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## The Rights of Indigenous Peoples to their Ancestral Land in Pakistan: A Critical Analysis of the Existing Laws and Policies

**Shah Faisal Hamad**

LL. B 3<sup>rd</sup> Year Student at Department of Law, University of Sindh, Jamshoro  
[shahfaisalhamad3@gmail.com](mailto:shahfaisalhamad3@gmail.com)

**Obhayo Khan**

Subject Specialist (BPS-17), Pakistan Studies at ABKD Government Higher Secondary School,  
 Garhi Yasin  
[obhayoshar786@gmail.com](mailto:obhayoshar786@gmail.com)

**Rind Ali**

LL. B 3<sup>rd</sup> Year Student at Department of Law, University of Sindh, Jamshoro  
[rindali11223@gmail.com](mailto:rindali11223@gmail.com)

**Muhammad Mussadiq**

LL. B 3<sup>rd</sup> Year Student at Department of Law, University of Sindh, Jamshoro  
[mussadiq.nahiyoon@gmail.com](mailto:mussadiq.nahiyoon@gmail.com)

### ABSTRACT

*In Pakistan, the concern over the rights of the natives does exist over the lands of their forefathers, as policies and laws are usually not effective enough to protect them. Despite international obligations, which Pakistan has ratified, in several instances, land rights remain ambiguously defined or entirely unrecognized in Pakistan's domestic law for the indigenous people and one witnesses forced evictions, land grabbing and environmental degradation as well. The main and primary aim of this research paper is to critically analyze the existing legislation includes the Land Acquisition Act 1984, Forest Act 1927 and the absence of constitutional protection to indigenous people's land rights. Furthermore, this research paper will also look into Pakistan's commitments to the international organizations including the UN Declaration on the Rights of indigenous Peoples and the International Labour Organization. This study primarily relies on doctrinal legal research, focusing on the critical analysis of laws and their practical implementation. This study aims to examine the urgency of legal reforms which will also be analyzed to safeguard land rights of natives in Pakistan through an analysis of legal gaps, policy shortcomings and case studies. In conclusion, Pakistan has to meet the international standards and preserve the culture diversity of its indigenous people as they are taken by the developed countries, which demonstrate constitutional recognition, land restitution, and participatory governance are not possible but necessary to achieve justice and reconciliation.*

**Keywords:** Indigenous People Rights, Ancestral Land, Cultural Protection, Land Acquisition, UNDRIP, Legal Framework.

### Introduction

Pakistan, being the root of Indus valley civilization the oldest of all times, is also the home of various indigenous people. Among the notable nomadic and tribal groups are the Kalash renowned for their unique cultural heritage alongside the Bakarwal, Kabootra, Jogi, Kehal, Rebari, and Koochis communities. International organizations such as the United Nations (UN), the International Labour Organization (ILO), and the World Bank have conceptualized

“indigenous peoples,” but universally there is no definition based on absolute consensus. The UN defines indigenous people as “communities that, because of their historical continuity with preceding generations, consider themselves to be the original peoples of a given territory and, for some reason, regard themselves as different and unique sections of the society.” These groups are virtually isolated from mainstream populations because of their unique cultural and social structures (UNO).

In the past half century, a series of detailed discussions of the nature of indigenous groups has occurred among the United Nations, but the concept of an indigenous group has not been defined universally. However, the seminal study of José R. Martínez Cobo regarding the indigenous communities defines them as those that maintain historical continuity with a society that existed in their territories before colonization or invasion. (IOL, 1989). Active in the preservation, development, and transference of their ancestral lands, ethnic identities, and cultural heritage to future generations, such groups are formed by their own social institutions, practices, and legal norms and based on their own self-identification as distinct from the prevailing society.

It is the framework that underlines those indigenous people should not be seen only as ethnic minorities, but as peoples with deep-rooted cultural, historical, and territorial affiliations with a given region. But their conceptions of themselves are closely tied to their traditional lands upon which their knowledge systems, legal frameworks, and social organization are grounded. Although these communities possess a notable cultural legacy and the distinctive socio-legal structures, yet there is an obvious shortcoming in the official acknowledgment of natives’ rights, particularly to their ancestral land in Pakistan.

#### **Research Questions**

1. What are the constitutional and legal frameworks concerning indigenous people land rights?
2. How effectively are these laws and policies implemented to protect indigenous rights?
3. What challenges do indigenous communities face regarding land ownership and cultural preservation?
4. How does Pakistan’s legal framework compare with international standards like UNDRIP?
5. What reforms are needed to bridge the gap between policy and practice?

#### **Literature Review**

This paper highlights several indigenous communities in Pakistan, such as the Kalash widely recognized for their distinct culture along with the Kabootra, Sanyasi, Kehal, Bakarwal, Jogi, and Koochis. It argues for establishing proper legal mechanisms to protect their inherited resources, cultural expression, and traditional knowledge within an intellectual property framework as a means to preserve these declining populations and improve their livelihoods. The paper connects to a broader discussion about the rights of natives to their property, which states that the international legal framework is needed, as noted in another research that the Native American Graves Protection and Repatriation Act (NAGPRA) or general international human rights provide direct applicability solutions for indigenous cultural property (Britannica, 2025). Another research study from Duke University expounds that Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples affirms that native communities have the right to preserve, manage, safeguard, and enhance their cultural heritage, traditional knowledge, and expressions of culture, which provides important context for the Pakistani case study (UNDRIP, 2007). It also focuses on the intellectual property framework related to the ongoing debate of whether the Western IP system can adequately protect indigenous people’s knowledge. As it is also noted that in the resources intellectual property law has European origins that promote a particular

interpretation of knowledge and ownership, which may not align with the indigenous understanding. This creates significant challenges for protection, and it also continues to discuss the definition of indigenous people, which are the challenges indigenous people are facing to protect cultural rights and lands of their ancestors. Later in the paper, the author explains that international human rights bodies have begun acknowledging the cultural, communal, and territorial commitments of indigenous peoples as legitimate political claims. Other research has shown that international law has evolved to accommodate the indigenous people, but there are significant gaps remaining in implementation at the national level. The Pakistani case study of different indigenous people has given the localized insights to the global discussion. This literature review situates the paper within three key scholarly conversations, indigenous cultural rights and property, challenges of legal protection frameworks and the international standards and local implementation. The Pakistani case study adds valuable perspective to the global discussion about preserving indigenous identities and knowledge systems through appropriate legal mechanisms. The paper focuses on creating livelihood opportunities through cultural preservation and also connects to wider development discourses regarding indigenous communities.

The Land Acquisition Act 1984 has long been criticized for the absence of adequate protection for landowners and lack of transparency in land acquisition under the colonial era. Scholars also contend that the law is skewed with respect to state interests and unclear on key terms such as “public purpose” and “urgency” and has been used inappropriately broadly (Afzal, 2023). Sabri shows the history of the land acquisition act and conflicting values given to land, both economic and cultural (Sabri, 1975). Malloy also argues that internationally the government can use eminent domain for the benefit of private interests under the guise of the public good through a comparison of the New London city vs Kelo case in USA (Case, 2005). Singh and Zahid criticize the land acquisition act for entrenching state dominance and limiting access to justice for affected communities. Like Searle, the misuse of compulsory acquisition in the context of urban identification is also evidenced at the global level, and Searle argues that a stronger legal safeguard is necessary. On the other side, Austin and M.V. Pylee and Jacobs and Biswas assert that the constitutional scholars further buttress that property rights should be integrated into a rights-based framework for land acquisition amidst the complexities of fair compensation and multiple dimensions of the value of land. The paper examines the land acquisition act, which is analyzed to give the state unchecked power to acquire land without recognizing ancestral land or communal rights and which disproportionately affects indigenous communities in Pakistan. The act has no provisions for consultation, cultural valuation, or resettlement that undermine the rights of groups such as Kalash and tribal populations. Both constitutional protections and international standards such as UNDRIP are violated because of its vague definition of ‘public purpose’ that allows land seizures without consent. This call for urgent reform of Pakistan’s legal framework to safeguard the land rights of natives both justly and with respect to the interests of natives and culturally sensitive policies.

### **Research Gap**

While global scholarship has explored indigenous cultural rights, there is limited focus on integrating intellectual property (IP) protections for indigenous communities in Pakistan. Moreover, the current IP system, rooted in Western legal thoughts, fails to recognize the communal and intergenerational nature of indigenous knowledge; however, groups like the Kalash and Jogi lack legal recognition of their cultural expression, leaving their heritage exposed to misappropriation without consent or benefit. Secondly, the land rights that are essential to indigenous identity are similarly neglected under Pakistan’s Land Acquisition Act of 1984 (Punjab

Laws), but the law grants the state broad authority to seize land without regard for ancestral claims, cultural significance, or community input. Moreover, this disproportionately affects nomadic and tribal communities whose livelihoods and traditions are closely tied to their territories, but the law offers them no adequate legal protection or resettlement rights.

Furthermore, it is emphasized in the research paper that there is also a lack of integrated research addressing both cultural and land rights within a unified legal framework, but intellectual property and land acquisition issues are often treated separately despite being deeply interconnected for indigenous communities. This fragmentary strategy results in legal blind spots and regulatory failures that undermine these groups' entire identity along with their capacity to survive. However, community-based research on indigenous peoples in Pakistan is largely missing, but existing literature rarely includes the voices or lived experiences of groups like the Bakarwal and Kehal. This limits the development of informed, culturally sensitive reforms that align with global standards like UNDRIP and address the specific needs of local indigenous populations.

### **Discussion**

The constitutional and legal structures of Pakistan include specific provisions that address the rights of native communities, though these are often fragmented and lack specificity but the Constitution of Pakistan guarantees fundamental rights such as equality before the law (Article 25) and cultural preservation (Article 28) which indirectly supports indigenous peoples claims however the statutory instruments like the Forest Act, Land Acquisition Act, Sindh Tenancy Act, and the Balochistan Package offer certain legal bases for accessing land and natural resources; however, the Protection of Pakistan Act 2014 underscores the continuing necessity to tackle marginalization-related challenges (Islam, 2022). Although these laws offer certain protections, they do not explicitly acknowledge 'Indigenous peoples,' which hampers their effectiveness in addressing the distinct rights and needs of these groups. The absence of formal legal recognition also creates ambiguity and hinders proper implementation and enforcement.

So far, the laws and policies meant to protect Pakistan's indigenous peoples have been disregarded or ineffectively enforced. This has made them mostly inactive. Attempts have been made to establish legal structures that reflect minority and indigenous people. The frameworks, however, remain unimplemented in practice. These native peoples, including Kalash, Brahui, Sheedi, and Balti, are facing issues including land dispossession, forced assimilation, and indifference from the authorities to their suffering. Furthermore, while Sheedi people endure ongoing discrimination and insufficient legal protection for land rights and compensation, the Kalash community has experienced land grabs on their ancestral territory with little state action. While the constitution does promise protection for indigenous peoples, there's a noticeable gap between what's written and how it's actually enforced. These laws often fail to provide real benefits to the communities they aim to support. This situation also highlights the government's laziness and inability to effectively uphold the rights that are supposed to be guaranteed to these groups.

There are many problems faced by indigenous communities of Pakistan, including land tenure and preservation of their cultural heritage. The principal obstacles they face are legal uncertainty, lack of formal recognition, systemic marginalization, and attempts at cultural assimilation. For example, the Kalash community has suffered both territorial infringements and religious discrimination and forced religious conversion. Similar to the Sheedi population, they also have little or no access to land and do not have adequate legal recourse if their properties are nationalized without fair compensation. Indigenous groups are also the victims of the erosion of their cultures due to the assimilation pressures of the dominant society, lack of opportunities

for education in their native languages, and the inadequate measures of protection of their intangible cultural assets in a more general sense. State policies that do not sufficiently take into account indigenous identities and fail to adequately represent them in decision-making frameworks only heighten these challenges.

Pakistan's legal framework falls short when compared to international benchmarks such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Even though Pakistan voted in favor of UNDRIP and has signed on to several key international human rights treaties, its own laws don't fully reflect the principles laid out in the declaration; Nonetheless, UNDRIP emphasizes key rights including the right to free, prior, and informed consent, protection of cultural heritage, ownership and control over ancestral lands, and active involvement in decision-making processes. But unfortunately, Pakistani laws fall short in explicitly recognizing indigenous status and don't require consultation with indigenous communities before implementing policies that impact them. Moreover, the mechanisms needed to uphold rights like land restitution, environmental protection, and indigenous education are either missing or not effective in Pakistan, showcasing a notable gap from international norms.

Comprehensive legal and administrative reforms are to be brought by Pakistan in order to narrow the gap that exists between policy and practice. A primary reform priority should be the formal acknowledgment of indigenous communities as a separate and distinct group within national legislation, in alignment with international frameworks such as UNDRIP. Along with it, the laws must be changed to clearly ensure indigenous land rights, cultural self-determination, and representative government. Implementation modalities must involve community-based monitoring, judicial review, and autonomous institutions to deal with indigenous issues. Education and consciousness-raising campaigns are also useful against discrimination in society and to promote inclusion. Indigenous participation in policymaking, e.g., in representative councils or consultation forums, is necessary to make reforms responsive and a success. These changes would not only strengthen legal protection but also consolidate the socio-political status of indigenous peoples.

### **Findings**

From the research conducted, the central findings that emerge from this study are as follows:

1. The Pakistani legal system does not recognize indigenous people as a separate legal category, and this lack of formal acknowledgment contributes to the social isolation and legal invisibility of indigenous groups like the Kalash, Jogi, Bakarwal, and Sheedi communities.
2. The present laws, such as the Land Acquisition Act (1984) and Forest Act (1927), Current legal frameworks, including the Land Acquisition Act (1984) and the Forest Act (1927), do not adequately safeguard the ancestral land rights of indigenous communities. Instead, they tend to facilitate state-led acquisition and development initiatives, frequently excluding meaningful consultation with the communities involved—an approach that stands in conflict with international norms of free, prior, and informed consent. However, constitution of Pakistan gives protection under Article 25 and Article 28, but the implementation remains poor. The absence of a mechanism to implement and represent has made these laws' protection ineffective in practice.
3. Pakistan is a signatory to UNDRIP and has signed many treaties, but domestic law fails to align with these standards, and key principles such as indigenous people participating in decision-making, land compensation, and cultural protection are not sufficiently enforced.

4. Indigenous communities face cultural assimilation, religious discrimination, and lack of access to education in their native language; however, the cultural expressions and traditional knowledge remain unprotected due to the absence that reflects a form of intellectual property aligned with shared cultural heritage.
5. The separation between cultural and land rights in policy and legal discourse leads to incoherent protections; however, there is a need for a unified legal framework that addresses land tenure, cultural identity, intellectual property, and participatory government at the same time.

### **Recommendations**

Directly from the research's outcomes and discussion, the described below recommendations can be taken for members of the government, legislative bodies, and others in Pakistan as actions:

#### **Legal Recognition of Indigenous Peoples:**

Pakistan must recognize indigenous people communities in its constitution or by their legislation; however, this foundational step would affirm their distinct legal identity and grant them access to legal protections and rights similar to Section 35 of Canada's Constitution Act, 1982, which recognizes and upholds Aboriginal and treaty rights

#### **Reform Colonial-Era Land Laws:**

The Land Acquisition Act 1984 should be restructured to include human rights safeguards, prevent involuntary displacement and guarantee communities are engaged through early and well-informed consultation procedures (FPIC) before any state or private claim of ancestral land, and this aligns with practices in jurisdictions such as Canada and the Philippines, where community consent is a requirement for development on indigenous land.

#### **Establish a National Commission on Indigenous Peoples:**

Create legal body to document indigenous grievances, monitor rights violation and guide national policy reforms which is inspired by TRC of the country, Canada as this body would centralize these issues in national discourse and accountability mechanism (Summary report, 2015).

#### **Create a National Indigenous Land Registry and Legal Mapping System:**

A centralized and participatory registry should document lands historically and culturally tied to indigenous groups, but the mapping should be led by local communities and legally recognized to prevent unlawful acquisition and encroachment.

#### **Recognize and Integrate Customary Laws:**

Indigenous dispute resolution and land tenure systems should be formally acknowledged and allowed system similar to the Maori land law system in New Zealand, and it would protect indigenous autonomy and strengthen cultural integrity.

#### **Guarantee Representation and Participation:**

Establish the indigenous representatives' councils at the national and provincial levels with advisory and decision-making roles and reserve seats in legislative body such as Nepal and Bolivia which can ensure political inclusion and policy sensitivity.

#### **Mandate Environmental and Social Impact Assessment with Indigenous Input:**

Development projects must require environmental assessment with indigenous community participation, focusing on cultural, environmental, and spiritual impacts; however, it is consistent with UNDRIP and the Canadian Environmental Assessment Act, which mandates meaningful consultation and protection.

#### **Promote Cultural, Linguistic and Intellectual Property Rights**

Enact protections for indigenous languages, customs, and traditional knowledge through legislation and educational reforms, but the cultural revitalization efforts, such as the inclusion of indigenous content in the national curriculum, public awareness and intellectual property rights protection should be mainstreamed.

### Conclusion

The critical analysis of indigenous peoples' ancestral land rights in Pakistan shows legal and institutional gap that continues to undermine communities such as Kalash, Bakarwal, Sheedi and Jogi however Pakistan's commitments under international organizations such as United Nations Declaration on the Rights of Indigenous peoples (UNDRIP) but the domestic laws lack both clarity and enforcement mechanism to safeguard indigenous land tenure, cultural autonomy and participation in governance.

A major failure lies in the colonial era, such as the Land Acquisition Act 1984, which prioritizes the interest of the state as well as the economic development over indigenous claims. Moreover, it also leads to forced eviction without consent or adequate compensation, but the Constitution of Pakistan is providing equality and cultural rights, but it does not specifically recognize indigenous peoples as a unique legal category, but it is leaving a critical gap in the protection.

Additionally, Canada's Constitution and legal framework offer a progressive mode as Section 35 of the Canadian Constitution Act 1982 recognizes and affirms the original and treaty rights of indigenous people. Moreover, the Canadian courts have developed strong jurisdiction on indigenous title in *Delgamuukw v. British Columbia*. The Supreme Court emphasized the spiritual and cultural dimensions of land to indigenous communities. Despite this, Canadian law mandates free, prior, and informed consent (FPIC) in resource extraction and development projects impacting indigenous territories.

If Pakistan has to meet the international standards and preserve the cultural diversity of its indigenous people, then they must move beyond the symbolic references and undertake meaningful legal reforms, as they are taken by Canada, which demonstrate constitutional recognition, land restitution, and participatory governance are not possible but necessary to achieve justice and reconciliation.

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