

Indian Forest Laws and their Implication on the Tribal Population

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Abstract

Indian tribal play a key part in constructing the cultural heritage of India. They occupy a major part in the history of India as they are considered true inhabitants of India. The tribal people are scattered in different parts and they form a considerable number of India. There exists a symbiotic relationship between forest and the tribal people. Deforestation, illegal encroachments into forest and development projects in forest area affect the tribal life. Forest legislation has adversely affected the interests of tribal people. The law did not contain adequate provisions to protect their rights in forest. Tribal people have not been destroyers of forest. They use forest resources in a sustainable way. The law relating to forest should permit the tribal communities to exercise their age old rights in forest. Since times immemorial, the tribal communities of India have had an integral and close knit relationship with the forests and have been dependent on the forests for livelihoods and existence. The relationship was mutually beneficial and not one sided. However, rights were rarely recognized by the authorities and in the absence of real ownership of the land, the already marginalized local dwellers suffered. Almost all the tribes in the forest ecosystem have their own socio-cultural pattern, tradition. They depend mainly upon the natural resources of the habitat. so, there should be purposeful efforts to revive and promote the tribal community .

KEY WORDS: Indigenous, Tribal, Ownership, Forest Dwellers, Deforestation, Nomads

“A tribe is a collection of families bearing a common name, speaking a common dialect, occupying or professing to occupy a common territory and is not usually endogamous though originally it might have been so”
Imperial Gazetter

Indian tribal primarily live in various ecological and geo-climatic conditions ranging from plains, forests, hills and inaccessible areas that perhaps lie dotted in the panoramic Indian terrain. According to Article 342 of the Constitution of India at present there exist 697 tribes as notified by Central Government. The history says that India was abode of various tribal groups since the commencement period of India history. It represents an element in Indian society which is integrated with culture mosaic of our civilization.¹

India's forests are home to crores of people, including many Scheduled Tribes, who live in or near the forest areas of the country. Nearly 250 million people live in and around forests in India, of which the estimated indigenous Adivasi or tribal population stands at about 100 million. To put these numbers in perspective, if considered a nation by

¹ Puja Mondal, Article “Essay of Tribes in India” (www.yourarticlelibrary.com)

themselves, they would form the 13th largest country in the world, even though they cannot be depicted as representing any singular, monolithic culture. Forests provide sustenance in the form of minor forest produce, water, grazing grounds and habitat for shifting cultivation. Moreover, vast areas of land that may or may not be forests are classified as "forest" under India's forest laws, and those cultivating these lands are technically cultivating "forest land".²

Majority of Tribal lived in the countryside and relied mainly on Agriculture. From an economic point of view, the tribes could be classified as semi-nomadic, the jhum cultivators and the settled cultivators living completely on forest produce. Forest are main source of sustenance for them. They collect their food from them, use timber or bamboo to construct their houses, collect firewood for cooking and in winter to keep warm, use grass for fodder brooms, mats, collect leaves for leaf plates, use hare behra for tanning and dyeing.³ The illiterate, innocent tribes were absolutely unaware regarding the forest laws and their implications relating to the forest. The forest was their own abode wherein they enjoyed age old rights generation wise. But the forest Act restricted their longstanding rights over it, their movements were restricted, their sustenance of livelihood faced an unwanted storm and was in jeopardy.⁴

The Indian forest Act was enacted by the British Government in 1865 as amended in 1878 and finally in 1927, till the time India was ruled by the British the tribal people of India were mostly neglected and disregarded. They were in utter dismay and their dismissal situation continuing till the Indian Independence.⁵

In 1952 the first Indian Forest Policy in a sovereign State was declared, though it was implemented in 1894 by erstwhile government the Tribes had inadequate importance there. The National Forest Policy of Govt. of India (1952) prescribes that the claims of the communities near forest should not override the national interest that in no event can the forest dwellers use the forest wealth at the cost of wider national interest. The concept of national interest has been applied in narrow sense. A welfare state cannot have a basic contradiction between local and national interest. In the implementation of forest policy, national interest remains confined to augmenting revenue earning from the forest. Whenever the interest of local people or ecological consideration hampered possible revenue from forests, the forest department pushed them aside on the pretext of broader

² Sarin, Madhu "Scheduled Tribes Bill: A Comment" . *Economic and Political Weekly*. 40 (21). (5 May 2005). Retrieved 26 December 2007.

³ Forest Policy and Tribal Development, Cultural Survival, Quarterly Magazine, June 1989.

⁴ Suparna Sanyal Mukerjee "Indian Forest Act and Democracy: Effect on Traditional Tribal System" *Mainstream*, Vol LIV No 18, April 23,2016.

⁵ *Ibid*.

national interest.⁶ In 1988, the Indian forest policy looked into forest conservation, restoration of ecological balance, checking of soil erosion and denudation, scientific management etc. Chronologically it is observed that all the forest policies had had a special space for tribes regarding their restoration and rehabilitation.⁷

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, 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. The object or purpose of the Act for which it is enacted is to provide for recognition and vesting in the Scheduled Tribes, who are having forest dwellings and other traditional forest dwellers who were being residing in such forests from generations without having their rights recorded, the forest rights and occupation in forest land. Similarly, the Act also makes provisions for providing a framework for recording such forest rights and providing nature of evidence which will be required for such recognition and vesting. Moreover, again it provides for recognizing the rights of such people to include responsibilities and authority for sustainable use, conservation of biological diversity, etc. The Act was extended to the entire territory of India, but there is an exception State i.e. the State of Jammu and Kashmir, where the provisions of this Act are not having applicability.

The Act as passed in 2006 has the following basic points.

Types of rights

The rights which are included in section 3(1) of the Act are:

1. Right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;
2. Community rights such as nistar, by whatever name called, including those used in erstwhile Princely states, Zamindari or such intermediary regimes;
3. Right of ownership, access to collect, use, and dispose of minor forest produce(includes all non-timber forest produce of plant origin) which has been traditionally collected within or outside village boundaries;
4. Other community rights of uses of entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
5. Rights including community tenures of habitat and habitation for primitive tribal groups and pre-agriculture communities;

⁶ *Supra* Note 4

⁷ *Supra* Note 5

6. Rights in or over disputed lands under any nomenclature in any State where claims are disputed;
7. Rights for conversion of Pattas or leases or grants issued by any local council or any State Govt. on forest lands to titles;
8. Rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forest, whether recorded, notified or not into revenue villages;
9. Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
10. Rights which are recognised under any State law or laws of any Autonomous Dist. Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;
11. Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
12. Any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses-1 to 11, but excluding the traditional right of hunting or trapping extracting a part of the body of any species of wild animal

These can be summarized as:

- Title rights - i.e. ownership - to land that is being farmed by tribals or forest dwellers as on 13 December 2005, subject to a maximum of 4 hectares; ownership is only for land that is actually being cultivated by the concerned family as on that date, meaning that no new lands are granted.⁸
- Use rights - to minor forest produce (also including ownership), to grazing areas, to pastoralist routes, etc.⁹
- Relief and development rights - to rehabilitation in case of illegal eviction or forced displacement,¹⁰ and to basic amenities, subject to restrictions for forest protection.
- Forest management rights - to protect forests and wildlife¹¹

⁸ Section 3(1) The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

⁹ *Ibid.*

¹⁰ *Ibid.*

Eligibility:

Eligibility to get rights under the Act is confined to those who "primarily reside in forests" and who depend on forests and forest land for a livelihood.¹² Further, either the claimant must be a member of the Scheduled Tribes scheduled in that area¹³ or must have been residing in the forest for 75 years.¹⁴

Resettlement for wildlife conservation:

Section 4(2) of the Act lays out a procedure by which people can be resettled from areas if it is found to be necessary for wildlife conservation. The first step is to show that relocation is scientifically necessary and no other alternative is available; this has to be done through a process of public consultation. The second step is that the local community must consent to the resettlement. Finally, the resettlement must provide not only compensation but a secure livelihood.¹⁵

Duties:

Section 5 of the Act provides for duties of the forest rights holder, Gram sabha, etc. to protect the wild life, forest and biodiversity and to ensure adjoining catchments area, water, etc. are adequately protected, also to ensure preservation of habitat of forest concerned dwellers from any destructive practices and finally to ensure again that decisions of Gram Sabha in regulating the access to community forest resources, etc

Penal Provisions:

Penal provisions, where it is given that, if any authority or Committee or officers or members thereof breaches any provisions of this Act or rule made in pursuance with this Act, then they should be punished under this provision, and penalty should be fine extending to 1000 rupees. For taking cognizance of such offence there should be notice of 60 days to the State Level Monitoring Committee and on such notice if such Committee has not proceeded against such Authority who is default, then only cognizance can be taken by the Court.

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

¹¹ Sections 3(1) and 5 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

¹² Sections 2(c) and 2(o) The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

¹³ Sections 2(c) and 4(1) The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

¹⁴ Section 2(o) The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

¹⁵ Section 3(2) The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

demonstrations involving hundreds of thousands of people.¹⁶ The Act is not a land distribution measure, and further that the Act is more transparent than existing law and so can help stop land grabbing.¹⁷ Regarding wildlife conservation, they have argued that the Act actually provides a clear and explicit procedure for resettling people where necessary for wildlife protection, but also provides safeguards to prevent this being done arbitrarily.¹⁸ They also argue that the provisions in the Act for community conservation will in fact strengthen forest protection in the country. This is said to be because it will provide a legal right for communities themselves to protect the forest, as thousands of villages are already doing in the face of official opposition.¹⁹

A great deal of the debate is fuelled by misunderstandings of the purpose of the Act. The most common is that the purpose of the law is to distribute forest land to forest dwellers or tribals, often claimed to be at the rate of 4 hectares per family. The Act is intended to recognize lands that are already under cultivation as on 13 December 2005, not to grant title to any new lands.²⁰ The Act has been met with much concern and opposition from environmentalists and wildlife conservationists. Some of this opposition has been motivated by those who see the law as a land distribution scheme that will lead to the handing over of forests to tribals and forest dwellers. But the strongest opposition to the Act has come from wildlife conservationists who fear that the law will make it impossible to create "inviolable spaces", or areas free of human presence, for the purposes of wildlife conservation.²¹ Tiger conservation in particular has been an object of concern. However, the law has also been the subject of considerable controversy in the English press in India. Opponents of the law claim it will lead to massive forest destruction and should be repealed. In October 2003, Vanashakti, a group based in Mumbai, ran television advertisements against the Act. This is the first time any Indian legislation has been attacked through a television campaign.²² The group criticised the Forest Rights Act as having the potential to cause huge floods, droughts, and to increase global

¹⁶ Press releases on the Forest Rights Act by the Campaign for Survival and Dignity.

¹⁷ "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006"

¹⁸ Section 4(2) of the act.

¹⁹ Ashish Kothari, "For Lasting Rights". *Frontline*. 23 (26), (30 December 2006).

²⁰ Shankar Gopalakrishnan, IANS "Forest Rights: Why the New Law Needs to be implemented".

²¹ Thapar, Valmik "Conflict will go up by 10000 per cent", *Daily News and Analysis* 23 December 2007.

²² Sethi, Nitin. "Activists Come Out With Ads to Slam Forest Act", *Times of India*, 23 October 2007.

warming.²³ They also decried it as an effort to keep "tribals in the forest" instead of assisting their "development."

While supporting the principles of the law, forest rights supporters are not entirely satisfied with the law as finally passed. The recommendations of a Joint Parliamentary Committee on the law were partly rejected, and supporters of forest rights have claimed that some of the rejected clauses were important. In particular, the final form of the law is said to make it easier to exclude some categories of both tribal and non-tribal forest dwellers, to have undermined the democratic nature of the processes in the Act and to have placed additional hindrances and bureaucratic restrictions on people's rights.²⁴ The Campaign for Survival and Dignity described the final form of the law as "both a victory and a betrayal" in their official statement on the occasion.²⁵

All of the key features of this legislation have been undermined by a combination of apathy and sabotage during the process of implementation. In the current situation the rights of the majority of tribals and other traditional forest dwellers are being denied and the purpose of the legislation is being defeated. Unless immediate remedial measures are taken, instead of undoing the historical injustice to tribal and other traditional forest dwellers, the Act will have the opposite outcome of making them even more vulnerable to eviction and denial of their customary access to forests... both the Central and the State governments have actively pursued policies that are in direct violation of the spirit and letter of the Act."²⁶

Developmental Programmes construction of roads, availability of education, and medical, housing facilities have allowed economically viable outsiders to enter forest regions in order to make quick profits they have exploited the tribals. The various development programmes and tribal welfare schemes of the Government have by and large failed to make any dent in the deterioratory conditions of the tribals. The crux of the problems lies in misdirected policy and its half hearted implementation. The forest department blames the tribal wanton and indiscriminate destruction of wild vegetation and wild life. The attitude of the department in many states is found to be one of callousness, indifference and neglect towards tribals. Moreover the forest department practice of serving eviction

²³ Vanashakti.com

²⁴ Prasad, Archana . "Survival at Stake". Frontline. 23 (26), 30 December 2006.

²⁵ Campaign press release

²⁶ Summary Report on Implementation of the Forest Rights Act, Council for Social Development, posted on Campaign for Survival and Dignity website.

notices to the tribal encroachers and fining them operated as great hardship to tribals. Illiteracy and poor economic conditions make them even more vulnerable.²⁷

Huge amount have been spent in implementation of forest laws/policies, But because of bureaucratic red tape, inadequate facilities for land reclamation, soil conservation, the exploitation of tribals, the schemes have by and large failed. These should be in line with custom, habits, religious practices and belief of forest dwellers.²⁸

Moreover the Forest Right Act 2006 also accepted that it was “Historical Injustice” to own fellow citizens by the governance. Thus, the forest based Tribes and their traditional system of livelihood have gradually declined and degenerated towards customary methods of livelihood sustenance. Today’s Tribal situation in India is riddle with conflicting tendencies, which weaken the effectiveness of the democratic system. The sequel does not solicit that these men be pushed back to history, it only points to the fact that if the traditional system is ignored and not taken proper care of there is every possibility that the tradition may be obliterated, which is not what is propagated by democracy.²⁹

J&K awaits extension of Forest Act

Owing to its special position, under article 370 of Constitution of India, the state of Jammu and Kashmir has not extended the Forest Right Act 2006 till date, though it was largely implemented in all most all the states of India. In absence of forest rights, around 12 Scheduled Tribe communities are facing a lot of hardship including evocation from land by Forest department from time to time. They are demanding extension of ‘Forest Rights Act-2006’ enacted by Indian Parliament to the J&K so that they can also have rights on forest lands as are constitutionally available to other STs across the country. Fighting for their rights, the members of different tribal communities have been raising the issue at different forms. They are pleading that the government should follow the other state’s model to settle nomads especially to rehabilitate the nomadic Gujjars-Bakarwals’ who are the main forest dweller community of the state.³⁰

Recently, there is a Bill namely, ‘The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Bill, 2014 which was tabled before the House of People for seeking amendments in this Act. The only change in the amending bill is in the definition of the term ‘Other traditional forest dwellers’ which was

²⁷ Forest Policy and Tribal Development, Cultural Survival, Quarterly Magazine, June 1989.

²⁸ *Ibid.*

²⁹ Suparna Sanyal Mukerjee “Indian Forest Act and Democracy: Effect on Traditional Tribal System” Mainstream, Vol LIV No 18, 23 April, 2016.

³⁰ Dr. Javed Rahi Article “Granting Tribal and Forest Rights to the Tribes of J&K”, Nov 17 2016.

originally defined as includes every member or community who has resided in the forest for bona fide livelihood needs for at least three generations prior to the 13th December, 2005. Now the proposes definition is to include any member or community who has primarily resided and has engaged in agriculture on the forest land or who depend on the forests or forest land for bona fide livelihood needs.

On the occasion of the inauguration of 'National Tribal Carnival' on October 25th, 2016,

in New Delhi, the Prime Minister, Shri. Narendra Modi exclusively praised the tribes of India which marked intense struggle throughout their life. He declared them as ideals of community living, and of living cheerfully despite many troubles. He also complimented the nomadic communities for their role in the conservation of forests in India. He said, if we have to protect Jungles we should utilize tribes. He further said that the inheritance of tribes is largely based on forests as they are the real custodian of forests. Prime Minister stated that the livelihood of tribes is largely based on forest, though they have no written record of their land dwell in and due to this they are facing difficulties. He said his government is committed to give rights to tribes and center with the help of State Governments allotted lands / Pattas of forest to Tribes for the reason that they must get due privileges. He said nobody will be allowed to dislocate the tribes from their inherited lands, owned by them traditionally. He said my government will take serious steps in this direction. Tribes should get ownership on forest lands, as the Jungles are a part of their life and livelihood which could not be separated at all.

Suggestions

So it can be suggested that Care should be taken to see that the tribal members are not made tools by plainmen to smuggle timber and other valuable forest produce. In the present deteriorated condition of Indian forest, the tribal people need not be encouraged to practice shifting cultivation. They should be trained in modern cultivation methods. Draining tribal people in making useful fancy articles out of bamboo and other forest produce will reduce the problem of unemployment among the tribal people. Tribal people displaced when development projects are undertaken should be properly resettled. Instead of resettling tribal people at places chosen by the Government, the tribal members should as far as possible be permitted to select areas of their choice. This will enable them to easily adapt themselves to the new surroundings. The task of forest protection can be effectively and successfully carried out if the Forest Department seeks co-operation and involvement of tribal people. Tribal members should be employed in sufficient number in the Forest Department as watchmen and guards. For appointment the minimum educational qualifications should be relaxed in the case of tribal candidates. If possible, they should also be given higher posts. The traditional tribal wisdom has to be meaningfully and profitably used in the protection and management of forest.

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