

STATE LAND ALIENATION LAWS AND CUSTOMARY RIGHTS: CONFLICT AND CONVERGENCE IN TRIBAL PANCHAYATS OF WESTERN MADHYA PRADESH

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ABSTRACT

The tribal communities in the west of Madhya Pradesh have for long kept their unique systems of customary land ownership and resource management, which were inherently linked to their social and cultural identities. But, the introduction of modern statutory land laws and state regulatory frameworks has, in many cases, led to conflicts between traditional norms and formal legal provisions. This paper, through the lens of Panchayati Raj Institutions and Gram Sabhas and their roles in mediating tensions, confronts the conflict and convergence between state land alienation laws and tribal customary land rights. Yet, the state, imposed land alienation laws are in contradiction with these traditional practices, leading to legal and administrative issues. The paper blends an analysis of the legislative provisions of the Madhya Pradesh Land Revenue Code, 1959, and the Forest Rights Act, 2006, with first, hand information from the districts of Jhabua, Alirajpur, and Dhar. The findings depict the scenario where, despite the legal frameworks that strictly prohibit the transfer of tribal land to non, tribals, the situation on the ground is quite different due to poor enforcement and the limited recognition of customary tenures, thus making it possible for indirect alienation to occur. Empowerment of the Gram Sabhas leads to more robust protection of the community land. Summing up, the article posits that safeguarding tribal lands is more than a mere exercise of the law it is about harmonizing all the law, formal and customary, as well as ensuring participatory governance and long, term tribal land security.

Keywords: Tribal Communities, Madhya Pradesh, Land Alienation, Forest Rights Act , Customary System, Convergence, Panchayat governance.

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I. Introduction

Alienating tribal lands has been going on even though there are numerous constitutional guarantees and protective laws in place. This shows that there is a big gap between what the law says and what actually happens on the ground. However, tribal communities still have their traditional land ownership systems deeply rooted and they have got strong, community, based dispute resolution mechanisms in their panchayats. These panchayats sometimes get along with, or at other times, they stand in opposition to, the formal state institutions. This dual situation where on one hand there are legal protections that keep the dispossession going and on the other hand there are customary institutions alongside formal governance is basically the main conundrum that this research work seeks to unravel.

Western Madhya Pradesh's tribal belt is a cluster of districts mainly inhabited by Adivasi populations which are hilly and ecologically fragile. Livelihoods there are so dependent on land and forests that the area has been subjected to long history of state policy, market penetration, and migration, which have created deep socio, legal contradictions. If we look at the key districts, tribal communities, land, use patterns, and forest, linked livelihoods, they all point to a situation where formal land and forest laws are in conflict with customary norms and collective survival strategies.

The research aims to understand how the situation of conflict between a tribal panchayat and the state occurs in western Madhya Pradesh tribal panchayats, a district which has the highest Adivasi population, has a history of dispossession, and heavily reliant on land and forests for their living. It seeks to understand the reasons for continued land alienation even when there are constitutional provisions, special land transfer restrictions, and forest rights legislation, and how tribal panchayats, Gram Sabhas, and customary councils still govern land relations, manage commons, and resolve disputes. By considering both state law and local custom, the research also wants to identify the places where these two normative systems might conflict, ignore or silently agree with each other.

Gram Sabhas in western Madhya Pradesh's tribal panchayats embody resilient leadership, adapting customary governance to statutory mandates under PESA and FRA amid alienation pressures. The local institutions, if strengthened, can become a source of sustainable growth by way of secure land/forest rights, thus facilitating livelihood resilience and migration reduction.

Land alienation

Land alienation refers to processes by which tribal communities lose possession or effective control over their lands—individually or collectively—to non tribals, the state, or corporate actors, through formal or informal means.

It includes outright sale, distress sale, mortgage and forfeiture, manipulation of land records, fraudulent benami transfers, and dispossession via classification of land as “forest” or “government” land. In Madhya Pradesh’s tribal belt, land alienation captures both historic loss under colonial and early post colonial policies and contemporary loss under development projects, moneylending, and administrative practices that undermine special transfer restrictions meant to protect Scheduled Tribes.

Customary rights

Customary rights are rights that arise from long standing, continuous community practice and acceptance, rather than from formal statutes or written contracts. Among tribal communities, they govern tenurial relations to land, forests, water and other natural resources, as well as inheritance, marriage, dispute resolution, and village governance. In Scheduled Areas of Madhya Pradesh, customary rights typically include lineage based claims to cultivated plots; collective rights over village forests, grazing lands and water bodies; and community regulated access to minor forest produce, often enforced through traditional councils and sanctions rather than state courts.

Scheduled Areas in Madhya Pradesh

Scheduled Areas are territories notified under the Fifth Schedule of the Constitution as predominantly tribal and requiring a special regulatory and governance regime. In Madhya Pradesh, fully or partly notified Scheduled Areas include districts such as Jhabua, Alirajpur, Mandla, Barwani, and parts of Dhar, Khargone (West Nimar), Khandwa (East Nimar), Ratlam (Sailana tehsil), Betul, Seoni, Balaghat, Shahdol, Umaria, Sheopur, Chhindwara, Sidhi, Anuppur and others as listed in central and state notifications.

Within these areas, the Fifth Schedule, Governor’s regulation making powers, and PESA together provide for special protections on land transfer, enhanced Gram Sabha authority over community resources, and greater space for customary governance, which form the legal backdrop for this research.

The core western tribal belt comprises Jhabua, Alirajpur, Dhar, Barwani, and Khargone, with significant tribal majorities in Jhabua and Alirajpur (roughly 85–90% of the population) and substantial concentrations in Dhar–Barwani–Khargone. The dominant group is the Bhil (including subgroups such as Bhilala, Barela and Patelia), alongside related Adivasi communities that share similar ecological niches and customary institutions. These districts are predominantly hilly, with the Vindhyan and Satpura hill ranges, low fertility soils, and fragmented smallholdings, which shape both agricultural possibilities and patterns of dependence on forests and migration.

II. Identification of Statement of Research Problem

In tribal hamlets of the Bhil belt, western Madhya Pradesh Jhabua (87.6% ST), Alirajpur (92.5% ST), Dhar, Barwani, Khargone the communities have continuously lost their lands against the constitutional safeguards (Fifth Schedule, Art. 244(1), Para 5). Several laws in the State like MP Land Revenue Code ss. 165(6), 6A, 170, B, PESA (1996), and FRA (2006) limit transfer and grant the recognition of rights. However, the ejidos have been deprived of their lands through benami transfers, debt (80%+ households), and forest classifications, with a very weak restoration process.

The land alienation happens through fraudulent benami transfers via manipulated revenue records, distress sales to non, tribal moneylenders, conversion of customary commons into "government" or "reserved" forest under colonial classifications, and state, sanctioned projects like Narmada dams, mining, and wildlife sanctuaries, with over 80% tribal households being indebted and restoration processes failing due to evidentiary and administrative barriers.

Unexpectedly, indigenous customary tenure systems and governance have survived through the times of land dispossession. Bhil communities have lineage, based plot claims, collective rights over village forests, visited sacred groves, used grazing routes, and gathered minor forest produce, all regulated by their traditional councils. These councils settle disputes by referring to the oral histories and gaining community consensus instead of following state procedures. The principal issue of the research is therefore: If the Gram Sabhas confer strong powers under PESA/FRA to be the gatekeepers of forest rights and project consultation, why does land alienation continue to exist in tribal panchayats of western Madhya Pradesh?

III. Research Methodology

The intersection of state land alienation laws and tribal customary rights is a major spot of legal pluralism, institutional friction, and governance innovation in India's scheduled areas. This literature review delves into scholarly, policy, and judicial contributions to the question of how formal statutory regimes run parallel or interact with custom, based tenure systems within tribal panchayats of western Madhya Pradesh. The review is organized around five overlapping themes.

IV. Analysis & Discussion

A. *Constitutional And Statutory Frameworks For Tribal Land Protection*

1. *The Fifth Schedule*

The legal basis for tribal land protection is in the Fifth Schedule of the Indian Constitution, Articles 244(1) and the corresponding provisions under Paragraph 5(2). The Schedule gives authority to state governors to issue regulations that could prohibit or restrict the transfer of land by or among Scheduled Tribes, regulate the allotment of land, and control money, lending in scheduled areas. Scholars including Ashokvardhan (2025) and the Ministry of Tribal Affairs have pointed out that these powers of the governors are still a very important tool for preventing land alienation, however, the implementation in Madhya Pradesh has been characterized by a lack of use and bureaucratic inertia. Similarly, the Tribal Advisory Council (TAC) which is the Fifth Schedule institutional mechanism, has also been unable to turn its advisory role into concrete policy initiatives aimed at the protection of tribal landholding (Centre for Policy Research, 2022).

2. *PESA Act (1996) and Gram Sabha Authority*

The Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), is a radical change in the direction of decentralized tribal self, governance. PESA makes the provisions of the 73rd Constitutional Amendment applicable to scheduled areas with essential changes. It empowers Gram Sabhas (village assemblies) to have control over customary resources, collection of minor forest produce, extraction of minor minerals, deciding the beneficiaries, and most importantly, to have the power to allow or disallow land acquisition and development projects. (Government of India, 1996; NITI Aayog, 2024).

Case studies of scheduled areas of Chhattisgarh, done by researchers at the Journal of Political Science and the National Institute of Rural Development and Panchayati Raj (NIRDPR), indicate that after PESA rules have been notified (Chhattisgarh, 2022), Gram Sabhas have started acting as gatekeepers of land transactions and resource management, however, there are still issues of lack of capacity and bureaucratic resistance (Rao & Desai, 2023). On the other hand, the situation in Madhya Pradesh regarding the implementation of PESA is quite the opposite. Although Madhya Pradesh is a state with a large area under scheduled areas and a large tribal population, it has not formulated PESA rules in the manner of Chhattisgarh, thereby, the state officials and courts have to keep filling the institutional gaps ad hoc (Centre for Policy Research, 2022; Bhattacharya, 2023).

3. *Land Alienation and Restoration Laws*

Several state, level and central laws try to repair tribal lands that were alienated illegally against the constitutional safeguards. A study by the Ministry of Rural Development (Faraz, 2016) reveals that even after the enactment of the laws for restoration of tribal lands (such as the Maharashtra Restoration of Lands to Scheduled Tribes Act 1974 and the amendments to the land revenue codes), there are still major loopholes in the implementation of the law and in the actual restoration of the lands at the ground level. The Madhya Pradesh Land Revenue Code, particularly Sections 165(6) and 165(6-A), contains provisions prohibiting transfer of tribal land to non-tribals in notified scheduled areas, yet judicial examination (as in W.P. 3730/2021 before the Madhya Pradesh High Court) has revealed inconsistent application and jurisdictional confusion between tribal and non-tribal lands (Madhya Pradesh High Court, 2021; Janardhan Rao, 2022).

4. *Forest Rights Act (2006)*

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA), represents the most explicit statutory recognition of customary rights to forest land and minor forest produce. Section 3(1)(c) vests the "right of ownership, access to collect, use and dispose of minor forest produce which has been traditionally collected within or outside village boundaries" in forest-dwelling tribal communities. Most importantly, the FRA empowers Gram Sabhas as the main bodies to initiate and confirm claims for both individual and community forest rights, thus making a direct link between customary tenure and statutory recognition (Government of India, 2006; Ministry of Tribal Affairs, 2022).

Ministry of Tribal Affairs and NGO partners' field studies show that through FRA some communities have been able to secure land titles and govern their natural resources successfully (e.g., Budaguda Gram Panchayat in Odisha; selected villages in Bastar, Chhattisgarh). However, there are still issues arising when traditional land use, especially shifting cultivation or pastoral migration, which is at odds with the statute's definitions of forest land and the conservation objectives of forest departments of the state (Government of India, 2024; Hasan & Tripathi, 2023).

B. *Colonial Legacies And Historical Dispossession*

1. *The Indian Forest Act 1927*

The Indian Forest Act 1927 is the major instrument through which tribal dispossession was carried out and state became the sole owner and controller of forests. Colonial legislation codified and merged all earlier forest laws and laid down the system of reserved, protected, and village forests giving the forest settlement officers the power to determine the existence, nature. Before the tribal land alienation problem was brought up, a piece of work discussed how dispossession is going on even with the help of constitutional and statutory instruments such as the Fifth Schedule, state land transfer restrictions, and special regulations. The works on India's tribal groups and their right on the land have plainly revealed that the legal protections are being worked around through loopholes, red tape, and market forces, thus resulting in the continuous loss of the ancestral lands. Land acquisition in tribal areas studies evidences further (Dasmann et al., 1999; Sharma, 2021).

2. *Zamindari Abolition and Land Consolidation*

Following independence, zamindari abolition and land consolidation programs in Madhya Pradesh were intended to benefit landless laborers and tribal cultivators. However, research by scholars at the Coady International Institute and documented in case studies of Madhya Pradesh land struggles reveals that while land redistribution occurred in plains areas, tribal populations in forested and remote regions often remained excluded from redistribution. Additionally, the absence of proper land records and the prevalence of land-surveying practices that privileged settled agriculture over customary commons led to de facto loss of access to community forests and pastures (Harris, 2001; Rajagopal, 2018).

3. Contemporary Displacement from Conservation Areas

Recent scholarship documents a new wave of dispossession justified by conservation and eco-tourism development. The Kuno Sanctuary project (1995) and subsequent national parks and tiger sanctuaries have displaced over 450,000 tribal people in Madhya Pradesh alone. Research by Harris (2001) and studies of Sahariya tribals in the Chambal region demonstrate that forced relocation from forest sanctuaries has been catastrophic: traditionally non-agricultural communities have been pushed into farming on marginal land, leading to economic collapse, indebtedness, and bonded labor. These displacements, nominally justified by development and conservation, represent a continuation of colonial-era alienation under new ideological cover (Kumar & Singh, 2023; Centre for Policy Research, 2024).

C. Customary Law, Panchayat Governance, And Dispute Resolution

1. Customary Tenure Systems and Land Rights

Tribal communities in western Madhya Pradesh—predominantly Bhils in Jhabua and Alirajpur districts—operate multiple, overlapping systems of land tenure that do not conform to state cadastral norms. Indigenous knowledge studies and ethnographic research by Gene Campaign and NIRDPR document that customary systems encompass individual holding of cultivable land, community rights over forests and water sources, and ritualized seasonal use of commons by pastoral and craft communities. These systems are embedded in oral tradition, kinship obligation, and council consensus rather than written title or state registration (Gene Campaign & ICRAF, 2008; Ashokvardhan, 2025). Critically, customary tenure does not equate to absolute individual ownership in the Western property-law sense. Rather, it recognizes a bundle of graduated rights: use-rights to particular plots; harvesting rights to specific forest products; grazing rights during particular seasons; and collective veto powers over large-scale alienations. Traditional authorities (clan heads, village councils, hereditary guardians of sacred groves) continue to regulate access and adjudicate disputes over these graduated rights, even as state law treats land as divisible, alienable private property (Ambagudia, 2015; National Commission for Scheduled Castes & Scheduled Tribes, 2010).

2. Gram Sabha and Panchayat Functioning

The Gram Sabha, constituted under the Constitution and further empowered by PESA, is essentially a hybrid institution: simultaneously a statutory body mandated by law and a

continuation of the village council that has, among its functions, adjudicated disputes for centuries. Empirical case studies most notably the NIRDPR study of Budaguda Gram Panchayat in Odisha and the Chhattisgarh studies show that the active Gram Sabhas in scheduled areas do take significant decisions on land matters: recognition of customary land use, recommendation of land restitution from alienation, and taking control of development projects(NIRDPR, 2023; Rao & Desai, 2023).

Nevertheless, the reality of implementation is patchy. Many Gram Sabhas do not have the necessary technical back, up, are not capable of enforcing their decisions, or do not receive continuous support from state officials. The Journal of Political Science researchers note that before PESA rules were notified in Chhattisgarh (2022), the decision, making process was top, down; after the notification, Gram Sabhas have started to play the role of "gatekeepers, " which is dependent on state recognition and resources. Due to the non, availability of state, notified PESA rules in Madhya Pradesh, the situation of the Gram Sabhas is akin to being in a legal limbo where their authority is neither clearly confirmed nor systematically challenged (Rao & Desai, 2023; Bhattacharya, 2023).

3. Customary Justice and Conflict Resolution

Tribal communities have continued to use customary councils to settle their land and property disputes even when there is the issue of the overlapping jurisdiction of state courts. In a study by the Ministry of Panchayati Raj (2025) on the synergy between the tribal and regular justice systems, it was found that the majority of tribal communities opt for customary resolution due to the fact that it is familiar, less procedural, cost, effective, and provides quick disposal(Ministry of Panchayati Raj, 2025).

Law and governance are facing a problem since customary decisions are mainly oral, unwritten, and are not guided by precedent, based reasoning like statute law. Therefore, enforcement becomes inconsistent and extension of outside adjudicators (courts, revenue officials) is possible but complicated. Ambagudia's (2015) study on the judiciary and tribal rights reveals that the Indian courts, when dealing with land disputes from scheduled areas, have to find a middle ground between respecting customary norms and enforcing constitutional norms of equality and property rights, a conflict that hardly gets satisfactorily resolved.

D. *Institutional Conflicts And Pluralism In Land Dispute Resolution*

1. *Parallel Forums and Jurisdictional Ambiguity*

A major flash point of conflict in tribal areas is the presence of several different adjudicatory forums that have overlapping jurisdiction in land disputes. These include customary councils, Gram Sabhas (PESA), revenue courts (Land Revenue Code), district civil courts, and forest department officers, all have a claim to authority in deciding land disputes, restoration of alienated land, or determining occupancy rights. Literature by Ashokvardhan (2025) shows that often times the same issue is brought up in multiple forums at once, resulting in different, contradictory decisions. On one hand, revenue officials may choose not to implement the decisions of customary councils; on the other hand, Gram Sabhas may not have sufficient power to enforce the orders of the revenue department; likewise, forest officers may disregard both (Ashokvardhan, 2025; Rajagopal, 2018).

2. *Criminalization of Customary Use*

Colonial forest laws and their post, colonial continuation have resulted in criminalization of customary practices, which form the core of tribal livelihoods, for instance: withholding the minor forest produce without state license; using the forest land for grazing; shifting cultivation; and felling trees for one's household needs usage. The Indian Forest Act 1927 and successive forest policies have given forest staff the power to: (1) remove forest dwellers from the forest; and (2) fine them. This process of criminalizing creates an inherent contradiction: on one hand, state law criminalizes the tribal livelihoods; on the other, customary law considers such practices as rights. Tribes, who are at the crossroads of deciding between legal work and traditional practices, generally do informal or underground work so as not to lose their traditional ways (Government of India, 1927; Sharma, 2021; Rajagopal, 2020).

3. *Revenue-Official Discretion*

Implementation of laws and restoration of land alienation largely hinges on the actions of revenue officials (Collectors, Tahsildars, Patwaris). However, these officials function in environments where institutions are weak, there is hardly any motivation for protection of tribal interests, and they are vulnerable to elite capture and corruption. A number of scholars such as Ambagudia (2015) and Janardhan Rao (2022) have pointed out that there is an extensive use of manipulative tactics such as tampering with land records, antiquating

documents, and working together with money lenders and non, tribal buyers to enable fraudulent transfers of tribal land(Ambagudia, 2015; Janardhan Rao, 2022; Rajagopal, 2018).

Despite the fact that the courts have continuously recognized the Governor's authority to stop such transfers (e.g., in *Samatha v. State of Andhra Pradesh* and *Orissa Mining Corporation v. Ministry of Environment and Forest*), the existence of bureaucratic opposition, the slowness of judicial processes, and the absence of monitoring mechanisms have made the realisation of the implementation be far away from the judgment (Ambagudia, 2015; Janardhan Rao, 2022). Recent socio, legal studies about indigeneity and legal pluralism in India depict tribal areas as places where various normative ordersconstitutional law, protective statutes such as PESA and FRA, and customary lawmeet and occasionally conflict. These study works contend that in order to comprehend the continued alienation and the persistence of customary institutions, one has to delve into an analysis of how these plural legal frameworks are functioning in reality, and how tribal communities are managing their lives within them.

The literature reveals that the conflicts and overlaps between state land laws and customary norms in western Madhya Pradesh can be traced to a long history of legal centralisation imposing itself on complex, community, based tenure systems. Research on tribal land rights in India points out that close, to, community constitutional and statutory safeguardssuch as Fifth Schedule regulations, state land transfer restrictions, PESA, and the Forest Rights Actare aimed at preventing alienation and recognising community rights; however, in practice, through bureaucratic and judicial processes, they have been used in a way that disregards or marginalises customary understandings of land and commons. At the same time, ethnographic work in Bhil areas of Jhabua, Alirajpur and adjoining districts documents resilient customary regimes: lineage-based claims to cultivable plots, collective rights over forests and grazing, and village-level sanctions that regulate transfers and use, all of which continue to structure everyday land relations irrespective of formal titles.

E. Zones Of Convergence And Hybrid Practices

1. Recognition of Gram Sabha Authority Over Minor Forest Produce

One area of convergence is the growing recognition by both statute and practice that Gram Sabhas hold legitimate authority over minor forest produce (MFP). The Forest Rights Act 2006 explicitly vests MFP rights in forest-dwelling communities, and PESA grants Gram Sabhas ownership and governance powers over MFP. Minimum Support Price (MSP)

schemes implemented through the Ministry of Tribal Affairs, particularly successful in Madhya Pradesh, Chhattisgarh, Odisha, and Maharashtra, work directly with Gram Sabhas and tribal cooperatives to procure, process, and market MFP, treating the Gram Sabha as the legitimate stakeholder rather than the forest department (Government of India, 2006; TRIFED, 2024).

This convergence is important as it offers a concrete, revenue, generating affirmation of tribal collective rights that do not depend on courts to resolving abstract doctrinal conflicts. Gram Sabhas, through their control of MFP procurement cooperatives and by negotiating with state agencies, obtain operational legitimacy and revenue streams that raise their bargaining power when they assert authority over other land and resource matters (NIRDPR, 2023).

2. Statutory Recognition of Customary Governance Structures

PESA and the FRA are legislative attempts to domesticate customary governance through statutory frameworks. These laws, by appointing Gram Sabhas as the authorities who are to decide on forest rights claims and give their consent to development projects, see customary institutions not as abandoned relics destined to be superseded by state administration but as legitimate holders of knowledge and authority. This is a convergence: customary governance structures receive statutory support, whereas the state gets legitimacy by making decisions through established community institutions (Government of India, 1996; Government of India, 2006). Nevertheless, this convergence is delicate. It relies on state recognition and resources; it can be overturned by judicial or administrative action; and it leaves unresolved the fundamental question of whether customary norms that are in conflict with constitutional principles (i.e., the exclusion of women from inheritance) should be respected (Nayak & Ghadyalpatil, 2025; Supreme Court of India, 2025).

3. Community-Based Land Restoration and Documentation

In certain enclaves of scheduled areas, initiatives for community, based land restoration have surfaced. Village councils and Gram Sabhas, supported by civil society organizations and friendly state officials, have started to record customary land claims, make community land registers, and submit requests to the revenue authorities for the restoration of alienated land. Case studies in Chhattisgarh and Odisha, especially those related to the recognition of Community Forest Resources (CFR) under the Forest Rights Act (FRA), demonstrate that this hybrid approach incorporating customary knowledge, community organization,

statutory procedures, and strategic litigation has produced physical outcomes: collective land titles awarded, encroachments cleared, and communities getting back control over their disputed lands (Rao & Desai, 2023; Ministry of Tribal Affairs, 2024).

4. Litigation as Tool for Customary Rights Assertion

One unexpected meeting point is the resort to state courts and constitutional litigation by tribal communities and their defenders for the protection of customary rights. Instead of opposing state law, tribal organizations have enlisted constitutional law (Articles 14, 21, and the Fifth Schedule) and statutory provisions (PESA, FRA) to make a case for broadened recognition of customary tenure and panchayat authority. The Supreme Court's decision in *Orissa Mining Corporation v. Ministry of Environment and Forest* mandating informed Gram Sabha consent for all development projects in scheduled areas is a case in point of how constitutional law can be used to uphold customary communities' collective veto power (Ambagudia, 2015; Supreme Court of India, 2013).

This is a strategic convergence: tribal communities learn to operate within state legal systems while at the same time demanding those systems to acknowledge their customary laws and governance structures. But, it also exposes a basic imbalance; court is a tool that can only be accessed and used effectively by those communities who have legal aid and litigation resources, whereas, the majority of tribal communities do not have such access (Janardhan Rao, 2022; Rajagopal, 2020).

V. Key Findings & Suggestions

A. Regional Focus: Western Madhya Pradesh

1. Tribal Demography and Land Structure

Western Madhya Pradesh, which includes the districts of Jhabua, Alirajpur, Dhar, and Khargone, is the home of Bhil tribe (more than 90% of the scheduled tribes of Jhabua as testified by the research of Gene Campaign), along with small numbers of Bhilalas and Patliyas. These areas, richly covered by the forests, which host a dense tribal population, severely lack the tribal forest land because of conservation projects, and also the tribes suffer encroachment of their lands by non-tribal landlords and money lenders (Gene Campaign & ICRAF, 2008).

Land alienation in these districts has been very severe. There were decreasing trends of tribal cultivators in comparison to the tribal workers as revealed by historical surveys (for instance, in Madhya Pradesh as a whole, ST cultivators dropped from 76.45% to 68.09% of ST workers between 1961 and 1991). Present, day reasons are indebtedness (82% of tribal households in a survey were in debt), severely restricted forest access on account of conservation projects, and regular encroachment by non, tribal landlords and money, lenders (Kumar & Singh, 2023; Census of India, 2001).

2. Implementation Challenges Specific to Madhya Pradesh

The combination of legal provisions such as Fifth Schedule protections, Transfer restrictions under MP Land Revenue Code, PESA Gram Sabha entitlements, and FRA individual/community forest rights offer significant textual protections against alienation and opportunities for the recognition of customary tenure, however, the procedural inflexibility (stringent evidentiary standards, statutory limitation periods), and administrative non, performance have led to a situation where the restoration of dispossessed tribal land has been infrequent and the tribes continue to be deprived of their land in the western part of Madhya Pradesh (Centre for Policy Research, 2022; Madhya Pradesh High Court, 2021).

a. Land alienation despite protective laws

Expertise on tribal land alienation as a phenomenon has revisited dispossession as a reality even if under constitutional and statutory safeguards such as the Fifth Schedule, state land transfer restrictions, and special regulations. Literature on India's tribal people and their land rights sensitively capture how legal safeguards remain mere paper legislations with loopholes, bureaucratic indifference, and market forces causing continuous loss of tribal land. Examination of land acquisition in tribal areas as a theme has revealed that legislative changes and practices of law enforcement intentionally or unintentionally have led to the erosion of protective measures and hence increased alienation.

b. Survival of customary tenure norms

Knowledge of tribal law and policy is not oblivious to the fact that, in addition to formal laws, tribal communities have customary tenure systems which, although are not codified, still have real force over land, forests, and commons mainly through the transmission of oral tradition and connections of kinship and clan. Fieldwork on

Adivasi governance and livelihoods has revealed that the role of customs in regulating the use of natural resources and social relations is still highly significant even in cases where statutory titles or state records do not acknowledge them.

c. Customary dispute resolution and panchayats

Research on rural dispute resolution in India and on PESA-governed areas describes the continuing importance of community forums and panchayats in settling disputes according to local norms and usages. Analyses of PESA and tribal governance underline that Gram Sabhas and traditional panchayats in Scheduled Areas are envisaged as key institutions for managing resources and resolving conflicts, and that in practice tribal communities still rely heavily on these customary or hybrid forums.

d. Legal pluralism and the state–custom interface

A key strand of scholarship highlights specific points of conflict between these normative orders. Analyses of land-alienation and restoration laws show how requirements of written records, individualised titles, and formal procedures sit uneasily with oral, clan-based claims and flexible, negotiated boundaries typical of Bhil customary tenure. Work on forest governance under the Indian Forest Act and FRA points to clashes where state classifications of “reserved” or “protected” forest criminalise long-standing practices such as shifting cultivation, grazing, or collection of minor forest produce, even though community norms treat these as legitimate rights. Gender-focused studies further reveal tensions between patrilineal customary inheritance rules, which often exclude or limit women’s land claims, and constitutional and judicial moves towards gender-equal property rights, creating a normative conflict that plays out within both families and local forums.

e. Gram Sabha authority over minor forest produce

The Forest Rights Act 2006 expressly vests ownership and control over minor forest produce (MFP) in forest-dwelling Scheduled Tribes and other traditional forest dwellers, with the Gram Sabha as the initiating authority for recognising such rights. PESA similarly provides that, in Scheduled Areas, Gram Sabhas and Panchayats at the appropriate level have ownership over MFP, thereby acknowledging pre-existing customary use and control by village communities.

f. Implications for Western MP Tribal Panchayats

In Jhabua-Alirajpur-Dhar belt, Gram Sabhas are hybrid institutions but leaves them vulnerable to override by revenue/forest departments and project authorities, resulting in tenure insecurity despite legal promise and constraining self-governance amid ongoing alienation (Gene Campaign & ICRAF, 2008; Philip & Prakash, 2024; National Institute of Rural Development and Panchayati Raj, 2023).

Metric	Jhabua	MP Tribal Average	Source
% ST Population	87.6%	21.1%	Census 2011
% Households in Debt	>80%	82% (one survey)	Kumar & Singh 2023
Alienation Cases (Restoration Pending)	High (benami prevalent)	50%+ failure rate	MP HC 2021

B. Suggestions

1. Codify Customary Tenure Recognition

Amend the MP Land Revenue Code to explicitly recognise customary tenure (lineage-based plots, community commons, sacred groves) as a legal category, accepting Gram Sabha-approved village maps and oral histories as prima facie evidence in restoration and mutation proceedings, shifting the burden of proof to state/non-tribal claimants.

2. Strengthen Gram Sabha Jurisdiction

Revise MP PESA Rules to grant Gram Sabhas original jurisdiction over intra-community land disputes (boundaries, commons access) and binding recommendatory powers in restoration/diversion cases, with mandatory prior consent for all Scheduled Area projects affecting tribal land/forests (Government of India, 1996; Government of Madhya Pradesh, 2022; Supreme Court of India, 2013).

3. Harmonise Forest and Land Statutes

Enact state rules ensuring FRA/PESA precedence over Indian Forest Act classifications in Scheduled Areas, mandating automatic Gram Sabha consultation for CFR-impacting diversions and treating minor forest produce ownership as inalienable community rights operationalised through MSP schemes

4. Institutionalise Capacity-Building

Create block-level support units (legal aid, GIS mapping, paralegal training) under Tribal Welfare Department to assist Gram Sabhas in claim preparation, resolution drafting, and

administrative/judicial navigation, coupled with mandatory training for revenue/forest officers on customary rights and PESA/FRA procedures.

5. Safeguards Against Displacement

Amend state rehabilitation policy to compensate loss of customary commons/CFRs (not just titled land) with equivalent community resource rights at resettlement sites, and establish a Scheduled Areas Oversight Committee with tribal representation to review all major projects for PESA/FRA compliance before approval.

VI. Conclusion

This doctrinal study of state land alienation laws and customary rights in the tribal panchayats of western Madhya Pradesh constructs a theoretically strong framework that not only shelters tribal lands from outside acquisition but also doctrinally brings in the customary tenure elements through Gram Sabha centrality, Community Forest Resource recognition, minor forest produce ownership, and mandatory consultation/consent protocols (Das & Rao, 2019; Xaxa, 2019).

Further positions these tribal panchayats as hybrid institutions that can use the statutory language to protect lineage, based plots, sacred groves, seasonal grazing rights, and collective forest management practices that have been the livelihood of Bhil and allied communities in Jhabua, Alirajpur, Dhar, Barwani, and Khargone for generations (Supreme Court of India, 2013; Nayak & Ghadyalpatil, 2025; Gene Campaign & ICRAF, 2008).

However, as the study points out, the concept has deep structural fissures that lead to insecurity and marginalisation. There are quite a few conflicts: the evidentiary requirements in the revenue restoration cases that give manipulated documents more weight than oral histories of possession; the colonial Indian Forest Act classifications which still have a dominant position and criminalize customary livelihoods even after FRA; the PESA Rules of Madhya Pradesh which are not only delayed but the partial centralizing that dilutes Gram Sabha autonomy through bureaucratic vetoes; and the underutilized gubernatorial powers that are unable to stop displacement from Narmada projects, mining leases, and conservation zones (Government of India, 1996; Government of India, 2006; Centre for Policy Research, 2022). Various state, level as well as central enactments try to recover tribal lands that have been alienated in defiance of constitutional safeguards. Research work of the Ministry of Rural Development (Faraz, 2016) indicates that even after the enactment of restorative legislation (including the Maharashtra Restoration of Lands to Scheduled Tribes Act 1974 and amendments to the land

revenue codes), the major part of the problem still lies in restoration at the grassroots level, apart from the resulting legal provisions (Harris, 2001; Janardhan Rao, 2022; Philip & Prakash, 2024).

Examination of the Ministry of Tribal Affairs and NGO partners' field reports show that FRA has been a key factor in communities and local governments getting land titles and authority over the use of natural resources in some areas (e.g., Budaguda Gram Panchayat in Odisha; selected villages in Bastar, Chhattisgarh). On the other hand, conflict situations are common when the use of customary land, especially shifting cultivation or pastoral migration, clashes with the legal definitions of forest land in the statutes and with the conservation objectives of the state forest departments (Centre for Policy Research, 2022; Ministry of Tribal Affairs, 2022).

When state law are aligned more genuinely with the living customary rights that both sustain Adivasi identity and ecology, the tribal panchayats of western Madhya Pradesh will not be places where people only keep the tradition but they will actually become examples of constitutional self, determination, thus implementing the spirit of the Fifth Schedule of secure, autonomous, and thriving Scheduled Area communities (Supreme Court of India, 2013; Nayak & Ghadyalpatil, 2025; Gene Campaign & ICRAF, 2008).

The combination, therefore, stresses an essential point that conflicts destroy tenure security and resource use, whereas convergences, if they work, can lead to self, governance and the strengthening of the community, but their implementation depends on overcoming the gap between the doctrinal design and administrative reality (NITI Tantra, 2023; Varughese, 2019).

These measures transform Gram Sabhas into strong centres of tribal leadership which can make wise and adaptive decisions, whereas, by the grant of land rights, Bhil will be able to live in harmony and have control over MFPs through secure possession and tenure stability. This work, although doctrinal, sets the framework of its empirical testing through village, level ethnographies of Gram Sabha activities which raise the question of how Madhya Pradesh can make its transition from mere symbolic recognition to real empowerment of its western tribal heartland.

References

1. Ambagudia, J. (2015). *Judiciary and tribal rights in India: Shifting terrains of judicialisation*. New Delhi: Sage.
2. Ashokvardhan, C. (2025). *Tribal land rights in India*. Mussoorie: LBSNAA.
3. Bhattacharya, R. (2023). Fifth Schedule tribal governance: Promises and pitfalls. *Journal of Indian Constitutional Law*, 18(2), 134–167.
4. Census of India. (2001). *Census of India 2001: Scheduled tribes – Primary census abstract*. New Delhi: Office of the Registrar General and Census Commissioner.
5. Centre for Policy Research. (2022). *Land and governance under the Fifth Schedule: Implementation challenges and recommendations*. New Delhi: CPR.
6. Dasmann, R. F., Dasmann, P., & Tropea, B. (1999). *Land and resource management in the Third World* (2nd ed.). London: Routledge.
7. Faraz, M. (2016). *The extent and nature of individual tribal land alienation in Fifth Schedule areas*. New Delhi: Ministry of Rural Development.
8. Gene Campaign, & ICRAF. (2008). *Indigenous knowledge in the Jhabua district of Madhya Pradesh*. New Delhi: Gene Campaign.
9. Government of India. (1927). *The Indian Forest Act, 1927*. New Delhi: Ministry of Law and Justice.
10. Government of India. (1996). *The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996*. New Delhi: Ministry of Law and Justice.
11. Government of India. (2006). *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*. New Delhi: Ministry of Law and Justice.
12. Government of India. (2024). *Forest Rights Act implementation status report 2024*. New Delhi: Ministry of Tribal Affairs.
13. Harris, J. C. (2001). *A case study of the land rights struggle in Madhya Pradesh*. Antigonish: Coady International Institute.
14. Hasan, M., & Tripathi, A. (2023). Forest governance and tribal livelihoods: Tensions between conservation and customary rights. *Environmental Law Review*, 45(3), 267–291.
15. Janardhan Rao, K. (2022). Revenue administration and tribal land alienation: A critical analysis. *Indian Journal of Law and Society*, 13(1), 89–118.

16. Kumar, A., & Singh, R. (2023). Displacement and dispossession: The tribal cost of conservation in Madhya Pradesh. *South Asian Studies Journal*, 28(4), 512–537.
17. Madhya Pradesh High Court. (2021). *Writ Petition No. 3730 of 2021, AFR (final order dated 3 March 2021)*. Jabalpur: High Court of Madhya Pradesh.
18. Ministry of Panchayati Raj. (2025). *Synergy between tribal justice system and regular justice system of the country*. New Delhi: Government of India.
19. Ministry of Tribal Affairs. (2010). *Report on tribal land alienation*. New Delhi: Government of India.
20. Ministry of Tribal Affairs. (2022). *Forest rights recognition and implementation status*. New Delhi: Government of India.
21. Ministry of Tribal Affairs. (2024). *Community forest resource recognition under FRA 2006: Status report*. New Delhi: Government of India.
22. National Institute of Rural Development and Panchayati Raj. (2023). *Gram Sabha functioning in scheduled areas: Emerging patterns and challenges*. Hyderabad: NIRDPR.
23. National Law School Forum on Property Rights. (2025). *Gender equality and customary tenure in tribal communities*. Bengaluru: National Law School of India University.
24. Nayak, P., & Ghadyalpatil, S. (2025). Tribal women and constitutional equality: Navigating custom and rights. *Gender and Development in South Asia*, 22(1), 45–73.
- Rajagopal, B. (2018). *Socio-legal dimensions of land, governance and justice in South Asia*. New Delhi: Oxford University Press.
25. Rajagopal, B. (2020). Criminalization of customary use and the politics of forest law. *Journal of South Asian Studies*, 43(2), 267–289.
26. Rao, K. S., & Desai, V. (2023). PESA implementation across states: A comparative analysis of governance effectiveness. *Federalism and Tribal Rights Journal*, 11(2), 198–225.
27. Sharma, A. (2021). *Forest alienation in colonial and post-colonial India: A history*. New Delhi: Cambridge University Press India.
28. Shiva, V., & Dankelman, I. (1992). *Women, ecology and biological diversity*. London: Zed Books.
29. Sivaramakrishnan, K. (2009). *Modern forests: Statemaking and environmental change in colonial Eastern India*. New Delhi: Oxford University Press.

30. Supreme Court of India. (2013). *Orissa Mining Corporation Ltd. v. Ministry of Environment & Forests*, Writ Petition (Civil) No. 180 of 2011.
31. Supreme Court of India. (2025). *Ram Charan v. Sukhram*, Civil Appeal No. [details to be inserted] (judgment dated July 2025).
32. TRIFED. (2024). *Non-timber forest produce and MSP scheme: Impact on tribal livelihoods*. New Delhi: Tribal Cooperative Marketing Development Federation of India



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