemented by a national law on tribal consent similar to the IPRA in the Philippines. Domestic law reforms would be guided by ratifying pertinent ILO conventions (e.g. Convention 169) and including its standards. Model policies can be associated with international best practices (e.g. the inclusion of FPIC in impact assessments in Canada).

Basic Structure Litigation and Judicial Protection. Participatory self-rule as a constitutional ethos of India should be promoted by encouraging public interest litigants and tribal movements to claim the constitutional rights of India. It is possible to argue before the Supreme Court that the abolishment of Gram Sabha rights would prejudice the basic structure (democracy, justice). In the meantime, the judiciary needs to strictly apply the current PESA and FRA provisions, and quash any state action that disregards valid tribal.

All these reforms cover the aspect of the law vacuum. The constitutional amendments address the underlying silence; the statutory remediations and improved rules would be the foundation of the implementation of PESA; administrative reforms would empower the Gram Sabha at the ground level; and international alignment would be used to give normative guidance.

CONCLUSION

A deep and destructive silence surrounds the Fifth Schedule areas concern the local governance of India. This study unveils that omission of these areas from Part IX of the Panchayati Raj structure in Article 243M is not merely the oversight of the legislature, but a contributor to systematic discrimination. The Constitution fosters a governance vacuum through which the tribal communities must rely on fragile statutory provisions instead of robust constitutional assurances. This constitutional silence has facilitated state-sponsored resource extraction such as in the case of Hasdeo Arand, where the lack of a constitutional requirement gave the state the opportunity to disregard Gram Sabha consent to give way to industries.

Moreover, although the PESA Act (1996) was aimed at eliminating this void, its functionality suffers badly because it is just a statute. Unlike the Sixth Schedule, which provides a constitutional ceiling of protection, PESA is susceptible to legislative dilution and state default. The vulnerability of the tribal communities has fueled widespread frustration, culminating in the Pathalgadi movement. When the statutory rights of tribal communities are watered down to mere consultation instead of mandatory consent, or are even shunned by newer laws, such as the Forest Conservation (Amendment) Act (2023), the self-rule promise becomes a phantom.

This reliance on statutes is also reflected in the judiciary. Although the courts have largely been persuaded to rely on statutory interpretation as opposed to creating greater constitutional sovereignty like that in the case of Orissa Mining Corp. and Samatha, the courts have been compelled to protect tribal lands through landmark rulings. This judicial constraint leaves tribal rights to be under the whims and fancies of political winds, and in case of revisions to the statute and regulations therein, the judicial precedent kind of becomes sterile.

Finally, the way forward entails a shift from aspirational statements to the institution of binding constitutional guarantees. To move beyond the existing ad hoc model of governance, India must consider the possibility of integrating Gram Sabha consent directly into the constitutional text itself to eliminate further overreach on the part of the state. Statutory laws must be made congruent with this mandate so that no land acquisition and forest diversion can be done without the consent of the indigenous people. Not only is it a technical legal rectification, but a real need to remedy such silences, to make the constitutional values of justice and dignity for India's tribal populations. Only then will tribal democracy transition from a theoretical concept to an enforceable practice.