

Legal Protection of the Scheduled Tribes and other Traditional Forest Dwellers and their Contribution in Eco-Tourism in India - An Overview

Makori Felix Asande

Research Scholar (LAW) Karnatak university Dharwad Department of studies in Law
Karnatak University, Dharwad-580 003, Karnataka, India

Abstract

Unquestionably more than a decade, The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006¹ has been the break point legal document in requisites of guaranteeing rights to tribal and other forest-dwelling populace in India. Basically these people depend on the forest produce. Majority can be found along the Western Ghats² where eco-tourism activities are permissible in over 60 forest destination. Eco-tourism best suited for environmental protection which means “conscientious travel to serene areas that conserves the environment, support the welfare of the local inhabitants, and involves construal and education both the guest and host³. The recent move by the Supreme Court to evict these forest dwellers and tribal people is a very disturbing issues which is going to affect lakhs of them together as their livelihoods will be affected.⁴ Therefore this paper tries to analyse the legal protection of the forest dwellers and tribal peoples, their contribution to eco-tourism in India.

KEYWORDS- Forest Dwellers, Schedules Tribes, Legal Protection, and Eco-Tourism.

Introduction

India is an enormous nation with all Geographical definitions contained within it. The Country is decked out with river hills, Deserts, and forests. India is one of the largest

It is a key piece of forest legislation passed in India on 18 December 2006. It has also been called the Forest Rights Act, the Tribal Rights Act, the Tribal Bill, and the Tribal Land Act. The law concerns the rights of forest-dwelling communities to land and other resources, denied to them over decades as a result of the continuance of colonial forest laws in India. Supporters of the Act claim that it will redress the "historical injustice" committed against forest dwellers, while including provisions for making conservation more effective and more transparent. The demand for the law has seen massive national demonstrations involving hundreds of thousands of people.

Press releases on the Forest Rights Act by the Campaign for Survival and Dignity available at [https://en.wikipedia.org/wiki/The_Scheduled_Tribes_and_Other_Traditional_Forest_Dwellers_\(Recognition_of_Forest_Right\)](https://en.wikipedia.org/wiki/The_Scheduled_Tribes_and_Other_Traditional_Forest_Dwellers_(Recognition_of_Forest_Right)) accessed on 12/01/2019

²Western Ghats also known as Sahyadri (Benevolent Mountains) is a mountain range that covers an area of 140,000 km² in a stretch of 1,600 km parallel to the western coast of the Indian peninsula, traverse the States of Kerala, Tamil Nadu, Karnataka, Goa, Maharashtra and Gujarat.[1] It is a UNESCO World Heritage Site and is one of the eight "hottest hot-spots" of biological diversity in the world available at https://en.wikipedia.org/wiki/Western_Ghats accessed on 12/01/2019

³ the international eco-tourism society “definition of eco-tourism” available at <https://ecotourism.org/what-is-ecotourism/> accessed on 12/02/2019

⁴Nitin Sethi “SC orders forced eviction of more than 1 million tribals, forest-dwellers” business standard new Delhi available at www.business-standard.com/article/current-affairs/sc-orders-forced-eviction-of-more-than-1-million-tribals-forest-dwellers-119022000855_1.html accessed on 22/02/2019

Peninsulas⁵ in the globe. With its rich in resources, the forest area is the home of the tribal dwellers. Tribal communities in India live in an assortment of ecological and geo-climatic confine ranging from plains and forests to hills and remote areas that conserves the environment and support the welfare of the local inhabitants⁶ Tribal populace is at diverse stages of social, economic and educational growth. Although some tribal communities have embraced a conventional way of life, at the other end of the continuum, there are certain Scheduled Tribes, over 60 in figures recognized as Particularly Vulnerable Tribal Groups (PVTGs). Under Article 342 of the Indian constitution,⁷ it empowers the president after deliberation with the governor in regard to any union territory or state by notification denote tribes or tribal group which as per as the constitution consider to be the schedule tribe to the union territory or state⁸

The indispensable distinctiveness of tribal communities:

- a) Distinct culture
- b) Primal character
- c) Stagnant or declining population
- d) Enormously low literacy
- e) Economically backward
- f) Shy of contact with community at large
- g) Survival intensity of economy
- h) Geographical segregation

Eco- tourism activities- a livelihood to the forest dwellers

Forests are a connected fraction of tribal societal life, since its magnitude is not only economic but also social, psychosomatic and spiritual. Tribes esteem trees, and animals, which live in the forests. They have a strong conviction their ancestors and gods resides in the forest. They protect the natural environment hence promote eco- tourism which involves travelling to a lesser disturbed remote areas. Therefore they never want to exhaust it but safeguard it through their long-established traditionalist methods. .

Forests and tribal are ethnically and customarily associated to each other. Tribals have been residing in the forest conservationism and that has fashioned their life and the civilization they currently have. Most of them live in close immediacy of forest and depend on the forest for their living and nourishment. Their entire survival revolves in the order of the forest as they evolve in these woodlands and extract rudiments like clean drinking water, air, groceries, medicines, safe haven, and even leisure retreats from these forests.

⁵is landform surrounded by water on the majority of its border while being connected to a mainland from which it extends

available <https://en.wikipedia.org/wiki/Peninsula> accessed on 12/01/2019

⁶ ibid

⁷Article 342 in The Constitution Of India 1949

available at <https://indiankanoon.org/doc/768139/> accessed on 12/01/2019

⁸ ibid

The tribals obtain rations from the forests by sophisticated agricultural, a way from plucking variation of cooked and herbal roots, tubers, creepers, fruits, leaves.⁹ beside with that tribals extracts diffract types of slight forest produce which comprises of silage and grasses, unprocessed materials like bamboo, canes and foliage, waxes, dyes and numerous types of food comprising of nuts, natural fruits, and honey.¹⁰ Therefore the forest dwellers and tribal populace are in the best position of promoting and embracing eco-tourism since they're understand better what the natural environment offers to them.

Legislation in India for Forest Conservation

Part X of article 244 the Constitution contains exceptional provisions pertaining to the management of Scheduled Areas and tribal areas.¹¹ Article 21 is a procedural magna carta protective of life and liberty according to justice iyer, j which has been extensively expounded so as to include all the dimensions of living a decorous life. Similarly in article 39 exclusively directs the State to allocate tenure and control of the material resources of the community for the common good of the society Land reforms.¹²

Further in article 48A propel a task on the State to take heed of the environment and forest eco-system. Besides Article 38, of the Constitution, stow a responsibility on the State to uphold a social order wherein justice communal, economic and political is an encounter to everyone. The Constitution supplementary apprehends a unique liability of the State for fortification and progression of tribal people, predominantly concerning the management of the forest inhabitants.

Consequently article 46, bestows a duty on the State to distinctively cater to the special desires of the Scheduled Tribes protecting them from mistreatment and making social justice reachable to them. In additional Article 15(4), of the Constitution, openly permits the State to make exceptional provisions for the Scheduled Tribes.¹³ Notwithstanding article 335 proffers for reservation in errand of the Scheduled Tribes in amenity and stake of the Government¹⁴

Guiding Principles of forest protection

Sustainable supervision of forest possessions cataract within the span of the state and central Government. The Indian Forest Act, 1927¹⁵ provides the wide legal scaffold for

⁹ Prakash tripathi "tribe and forest : a critical appraisal of the tribal foes right in India" available at https://www.researchgate.net/publication/308794288_Tribes_and_Forest_A_critical_appraisal_of_the_tribal_forest_right_in_India accessed on 12/02/2019

¹⁰ Prakash tripathi "tribe and forest : a critical appraisal of the tribal foes right in India" available at https://www.researchgate.net/publication/308794288_Tribes_and_Forest_A_critical_appraisal_of_the_tribal_forest_right_in_India accessed on 12/02/2019

¹¹ Vn Shukla, "Constitution of India" 10th edition, (lucknow: eastern book company 2007) p667

¹² article 39 (b) of the Indian Constitution

¹³ ibid

¹⁴ ibid

¹⁵ ministry of law "the indian forest act, 1927(act xvi op 1927) available <http://extwprlegs1.fao.org/docs/pdf/ind3171.pdf> accessed 14/01/2019

the administration and safeguard of the nation's forest resources. However for the purpose of formulation an execution of programs is managed by the state government, for this reason the rules and convention imposed by each state diverge based on the inimitable flora and fauna that respire in each state. Some of the laws which have fashioned the fortification of forest land and other resources and forest abode communities in India include-

Indian Forest Act, 1927

The Indian Forest Act, 1927¹⁶ provides the legal framework for the administration of forests in India. It is the leading navigation legislation in forestry. The purpose of this part of canon is to pledge:

- a) effective and conservation of prone with forest wrap
- b) fortification of forest areas with wildlife homogenize the movement of forest property
- c) indict duty on timber and other resources and other forest produce
- d) cataloging of areas into Reserved Forest, Protected Forest and Village Forest

Forest (conservation Act amendment 1988

The Forest (conservation Act amendment 1988¹⁷ close watch the fracas of forest areas for non-forestry purposes. The State government acts as the discharging authority for all desires and manifesto to utilize forest land for progress and infrastructure building the necessities. The Act also imparts that for all forest land mislaid to such growth compensatory must be addressed in a proper way. Further rehabilitation of tribal communities residing on forest lands are matters that ought to be arranged by the state and other parties implicated.

National Forestry Policy, 1988¹⁸

The policy lays prominence on the notion of united Forest administration where villages and the pertinent forest division administer precise forest blocks collectively to-

- a) convene the fundamental needs of rustic and tribal populations,
- b) improved forest production
- c) perk up the effectiveness of forest product utilization
- d) diminish stress on available forests

The Joint Forest Management system is possibly the preeminent and most effectual policy to have emerged from the National Forestry Policy in India.

¹⁶ ibid

¹⁷ Is an Act of the parliament of India to provide for the conservation of forest and for matters connected there with or ancillary or incidental there to? It was further amended in 1988

@ https://en.wikipedia.org/wiki/Forest_Conservation_Act,_1980 accessed on 21/02/2019

¹⁸ Government Of India Ministry Of Environment And Forests New Delhi available at <http://www.moef.gov.in/sites/default/files/introduction-nfp.pdf> accessed on 21/02/2019

Wildlife Protection Act, 1972¹⁹

This Act its main focal point is on protecting wild animals, plants and tree variety and makes hunting and bringing collectively the animals and plants in cosseted areas a criminal offence. Authorities like the National Tiger preservation Authority and the Tiger and Other in danger of extinction Species Crime Control Bureau²⁰

Schedules Tribes and Other Traditional Forest Dwellers (Recognition and Forest Rights) Act, 2006.²¹

This Act came into picture to take part in endowment rights, adjustment and to shield the way of life of forest dwellers those who depend on forests for their basis survival their livelihoods.

This Act focuses on the rights of forest dwellers and scheduled tribes. They include

- i. Title rights which include the ownership to land
- ii. Formulate use of rights to trivial forest produce in grazing areas to pastoralist routes.
- iii. help and develop rights to remedy in case of illegitimate removal
- iv. Forest regulation rights which aims in defensive forests and wildlife
- v. Right to sentinel, revitalize and preserve any community forest supply

International Initiatives

Indigenous and Tribal Populations Convention, International Labor Organization²² was the first organization to mobilize a global initiative in favor of the tribal population. In 1957, with collective effort, the ILO framed aboriginal and Tribal Populations Convention, 1957.

The governing principles of this Convention were:

- a) acknowledgment of the fundamental right of all human beings to their substance and saintly
- b) growth by having access to freedom and pride, economic safety
- c) Equal prospect;

¹⁹ The Wildlife Protection Act, 1972 is an Act of the Parliament of India enacted for protection of plants and animal species. Before 1972, India only had five designated national parks. Among other reforms, the Act established schedules of protected plant and animal species; hunting or harvesting these species was largely outlawed accessed on

https://en.wikipedia.org/wiki/Wildlife_Protection_Act,_1972. 05/02/2019

²⁰ <https://www.ukessays.com/essays/environmt>

²¹ Act, 2006, is a key piece of forest legislation passed in India on 18th December 2006. It is also been called the Forest Rights Act, the Tribal Rights Act, the Tribal Bill, and the Tribal Land Act. The law is concerns the rights of forest-dwelling communities to land and other resources, denied to them over decades as a result of the continuance of colonial forest laws in India
[availablehttps://en.wikipedia.org/wiki/The_Scheduled_Tribes_and_Other_Traditional_Forest_Dwellers_\(Recognition_of_Forest_Rights\)_Act,_2006](https://en.wikipedia.org/wiki/The_Scheduled_Tribes_and_Other_Traditional_Forest_Dwellers_(Recognition_of_Forest_Rights)_Act,_2006) .accessed on 03/02/2019

²² https://en.wikipedia.org/wiki/Indigenous_and_Tribal_Populations_Convention,_1957

- d) Recognizing the necessitate to incorporate the aboriginal inhabitants into the mainstream
- e) Recognizing the requisite to perk up the living and working environment of the tribal populace so that they can partake and advancement with the national community.

Indigenous and Tribal Peoples Convention, Having got inspired by the Universal Declaration of Human Rights, the International²³

Agreement on Economic, societal and Cultural Rights, the global agreement on Civil and Political Rights, and other international instruments on the avoidance of favoritism and also acknowledging the call for get rid of assimilations direction of the prior standards and need to accept new global standards with the shifting situations of the tribal people transversely nations, the ILO General Conference came with Convention regarding original and Tribal populace in sovereign nations.²⁴The main objectives of this conference were as follows:

- a) To distinguish the aspirations of these peoples to work out manage over their own institutions which they subsist.
- b) To facilitate the tribal populace to enjoy human rights at equivalence with other citizens of their State.
- c) To guard and identify their customs, morals, and perspectives.
- d) To recognize their unique assistance toward cultural and ecological agreement of the mankind.

Judicial Retort

The recent move by the Hon. Supreme Court of India bound for the eviction scheduled tribe from 17 states across India members of traditional dwellers .over one million populace who sought their right under scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006²⁵ were rejected. In the bench, constituting of Justices Arun Mishra, Naveen Sinha and Indira Banerjee, approved the latest path after the Central government continuously botched to defend its Forest Rights Act when it was challenged by a sequence of petitions.²⁶

The Supreme Court decision was reached as part of a case filed by wildlife organisations and retired forest officers, who have opposed the constitutional legality of the scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006.²⁷The contention was that that it vitalized intrusion of forestland. Such verdict was

²³ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

²⁴ ibid

²⁵ ibid

²⁶ shiba kurian "1 million tribal face eviction from forest lands: Did Centre's apathy cause this crisis?" news minute available at <https://www.thenewsminute.com/article/1-million-tribals-face-eviction-forest-lands-did-centres-apaty-cause-crisis-97112> accessed on 16/02/2019

²⁷ ibid

received in a varied response as the civil society requested for the appropriate rehabilitation.

While 7, 67,467 ST claims were rejected, 4, 45,047 OTFD claims were rejected in 17 states, with 1, 95,222 asseverate yet to be settled in three states. Madhya Pradesh has the maximum number of claims discarded. In south India, 3, 74,818 claims were rejected. The break-up is as follows.²⁸

- a) In Andhra Pradesh: 66,351 claims cast off
- b) Karnataka: 35, 521 ST claims and 1,41,019 OTFD claims rejected
- c) Kerala : 39,999 ST claims and 894 OTFD claims discarded
- d) Tamil Nadu: 7148 ST claims and 1811 OTFD claims rejected
- e) Telangana: 82,075 claims redundant

Prior, the zenith Court in *Samantha v. Arunachal Pradesh And Ors on 11 July, 1997*.²⁹ All applicable section in the Schedule and the rules must be amicably and extensively read as to stretch the Constitutional objectives and self-esteem of person to the Scheduled Tribes and ensuring minimize of injustice as a basic plan thereof. The Court realized that farming is the only spring of livelihood for the Scheduled Tribes distant from compilation and sale of trivial forest produce to complement their revenue. Land is their most imperative usual and precious asset and enduring bequest from which the tribal get their provisions, social status, economic and social parity, undeviating place of residence, labor and living. As a result, tribes have great poignant attachments to their lands.

similarly the summit Court held in the landmark case, *Orissa Mining Corporation Ltd. v. Ministry of Environment and Forest and Ors*³⁰ the court held that “have to tolerate in mind the higher than substance and reasons, whilst interpreting a range of sections of the Forest Rights Act, which is a curative statute. The Act safeguards a extensive assortment of rights of forest inhabitants and STs encompasses the habitual rights to exploit forest land as a community forest supply and not controlled simply to chattels rights or to areas of occupancy. The Act intends to defend custom, tradition, forms, performances and ceremonies which are suitable to the customary practices of forest dwellers.”

Conclusion

To sum up, protection of the forests is one of the vital things the state and every individual ought to do. But the recent move by the Hon Supreme Court order directing expulsion of over a one million tribals and forest dwellers from forest in 17 states could spawn an impact to them. In *Kailas v. State of Maharashtra*,³¹ Need for lenience and alike reverence for, to maintain our country united, pointed out STs being original inhabitants, but constituting about 8% of population, their vulnerability and deplorable status³². This people basically depend on forest produce and also they're in vanguard of promoting eco-

²⁸ ibid

²⁹ <https://indiankanoon.org/doc/1969682/>

³⁰ S.C.R. 881 [2013] 6

³¹ SCC 793(2011) 1

³² ibid

tourism less impact on the environment. Sending them away without proper rehabilitation will be a denial of justice .Finally will the Forest Act prevails over Article 21 of the Constitution right to life and personal liberty?

Reference

1. Vn Shukla, “constitution of india”10th edition ,(lucknow: eastern book company 2007)
2. <https://indiankanoon.org/doc/1969682/>
3. Kailas v. State of Maharashtra Scc 793(2011) 1
4. Orissa mining corporation ltd. V. Ministry of environment and forest and ors S.C.R. 881 [2013] 6
5. www.thenewsminute.com/article/1-million-tribals-face-eviction-forest-lands-did-centres-apathy-cause-crisis-97112
6. https://en.wikipedia.org/wiki/indigenous_and_tribal_populations_convention,_1957¹
https://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no::p12100_ilo_code:c19
7. https://en.wikipedia.org/wiki/wildlife_protection_act,_1972.
8. <https://www.ukessays.com/essays/environmt>
9. [www.wikipedia.org/wiki/the_scheduled_tribes_and_other_traditional_forest_dwellers_\(recognition_of_forest_rights\)_act,_2006](http://www.wikipedia.org/wiki/the_scheduled_tribes_and_other_traditional_forest_dwellers_(recognition_of_forest_rights)_act,_2006)
10. <http://www.moef.gov.in/sites/default/files/introduction-nfp.pdf>
11. <https://ecotourism.org/what-is-ecotourism>
12. www.business-standard.com/article/current-affairs/sc-orders-forced-eviction-of-more-than-1-million-tribals-forest-dwellers-119022000855_1.html