

RESEARCH ARTICLE

Preservation and Protection of Santhal Tradition and Cultural Expressions under the Indian Constitution and Other Laws

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ABSTRACT

This paper examines the preservation and protection of Santhal traditions and cultural expressions within the framework of the Indian Constitution and other legal instruments. The Indian Constitution provides certain safeguards for Scheduled Tribes under Articles 15(4), 19(5), 29, and 244, along with provisions in the Fifth Schedule and the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA), which aim to protect tribal customs and governance systems. Additionally, laws such as the Forest Rights Act, 2006, and international frameworks such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) reinforce the need to safeguard Indigenous knowledge systems and cultural expressions. This paper critically explores the efficacy of these legal protections in safeguarding Santhal culture and evaluates the role of governmental and non-governmental initiatives in cultural preservation.

Keywords: Santhal community; cultural preservation; cultural expressions

FULL PAPER

Introduction

India is home to an extraordinary diversity of Indigenous communities. Their cultural ecosystems have historically evolved in symbiosis with land, language, and collective memory (Xaxa, 1999). Among them, the Santhal community, one of the largest Adivasi groups in eastern India, inhabits regions of Jharkhand, West Bengal, Odisha, Bihar, and Assam, and sustains a vibrant cultural heritage rooted in oral traditions, ecological practices, indigenous governance, and ritual cosmologies (Tudu, 2018; Roy, 1912). Dr. B.R. Ambedkar is the principal architect of the Indian Constitution. He played a pivotal role in articulating a legal vision that safeguarded the rights and distinct identities of India's tribal communities, including the Santhals (Jaffrelot, 2005). Articles such as 244(1), 275(1), and 339(1) underscore this vision by allocating special administrative structures and financial assistance for tribal welfare (Austin, 2003). These constitutional guarantees, while progressive, continue to be challenged by developmentalist interventions, land alienation, and cultural erosion, necessitating a critical reappraisal of Ambedkarite constitutionalism in contemporary tribal contexts such as that of the Santhals (Narayan, 2010). The current study thus draws upon Ambedkar's constitutional philosophy to examine whether the existing legal mechanisms sufficiently protect the cultural integrity and autonomy of the Santhal community in postcolonial India.

In this context, constitutional and legal protections assume critical importance. The Indian Constitution enshrines multiple safeguards for Scheduled Tribes, including Articles 15(4), 19(5), 29, and 244, which seek to secure cultural autonomy and promote equity in public life (Bara, 2006). In particular, the Fifth Schedule and the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA), underscore the significance of community self-rule and customary law in the governance of Adivasi life-worlds (Bijoy, 2003). Complementing these national provisions, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, restores legal recognition of traditional forest dwellers' rights over land, forests, and habitats (Upadhyay, 2009). Moreover, international frameworks such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) emphasise the importance of safeguarding Indigenous cultural identities, intangible heritage, and knowledge systems (United Nations, 2007).

Methods and Materials

This study employs a qualitative, interdisciplinary research design grounded in socio-legal and ethnographic methodologies to examine the mechanisms for

preserving and protecting Santhal tradition and cultural expressions under the Indian constitutional framework and related legal instruments. The primary materials for the legal analysis include the Constitution of India, specifically Articles 15(4), 19(5), 29, and 244, as well as the Fifth Schedule, the Sixth Schedule, and the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA). Secondary sources comprise scholarly literature from books, peer-reviewed journals, reports from government and non-governmental organisations, and academic databases such as JSTOR, Scopus, and Google Scholar. Special attention was given to foundational ethnographies by P.O. Bodding, W.G. Archer, and Lars Skrefsrud, as well as to more recent analyses, including those by Nita Mathur, Dr B.R. Ambedkar, and Virginius Xaxa.

Analysis and Discussion

The historical legacy of tribal resistance forms a critical foundation for these legal safeguards. The revolutionaries, including Sidhu Murmu and Kanhu Murmu, Chand and Bhairav Murmu, and later Phulo and Jhano Murmu, along with the legendary Birsa Munda, who spearheaded the Santhal Hul and Ulgulan movement at the turn of the twentieth century, laid the ideological and moral groundwork for Indigenous empowerment, customary justice, and resistance to erasure. Their collective legacy continues to inspire the Santhal people's contemporary efforts to assert their constitutional rights and protect their cultural heritage. In this spirit, the following section critically examines the functionality and limitations of key constitutional provisions, specifically Articles 244(1), 275(1), and 339(1), in the context of the Santhal community, highlighting the disconnection between legal guarantees and the lived realities of Indigenous peoples.

Constitutional Safeguards under Articles 15(4), 19(5), 29, the Fifth Schedule, and PESA (1996): Protecting Santhal Identity and Autonomy

The Indian Constitution incorporates several provisions explicitly designed to safeguard the rights and identity of Scheduled Tribes, including the Santhals. Articles 15(4) and 19(5) empower the state to make special provisions and restrictions aimed at protecting the interests of socially and educationally backward classes, including tribes, thereby enabling affirmative action in education, employment, and political representation (Singh, 2015). Article 29 protects the cultural and educational rights of minorities, including tribal groups, safeguarding their right to conserve their distinct language, script, and heritage (Xaxa, 2005).

These constitutional guarantees are complemented by the Fifth Schedule, which lays out the framework for the administration of Scheduled Areas, where

many Santhals reside. It vests special powers in the Governor of such areas to make regulations protecting tribal customs, land rights, and social practices, recognising the unique socio-cultural fabric of tribal communities (Austin, 1999). The intention is to preserve traditional governance institutions and prevent exploitation by non-tribal interests, reflecting a constitutional commitment to pluralism and cultural preservation.

The Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) further implements these principles by extending self-governance to tribal areas through Gram Sabhas and Panchayats, granting them authority over natural resources, social welfare, and customary law enforcement (Mahapatra, 2003). PESA acknowledges the importance of community consent and participatory democracy, affirming tribal agency in decision-making processes. For the Santhals, whose socio-political organisation has historically revolved around customary councils such as the Manjhi-Pargana systems, PESA holds potential as a legal mechanism for cultural continuity and political empowerment (Dhanagare, 2000).

In other words, Articles 15(4), 19(5), 29, alongside the Fifth Schedule and PESA, constitute an essential constitutional framework for protecting Santhal cultural identity and autonomy. However, the gap between normative provisions and ground realities calls for enhanced implementation strategies, including community-level capacity building, strengthened legal literacy, and genuine political will. Empowering Santhal Gram Sabhas and recognising their customary institutions as legitimate governance bodies can transform these constitutional safeguards from symbolic promises into lived realities, thus reinforcing Indigenous agency and sustainable cultural preservation.

Constitutional Provisions and the Paradox of Protection: Evaluating Articles 244(1), 275(1), and 339(1) in the Context of Santhal Cultural Independence

The Indian Constitution provides a range of legal instruments to safeguard the rights and cultural heritage of Scheduled Tribes, notably through Articles 244(1), 275(1), and 339(1). These provisions, while progressive in intent, reveal a troubling gap between constitutional design and socio-political practice, especially when examined through the lived experiences of the Santhal community. A critical analysis of these articles not only underscores the structural limitations of India's tribal welfare architecture but also demands an urgent reevaluation of how constitutional guarantees can be more effectively enacted to preserve and empower Indigenous cultures.

Article 244(1), read alongside the Fifth Schedule, grants administrative autonomy to Scheduled Areas, ostensibly allowing tribal communities to govern themselves according to their customary laws and social institutions (Austin, 2003). For the Santhals, this legal framework affirms traditional governance systems such as the Manjhi-Prajha and Pargana sabhas, which are rooted in principles of collective decision-making, ecological stewardship, and social harmony (Xaxa, 2005). However, in practice, the implementation of Article 244(1) has been undermined by bureaucratic centralisation, state encroachment on forest and land rights, and a lack of administrative sensitivity to tribal jurisprudence (Rycroft & Dasgupta, 2011). Even the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), which was enacted to institutionalise local self-governance in tribal areas, has failed to ensure meaningful autonomy due to weak enforcement and frequent overriding of customary authority by external governmental agencies (Kujur, 2017).

Article 339(1), the third constitutional safeguard in this triad, mandates periodic review of the administration of Scheduled Areas and tribal welfare through commissions appointed by the President. Historically, bodies such as the Dhebar Commission (1960) and the Xaxa Committee (2014) have made crucial recommendations regarding tribal autonomy, land rights, and cultural preservation. However, the impact of these reports has been diluted by weak policy translation, lack of implementation timelines, and insufficient political will (Jha & Chakravarty, 2020). The Santhal experience reveals that despite being among the most populous tribal groups in India, their concerns, including those over displacement due to mining in regions like Deocha-Pachami and forest degradation in Hasdeo (Chhattishgarh), remain perennially unaddressed in actionable governance (Roy, 2021). The structural inertia surrounding Article 339(1) renders it largely symbolic, inadequate to catalyse systemic change.

Thus, Articles 244(1), 275(1), and 339(1) form a tripartite framework intended to uphold tribal rights through autonomy, resource allocation, and institutional oversight. However, the Santhal case exemplifies how these provisions, in the absence of robust implementation and participatory mechanisms, fail to counteract the erosion of Indigenous cultures. Literature, as both critique and counter-narrative, steps into this lacuna, offering alternative epistemologies and affective understandings of tribal life, resistance, and aspiration. The constitutional vision must therefore be reinterpreted not as a static set of provisions but as a dynamic mandate to engage with tribal communities on their own terms, to respect their institutions, to fund their priorities, and to listen to their stories.

Indian Constitution and Tribal Protection Rights: Legal Redress and Institutional Safeguards

The Indian Constitution not only recognises the socio-cultural distinctiveness of tribal communities but also provides mechanisms for their legal protection against systemic discrimination and violence. In this regard, The Protection of Civil Rights Act (1955) and The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) serve as critical legal instruments in affirming the fundamental rights of Scheduled Tribes, including the Santhals, to dignity, equality, and freedom from indignity and violence (Rao, 2009; Charsley & Karanth, 1998).

The Protection of Civil Rights Act (1955), originally enacted to operationalise Article 17 of the Constitution (abolition of untouchability), has limited direct application to Scheduled Tribes. However, it contributes to a broader legal environment that denounces caste-based and hierarchical social practices that frequently affect Adivasi groups through exclusionary mechanisms in public spaces, services, and institutions (Narula, 2008). For the Santhal community, which often resides on the socio-economic periphery of Indian society, these rights are not merely legal assurances but existential demands for recognition and inclusion within the national polity. Still, the Act's efficacy is constrained by weak enforcement and low conviction rates, underscoring the need for structural reforms and legal literacy among tribal populations.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989), however, marks a significant advancement in India's legislative framework, as it specifically criminalises a wide range of acts perpetrated against Scheduled Tribes, including physical violence, humiliation, land alienation, and obstruction of access to water sources or places of worship (Government of India, 1989). The Act functions as a constitutional bulwark against caste and ethnic-based atrocities, thus aligning with the directive principles and fundamental rights laid down in Articles 15, 17, and 21. For the Santhals, this legislation holds particular relevance in areas experiencing land dispossession, environmental degradation, and socio-political repression in the name of economic development (Sundar, 2016). However, its implementation has faced hurdles, including procedural delays, intimidation of witnesses, and collusion between perpetrators and local authorities. These are the problems that reinforce tribal mistrust in formal institutions.

To complement these legal protections, the Ministry of Tribal Affairs, established in 1999, plays a central role in formulating policy, disbursing welfare funds, and coordinating the state-level implementation of tribal development

schemes. It oversees cultural preservation programs, promotes the inclusion of tribal languages like Santali in education, and administers financial aid to artists, performers, and community institutions that embody Indigenous knowledge (Ministry of Tribal Affairs, 2020). However, despite its mandates, the Ministry often grapples with bureaucratic bottlenecks and insufficient consultation with tribal representatives, thereby diluting the participatory spirit enshrined in constitutional and legislative frameworks (Xaxa, 2014). The Santhal community's experience exemplifies the need for a shift from tokenistic inclusion to structural empowerment, wherein cultural rights are treated not as welfare concessions but as constitutional entitlements.

Forest Rights Act and the Santhals: Recognition, Displacement, and the Struggle for Justice

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006), commonly known as the Forest Rights Act (FRA), was a landmark legislation aimed at rectifying historical injustices by recognising the rights of Indigenous communities over forest lands and resources (Kothari et al., 2012). For the Santhals, whose cultural and economic lives are inextricably linked to forest ecosystems, the FRA theoretically promised restoration of community control over ancestral lands, protection of sacred groves, and empowerment against exploitative state and corporate interventions (Xaxa, 2011).

Despite its transformative intent, the FRA's implementation in Santhal-inhabited regions has been fraught with challenges of bureaucratic inertia, administrative apathy, and political neglect. Numerous Santhal families face systematic denial or delayed recognition of their forest rights, often on grounds of 'insufficient evidence' or competing claims by mining and industrial interests (Chaudhuri, 2019). Such denial exacerbates the vulnerability of the community, leading to loss of livelihood, erosion of cultural practices tied to the forest, and forced displacement without adequate rehabilitation.

Rehabilitation efforts, when provided, frequently fail to meet culturally appropriate standards and ignore the socio-economic specificities of the Santhal community. The loss of common property resources, limited access to alternative livelihoods, and absence of meaningful consultation highlight the gap between legal provisions and lived realities (Sharma & Tete, 2018). Furthermore, gendered impacts are profound, as Santhal women are the custodians of many oral traditions and rituals linked to the forest, and they face heightened burdens in displacement scenarios (Sundar, 2015).

The FRA thus exemplifies the complex interface between constitutional recognition, statutory mandates, and grassroots realities. For the Santhals, securing forest rights is not solely about land tenure but about preserving an entire socio-cultural matrix that sustains identity, spirituality, and agency. Bridging the disconnect between legal frameworks and community empowerment requires enhanced participatory governance, transparent grievance-redressal mechanisms, and policy reforms that foreground Indigenous voices, as both Munshi's literary critique and ongoing resistance movements advocate.

Failure of Tribal Policies and the Threat of Cultural Erosion among the Santhals: Religious Conversion, Globalisation, and Forest Degradation

Despite the Indian state's extensive legal and policy frameworks aimed at protecting tribal communities, the Santhals continue to face multifaceted threats that undermine their cultural fabric and socio-economic well-being. Central to these challenges is the failure of tribal policies to effectively address the dynamic pressures of religious conversion, globalisation, and environmental degradation, all of which contribute to accelerated cultural erosion.

Globalisation further complicates the Santhals' struggle to maintain cultural distinctiveness. Economic liberalisation, urban migration, and the proliferation of mass media expose tribal youth to dominant cultural paradigms that devalue Indigenous knowledge and languages (Dhanagare & Kulkarni, 2017). The commodification of tribal art forms and festivals risks reducing rich cultural expressions to tourist spectacles, detaching them from their original social and spiritual contexts (Banerjee & Mukherjee, 2019). Moreover, neoliberal developmental policies prioritise resource extraction and industrial projects over tribal welfare, exacerbating socio-economic disparities and marginalising Santhals within the national mainstream (Sundar, 2016). This cultural dilution, coupled with inadequate educational curricula that neglect tribal histories and languages, contributes to identity crises among younger generations.

Forest degradation presents an existential threat to the Santhals, given their profound symbiotic relationship with forest ecosystems. The depletion of forest resources through mining, logging, and agricultural expansion compromises the livelihoods of communities dependent on non-timber forest products and medicinal plants, as well as sacred sites critical to Santhal cosmology (Sharma & Tete, 2018). Despite the Forest Rights Act, as discussed earlier, systemic failures in implementation perpetuate environmental dispossession. This ecological disruption also erodes collective memory and oral traditions transmitted through engagement

with the natural environment (Munshi, 2018). The cumulative impact of these processes jeopardises not only material survival but also the community's spiritual and cultural continuity.

The failure of tribal policies to holistically integrate these intersecting challenges emphasises structural limitations within the governance framework. Policy formulations often compartmentalise issues, addressing economic, cultural, and environmental concerns in isolation, thereby overlooking their interdependence (Xaxa, 2014). Additionally, the top-down approach to policymaking marginalises tribal voices, leading to interventions misaligned with community needs and aspirations. The lack of sustained investment in cultural revitalisation programs, language preservation, and participatory governance mechanisms further compounds this failure.

Addressing cultural erosion among the Santhals necessitates a paradigm shift towards inclusive, culturally grounded policy frameworks that respect Indigenous epistemologies and promote self-determination. Empowering Santhal institutions to lead cultural preservation, integrating traditional knowledge into formal education, and ensuring environmental justice are crucial steps. The revitalisation of Santhal spirituality, arts, and oral traditions through community-driven initiatives can serve as effective countermeasures against the homogenising forces of globalisation and religious conversion.

Conclusion: Upholding Santhal Rights and Cultural Sovereignty

The Santhal community's enduring struggle for justice and cultural preservation reflects a broader pattern of systemic marginalisation faced by Indigenous peoples across India. Despite constitutional provisions such as Articles 244(1), 275(1), and 339(1), which aim to protect tribal autonomy and welfare, the implementation of these safeguards often falls short, leading to displacement, cultural erosion, and socio-economic disenfranchisement. Historical figures such as Sidhu Murmu, Kanhu Murmu, and Birsa Munda exemplify the Santhals' resistance to colonial and post-colonial exploitation, laying the foundation for contemporary movements advocating for Indigenous rights.

The institutionalisation of Janjatiya Gaurav Divas on November 15 by the Union Cabinet of the Government of India (2021), which is the birth anniversary of Birsa Munda, represents a symbolic yet profound recognition of the historical and contemporary contributions of tribal communities to the Indian nation. The celebration of the 150th birth anniversary of Birsa Munda in 2021 not only commemorated his revolutionary leadership and vision for tribal autonomy but also

marked a renewed national commitment to addressing the systemic inequalities faced by Indigenous peoples. For the Santhal community, this commemoration is an affirmation of their rightful place within the constitutional fabric of India and an opportunity to demand deeper engagement with issues of land rights, cultural preservation, and customary governance. However, such symbolic gestures must be matched with substantive policy reforms and accountability mechanisms that reflect the true spirit of Birsa Munda's legacy. Upholding Janjatiya Gaurav Divas must involve not only honouring past struggles but also enabling tribal communities to shape their own futures through legal empowerment, cultural recognition, and participatory governance. Only then can the constitutional promises to India's tribal communities, including the Santhals, be fully realised in both spirit and practice.

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