



7. The Tribal Rights in India: A Study

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Abstract

India has the largest population of tribals in world. They have lived in forests and used it as their habitat from time immemorial. However they were never given any right over their land. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is an attempt to do away the historical injustice.

This Act recognizes their rights over land they have lived upon. It recognizes and vests the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded. It also provides for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land. This Act is a Light in Tunnel for the Scheduled Tribes and other traditional forest dwellers.

(1) Introduction

Tribals or *Adivasis* are a primitive community or pre-literate society in which kinship plays a very important role. In India, there is a large population of tribes which is scattered in almost all parts of country. Indian tribes constitute roughly eight per cent of the population of India.¹ The states in central India have seventy five per cent of the total tribes' population. The Government of India has recognized 573 tribal communities as Schedule Tribes. It has the largest population of the world but unfortunately, the most exploited and disadvantaged community.

Tribal live in forests and use forest area as their habitat. In fact, tribes and forest are closely associated with each other. Forests are their home. Tribal people used to have many traditional rights over forest. They earn their livelihood from forests. They depend on forests for almost everything. They protect the forests and forest protects them.²

The Government of India promulgated the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act³, 2006. This Act also called the Tribal Rights Act, the Forest Right Act, and the Tribal Land Act.⁴

¹ 1991 Census

² B. R. Jindal, K. L. Toky & Paramjit S. Jaswal, *Environmental Studies*, (1997) p. 316

³ Act no. 2 of 2007. The objective of the Act has set out in *preamble* which reads that "an Act to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to



This historical Act saw hardly any opposition in Parliament in the course of its passing. The Act introduced on December 13, 2005, took two years in the process and was notified only on January 1, 2008. Strangely, the Act was opposed by the environmentalists and Ministry and Environment and Forests as human activities in the forest land would be a great risk to the forests.

The Act aims to compensate the "historical injustice" done to forest-dwelling tribes that were denied their traditional rights to forest lands and resources in the last couple of hundred years. In this period, the lands they had been dwelling on were declared "forest land" or "protected areas" for wildlife.

The traditional conservation ethos and dependence of tribal societies on forest land were overlooked. The Act aims to reverse the alienation of tribes from their own habitat caused by past policies and laws.

(2) General Background of the Act

The Tribal Rights Act concerns the rights of forest dwelling to land and forests. These rights has denied to them over decades as a results of the continuance of colonial forest law in India. This Act is a welcome venture and laudable step to restore the rights of the indigenous people of India. This Act is the result of international developments⁵ and also some pronouncements and directive made by the Supreme Court of India⁶ to ascertain and recognize the rights of inhabitants of the forest area and preserves their identity and culture. The National Forest Policy, 1988 and the National Policy on Tribals, 2004 have also motivated the Parliament to pass this Act. The Act is the result of constitutional mandate.⁷

This Act is being administered by the Ministry of Tribal Affairs, seeking to recognize and vest the forest rights and occupation in forest land in *Forest Dwelling Scheduled Tribes*⁸ and other traditional forest dwellers⁹ who have been residing in such forests for generations but whose rights could not be recorded, has been notified for operation with effect from 01.12.2007. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of

provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.”

⁴ Here in after referred to as the Forest Right Act.

⁵ E.g., United Nations Declaration the year 1993 as International Year for World’s Indigenous People; UNDP Policy programme of 2001; Johannesburg Conference of 2002; United Nations Declaration of Rights of Indigenous People, 2007.

⁶ Banawasi Sewasram vs. State of UP, AIR 1987 SC374, (1986) 4 SSC 753; Banawasi Sewasram vs. State of UP, (1987) 3 SSC 304; Banawasi Sewasram vs. State of UP, AIR 1987 SC 374; P Rami Reddy vs. State of Andhra Pradesh, AIR 1988 SC 1626, (1988) 3 SCC 433; Banawasi Sewasram vs. State of UP, (1992) 2 SCC 202; Samatha v. Arunachal Pradesh (1997) 8 SCC 191.

⁷ Articles 29 (1), 164 (1), 244, 244 -A, 275 (1) and Schedules V & VI of the Constitution of India.

⁸ “Forest dwelling Scheduled Tribes” means the member of community of the scheduled tribes who primarily reside in and who depend on the forest or forest lands for confide livelihood need and includes the Scheduled Tribes pastoralist communities, as provided in “The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Section 2(c).

⁹ Sections 2 (o) of the Act defines ‘other traditional forest dwellers’ as any member or community who has for at least three generations prior to 13th December, 2005 primarily resided in and who depends on the forest or forest land for bona fide livelihood needs.



Forest Rights) Rules, 2008 for implementing the provisions of the Act have also been notified on 1.1.2008.¹⁰

The Ministry of Tribal Affairs is the nodal Ministry responsible for monitoring the status of implementation of the Act and Rules. As per the Status Reports received from the Ministry of Tribal Affairs as on July 2011 12.02 lakh titles have been distributed. The Ministry, to ensure that the intended benefits of this welfare legislation flow to the eligible forest dwellers, has also issued comprehensive guidelines to the State/UT Governments on 12.7.2012 for better implementation of the Act. Further, to strengthen the Forest Right Rules, 2008, the Ministry has also notified *the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012* on 6.9.2012.

As per the Act and the Rules notified there under, the responsibility for recognition and vesting of forest rights and distribution of land rights rests with the State/UT Governments. After operationalisation of the Act and notification of the Rules, the Ministry of Tribal Affairs had addressed the State/UT Governments on 11.1.2008 to initiate necessary action for implementing the Act, as per a time-bound schedule. Subsequently, actionable points along with the timelines were also forwarded to all the States/UTs for implementation of the Act. They were directed to take all necessary steps to create awareness about the objectives, provisions and procedures of the Act and the Rules amongst the forest dwelling Scheduled Tribes and other traditional forest dwellers and the concerned authorities under the Act. They were advised to ensure translation and publication of the Act and the rules in all the regional languages and arrange their distribution to all Gram Sabhas, Forest Rights Committees and all departments of the Government including Panchayati Raj, Rural Development, Tribal and Social Welfare and Forest Departments, and to undertake the orientation of officials, civilian representatives and non-Government organizations in the State, who can then be called upon to assist as resource persons in the awareness programs, etc.¹¹

The progress of implementation of the Act is being monitored by the office of the Prime Minister, Cabinet Secretariat and Planning Commission through monthly progress reports being sent by the Ministry of Tribal Affairs. The Ministry of Tribal Affairs is also reviewing the progress of implementation of the Act periodically by convening review meetings of State Secretaries/ Commissioners of Tribal Welfare/Development Departments.

The rights proposed to be accorded to tribal and other traditional forest dwellers include pattas to forest lands occupied before 1980. This is not new; it has been a stated policy of the government for years now. A number of other rights are also to be granted: nistar (usufruct) or ownership rights to forest resources, grazing rights including seasonal ones of nomadic communities, habitation rights (for those classified as Primitive Tribal Groups), conversion of forest villages into revenue villages, and so on. No tribal person is to be evicted from currently occupied land until the process of determining rights is completed.

¹⁰ Annual Report 2010-11, Ministry of Tribal Affairs Government of India.

¹¹ Annual Report 2010-11, Ministry of Tribal Affairs Government of India.

Under the Act these rights are accompanied by responsibilities for forest protection. Tribal and other traditional forest dwellers have the duty to conserve forests and wildlife, protect catchment areas, water sources, and ecologically sensitive areas, and inform the gram sabha of ecologically destructive activities. Hunting is explicitly excluded from the list of forest rights. All rights recognized under the Act are meant only for bona fide livelihood needs, not for exclusive commercial purposes. In no case would forest land beyond 2.5 hectares be allotted (only land under occupation prior to 1980 can be considered, no new forest lands would be allotted).

(3) Forest Right of the Forest Dwellers

Section 3¹² of the Act lists the rights which shall be the forest rights of the forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers. These forest rights are:

- 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 Tribes or other traditional forest dwellers;
- community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;
- right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
- other community rights of uses or 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;
- rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities¹³;
- rights in or over disputed lands under any nomenclature in any State where claims are disputed;
- rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;
- rights of settlement and conversion of all forest villages, old habitation, unsure villages and other villages in forests, whether recorded, notified or not into revenue villages;
- right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
- rights which are recognized under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribal under any traditional or customary law of the concerned tribes of any State;

¹² Section 3 of the Act has conferred 13 forest rights to the forest dwellers and tribal living in forests.

¹³ Pre-agricultural communities are shifting cultivators, hunters, gatherers etc.

- right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
- 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 clause (a) to (k) of section 3 of the Act, but excluding the traditional animal;
- Right to rehabilitation including alternative land in cases where the Scheduled Tribes and other Traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.

(4) Recognition, Restoration and Vesting of Forest Rights

Section 4¹⁴ of the Act has specifically recognized if the indigenous/tribal people are living in critical wildlife habitats of national parks and sanctuaries and they are to be shifted, such migration/shifting will not be allowed unless-

- A settlement or alternative package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities given in the relevant laws and the policy of the Central Government;
- The free informed consent of the Gram Sabha of the area for the proposed resettlement and to the package has been obtained in writing;
- The facilities and land location at the resettlement location have been completed as per promised package;
- The State Government has concluded that other reasonable options, such as, co-existence are not available.

Thus, for the first time, some right to settlement and settlement procedure has been provided by the Act. The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the FCA, requirement of paying the “net present value” and “compensatory afforestation” for diversion of forest land, except those specified in this Act. Therefore, it can be said that the Act is welcome venture in this field, may be late but laudable action¹⁵

(5) Duties of Holders of Forest Rights

Rights and duties both are reciprocal. The Act has assigned the duties of forest dwellers. According to Section 5, the holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to-

- protect the wild life, forest and bio-diversity;
- ensure that adjoining catchment area, water sources and other ecological sensitive areas are adequately protected;

¹⁴Rights against special being moved out by force Protected Areas.

¹⁵Prof. Satish.C.Shastri, *Environmental Law*, (2012), p. 336.



- ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their natural and cultural heritage;
- Ensure that the decision taken in the *Gram Sabha* to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity.

(6) Establishment of Gram Sabha

Section 4 of the Act provides that *Gram Sabha* shall be the authority to initiate the process for determining the nature and extent of individual or community forest right that may be given to the forest dwelling scheduled tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act.

Any person aggrieved by the resolution of *Gram Sabha* may file an objection (petition) to the Sub-Divisional Committee constitute under Section 6(3). An appeal against the decision of the Sub-Divisional Level Committee's decision shall lie to the District Level Committee. As on 31-12-2012, the total number of claims filed under FRA is 32, 37,656 out of which 27, 91,330 claims have been disposed of and 12, 79,076 titles have been issued. Odisha has the distinction of issuing highest number of titles which is 3, 01,200 (3, 00,321 individual titles and 879 community titles). Maharashtra has the distinction of having highest forest area over which titles have been issued under this Act. The total forest area over which title has been issued in Maharashtra is 6, 35,915.57 acres.¹⁶

(7) Achievements of the Act

Some of the achievements of this Act are following:

- it protects natural habitat and culture-heritage of tribal;
- it is an indirect endeavour towards poverty alleviation;
- it seeks to ensure a secure livelihood to the tribal inhabitants and other forest dwellers and their community;
- it seeks to empower and strengthen the local self-Government by investing the *Gram Panchayats* with the power of control over forest land decision-making in regard to disposal of such land;
- It addresses the vital issues of conservation and management of forests which are an important resource for meeting the multifarious needs of the people.

(8) Judicial Contributions: Selected Cases

The judiciary has also taken due care in recognition of the rights of the tribes while disposing of cases respecting the forest. In *M. Prabhakar Reddy v. State of Andhra Pradesh*,¹⁷ the Andhra Pradesh High Court held that sawn timber being forest produce

¹⁶ Annual Report of 2012-2013 p. 212.

¹⁷ AIR 2006 AP 386, pp. 387-388. The subordinate court held that collecting of compounding fee on transporting sawn teak woods is illegal as sawn timber is not forest produce.



requires trans permit. The tribal seldom are engaged in timber business. According to the court, the levy on sawn teak is never against the interests of tribal people.

In *Iswar Chandra Gupta v. State of U. P.*¹⁸, the Allahabad High Court pronounced that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is in addition to Forest Act, 1927 and the two Acts run not derogatory to each other. These Two Acts run in different field and there is no inconsistency between provisions of these Acts. In this case, petitioners were running a shop in a forest area since 1928 and they could not prove themselves as forest dweller, or Scheduled Tribe or traditional forest dweller. Therefore, they were denied the right to continue their possession over forest land with their non-forest activity.¹⁹

In most important recent case of *Orissa Mining Corporation Ltd. vs. Ministry of Environment & Forest & Others*²⁰, the Supreme Court of India has adapted an approach which promotes and protects tribal rights. They have interpreted the FRA 2006, to give tribal every right over their lands.

In this case, the State of Orissa Undertaking, has approached the Supreme Court seeking a Writ of Certiorari to quash the order passed by the Ministry of Environment and Forests (MoEF) dated 24.8.2010 rejecting the Stage-II forest clearance for diversion of 660.749 hectares of forest land for mining of bauxite ore in Lanjigarh Bauxite Mines in Kalahandi and Rayagada Districts of Orissa. This case relates to “primitive tribal groups” of Dongaria Kondh and their rights over Niyamgiri hills.

It was asserted by the petitioners that the “Alumina Refinery Project” and the “Bauxite Mining Project” are totally separate and independent of each other and the violation of any statutory provision or a condition of environmental clearance by one cannot be a relevant consideration for grant of Stage II clearance to the other.

The Supreme Court refused to accept such assertion since there was sufficient materials on record to show that the two projects make an integrated unit. In the two earlier orders of the Supreme Court (in the *Vedanta* case and the *Sterlite* case) also the two Projects were seen as comprising a single unit. The Supreme Court observed that the Alumina Refinery Project and Bauxite Mining Project are interdependent and inseparably linked together and, hence, any wrong doing by Alumina Refinery Project may cast a reflection on the Bauxite Mining Project and may be a relevant consideration for denial of Stage II clearance to the Bauxite Mining Project.

The Apex Court referring to the Constitutional provisions observed that: “The object of the Fifth Schedule and the Regulations made there under is to preserve tribal autonomy, their cultures and economic empowerment to ensure social, economic and political justice for the preservation of peace and good Governance in the Scheduled Area.”

¹⁸AIR 2011 All 88.

¹⁹Satish.C.Shastri, *Environmental Law* (2012), p. 323.

²⁰ Writ Petition (Civil) No. 10 OF 2011 Judgment delivered on April 18, 2013.



The Constitution of India recognizes pre-existing rights of the tribal people. There are classified areas in to three categories, namely, tribal areas, scheduled areas and areas not falling within these two. In *Samatha vs State of Andhra Pradesh And Others*,²¹ where the appellant Society claiming to protect the interests and life of the scheduled tribes in the area, filed the writ petitions questioning the power of the Government to grant mining leases in favor of non-tribal in the scheduled area, in violation of the Regulation which prohibits transfer of any land in scheduled area to a non-tribal.

In this judgment the Court declared that the word 'person' would include both natural persons as well as juristic person and constitutional government and that all lands leased by the government or its agencies to private mining companies apart from its instrumentalities in the scheduled areas are null and void. In addition it also held that transfer of land to the government or its instrumentalities is entrustment of public property as the aim of public corporations is in public interest and hence such transfers stand upheld. *K. Ramaswamy J.* observed that:

*"The tribals have fundamental right to social and economic empowerment. As a part of right to development to enjoy full freedom, democracy offered to them through the States regulated the power of good Government that the lands I scheduled areas preserved for social economic empowerment of the tribals."*²²

(8) Conclusion

The Forest Right Act, 2006 is a welcome step towards aspirations of the considerable population of our country. The need of the time is that this Act be implemented in its proper spirit. This Act is perhaps the first legislation which acknowledges the symbiotic relationship between forest and tribal. They had certain traditional rights over the forests which have now been statutorily recognized under Section 3 the said Act. It was rather unfortunate that the British Government-made forest laws did not nurture any sympathy for forest dwellers rights and treated tribal no more than mere wage-earners. Even after the Indian Independence, the Government formulated policy of reserving the forests depriving the tribal of their traditional rights and privileges.

The forest land was indiscriminately used for non-forest purposes, mostly for commercialization under the control of the Government. Therefore, the Government policy worked against the tribal.²³ This approach of the Government towards forest tribal dwellers is well reflected in the cases of *Fatesingh Gimbavasava v. State of Gujarat*²⁴ and in *Suresh Lohiya v. State of Maharashtra*.²⁵

The review of judicial approach towards forest conservation and environment protection involving community's right over natural resources has brought to surface the fact

²¹AIR 1997 SC 3297.

²²Ibid. at 3330.

²³V.S.Saxena, Social Forestry and Tribale Development, (1996) p. 39.

²⁴AIR 1987 Guj 9.

²⁵(1996) 10 SSC 397.



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that the judiciary has been firm in forest conservation and wildlife protection irrespective of the parties involved in degrading forest resources thereby posing threat to wildlife habitats.

The judiciary has also shown concern for the traditional rights and claims of the villagers and tribal people over the use of forest resources for their livelihood but in some cases it has felt that if these people are posing a threat to wildlife and degradation of forest resources then state must take urgent steps to prevent any destruction or damage to the environment, flora and fauna and wildlife in those areas.

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