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The Need To Safeguard Tribal And Indigenous Communities And Their Role In Conservation Of Environment, With Reference To Forest Rights Act Of India

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Abstract

Background: The role of the tribal and indigenous communities in maintaining ecological balance and biodiversity is often overlooked and undermined. The tribal communities, if allowed to function autonomously, can provide a stimulus to ecological restoration. The aberration in the growth of industrialisation and urbanisation imposes serious threats on their livelihood, culture, and identity of these communities. Therefore, preserving the pristine form of lifestyle of these communities is even more important. Hence, there is a need to analyse the standing/status of such communities in India and across the world, by understanding their legal representation and the ambit of their autonomy, with reference to the Forest Rights Act which is a benchmark on the issue.

Objectives: The paper attempts to study the interrelation between Tribal communities and the ecological balance and analyses the legal standing of these communities in India and overseas. The paper attempts to formulate such an analysis by studying the implementation of Forest Rights Act for exercise of the rights of such communities and the contemporary status of such rights.

Method: The study relies on the various statutes, legislations, policies, treaties, conventions and declarations, corresponding to both national and international jurisdiction. The detailed analysis of the conducted research and analysis is also taken into consideration, in the process of our research.

Findings & Applications: We find that the congruity of Tribal communities and environment is not a myth but a reality. We find that although India has relied on its numerous acts and legislations to curtail the backwardness of tribal communities, discrimination against such sections of society still exists. We also delve into the International conventions and declarations formulated for the tribal rights and the legislations and treaties adopted by different countries to foster tribal rights.

KEYWORDS: Tribal Rights, Indigenous Communities, Forest Rights Act, Biodiversity, Ethnicity.

1. Introduction

For forest dwelling communities in India, which are mostly the Scheduled Tribes, forests are their means of survival.¹ As of 2019, India's total forest cover is 21,67% of the total geographical area of the country, whereas the tree cover is 2.89% of the total geographical area². A Government of UK publishing claims -only 12% of India's forest cover has dense forests; because the State claims ownership over uncultivated land to control the access of indigenous/tribal communities to forests.³ After the 42nd Amendment of the Indian Constitution⁴, when forests were moved from the State List to the Concurrent List, the Centre has staked control over increasing forest land, evicting indigenous communities in the process⁵. Despite various legislations a dispute arises between tribals and the State for forest rights. This is because the definition and demarcation of forests has been done using subpar procedures, policies tend to undermine the ability of tribal communities to protect forests and due to centralised administration of forests, the benefits of many welfare legislations do not percolate down to the forests and forest-dwellers⁶.

Tribal communities have a customary and traditional history for protecting their local forest

¹ ID 21 Natural Resources Highlights. (2006)

<https://assets.publishing.service.gov.uk/media/57a08c43e5274a27b20010b7/id21Forestry2.pdf>

² Indian State of Forest Report (2019). *Forest Survey of India*. (Vol. 1 pg 12)

<https://static.pib.gov.in/WriteReadData/userfiles/ISFR2019%20Vol-1.pdf>

³ ID 21 Natural Resources Highlights. (2006)

<https://assets.publishing.service.gov.uk/media/57a08c43e5274a27b20010b7/id21Forestry2.pdf>

⁴ Constitution of India, 1950 (42nd Amendment Act)

⁵ ID 21 Natural Resources Highlights. (2006)

<https://assets.publishing.service.gov.uk/media/57a08c43e5274a27b20010b7/id21Forestry2.pdf>

⁶ ID 21 Natural Resources Highlights. (2006)

<https://assets.publishing.service.gov.uk/media/57a08c43e5274a27b20010b7/id21Forestry2.pdf>

resources due to their dependency on it⁷. The fact that the State has destroyed 90% of natural grasslands by planting non-local trees and declaring them as “forests”,⁸ shows the government’s need for the tribal communities’ knowledge to protect our forests. The Symington committee’s recommendation in the 1940s (to include local communities in collecting forest produce) and the Government’s policies for Joint Forest Management in⁹ recent years have shown that the government too recognizes this need. the Committee on Forests and Tribal in India (1982) stated that “they are not only forest dwellers but also for centuries they have evolved a way of life which, on the one hand, is woven around forest ecology and forest resources, on the other hand, ensures that the forest is protected against the degradation by man and nature”¹⁰

Thus, due to the lifestyle of the tribal populace, their knowledge of forests, misguided forest laws and difficulty in percolation of central policies to local communities and forests – there seems an inherent need for the inclusion of tribal communities in forest management.

1.1. REVIEW OF LITERATURE

1. Singh B.P. (2017)¹¹ highlighted through his work how the coexistence of cultural diversity and biodiversity is congruous. He analysed that Tribal communities are a very integral part of the whole system and their continuous interaction with nature is necessary for maintaining biodiversity. He also shows a conflict of interest between preservation of the tribal culture and the millennium development.

⁷ Rajiv Rai R. and Vijendra Nath V., (2003). “THE ROLE OF ETHNIC AND INDIGENOUS PEOPLE OF INDIA AND THEIR CULTURE IN THE CONSERVATION OF BIODIVERSITY.” *FAO*. (1086-A1)
<http://www.fao.org/3/xii/0186-a1.htm#fnB1>

⁸ ID 21 Natural Resources Highlights. (2006)
<https://assets.publishing.service.gov.uk/media/57a08c43e5274a27b20010b7/id21Forestry2.pdf>

⁹ Forest Policy and Tribal Development, (1989). *Cultural Survival Quarterly Magazine*.
<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/forest-policy-and-tribal-development>

¹⁰ Tripathi, Prakash. (2016). Tribes and Forest: A critical appraisal of the tribal forest right in India. *Research Journal of Social Science and Management*.
https://www.researchgate.net/publication/308794288_Tribes_and_Forest_A_critical_appraisal_of_the_tribal_forest_right_in_India

¹¹ Singh, Bir. (2017). “Biodiversity, tribal knowledge, and life in India.” *Environment and Social Psychology*. (Vol.2)
https://www.researchgate.net/publication/318742287_Biodiversity_tribal_knowledge_and_life_in_India

2. Nayak J.K. (2016)¹² states in his research paper that one of the most essential steps to conserve the biodiversity of an area concerned should be to include the Tribal and indigenous people in the policy making. The tribal communities should have a fair access to natural resources on their lands so as to maintain an ecological balance.

3. Rajiv Rai R. and Vijendra Nath V. (2003)¹³ introduces the perspective of the link between environment and tribes. They explain how tribes preach the flora and fauna of their respective territories and are dedicated to always preserve them. They state that Indian Tribes have historically made efforts to protect the biodiversity, which tends to be tarnished owing to rapid industrialisation and urbanisation.

1.2. RESEARCH METHODOLOGY

1.2.1 RESEARCH METHODS

The research is based on both primary and secondary sources of information. The primary sources of data are various statutes, legislations, policies, treaties, conventions and declarations (national and international jurisdiction). The secondary sources of data include various articles, research papers, surveys and reports, prepared and analysed by other researchers.

1.2.2 OBJECTIVES

Through our paper we attempt to:

- Analyse community forest management by the tribal populace, with reference to the Forest Rights Act, 2006.
- Analyse the role of judiciary in ensuring tribal welfare.
- Analyse the legal position and the magnitude of protection provided by the International conventions and Legislations of different countries to tribal communities.

¹² Nayak, Jayanta. (2016). AN ANTHROPOLOGICAL OBSERVATION ON THE ROLE OF TRIBAL COMMUNITIES IN THE CONSERVATION OF BIODIVERSITY. *European Journal of Environmental Ecology*. https://www.researchgate.net/publication/309732041_AN_ANTHROPOLOGICAL_OBSERVATION_ON_THE_ROLE_OF_TRIBAL_COMMUNITIES_IN_THE_CONSERVATION_OF_BIODIVERSITY

¹³ Rajiv Rai R. and Vijendra Nath V., (2003). "THE ROLE OF ETHNIC AND INDIGENOUS PEOPLE OF INDIA AND THEIR CULTURE IN THE CONSERVATION OF BIODIVERSITY." *FAO*. (1086-A1) <http://www.fao.org/3/xii/0186-a1.htm#fnB1>

2. Findings And Discussions

2.1 Analysis of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The Forest Rights Act (FRA), 2006 acknowledges the rights of tribal societies inhabiting forests and other forest inhabitants traditionally dwelling here to its resources that these societies relied on for various needs, mainly subsistence, residency and others that are social and cultural in nature.¹⁴

Under the Act, the Gram Sabha's power allows the tribal populace to have a crucial part in deciding local schemes and policies that would affect them. The Act thus empowers forest inhabitants to access and utilise forest resources in their traditional manner, to safeguard, preserve and maintain forests, defend forest inhabitants from illegal evictions and also basic development facilities for the community of forest inhabitants to access facilities like health, education, infrastructure, nutrition etc.¹⁵

Impacts of FRA in Andhra Pradesh:

Historically, tribal communities have depended upon forests for their subsistence, cultivation and forest product collection. Example - numerous tribal communities employ the practice of shifting cultivation in upland forests (podu).¹⁶

Kondareddy, Chenchu, Savara, Kondh, Gadaba and Porja, are categorised as Particularly Vulnerable Tribal Groups (PVTGs) in Andhra Pradesh. According to the FRA Rules amendment, 2012, the District Level Committee (DLC) headed by the District Collector has to safeguard the PVTG's habitation rights. But despite one claim that was filed by the Chenchus, the Government

¹⁴ Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006 (Ind.)

¹⁵ Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006 (Ind.)

¹⁶ Reddy et al (2010) Reddy Gopinath, Anil Kumar K. Trinadharao P and Oliver Springate Baginski. "Obstructed Access to Forest Justice. The implementation of Institutional Reform (FRA-2006) in AP Forest Landscapes, CESS, Hyderabad." *CESS MONOGRAPH*. <https://cess.ac.in/wp-content/uploads/2019/10/Monograph-No.13.pdf>

has not recognised a single habitat right of PVTGs under the FRA thus far. Violating the Forest Rights Act, forest officials evict tribal families and PVTGs.¹⁷

The Forest Rights Act and the Panchayat (Extension to Scheduled Areas) Act have been violated, when by May 2010, the Andhra Pradesh government, instead of the Gram Sabhas, granted the Community Forest Resource (CFR) rights titles of more than 9.43 lakh acres of forest lands to around 1,669 Vana Samrakshana Samithis (VSS) .¹⁸ This has resulted in a drastically decreased forest area that the indigenous tribes have access to, and subsequently voiding their valid claims to this vast area of land that should have been theirs by law.

The rights over ownership of non-timber forest product (NTFP) for communities and its discarding is recognized in Section 3(1)(c) of the FRA which is detailed further in the amended FRA Rules, 2012.¹⁹ Therefore, the Gram Sabha and individuals from the tribal community are granted absolute command over forest goods that are minor in nature without any constraints in their acquisition, access and discarding. However, despite permitting monopoly rights of Girijan Cooperative Corporation (GCC) over NTFPs being a gross undermining of the FRA's provisions, it is an AP policy that has persisted regardless.²⁰

2.2 Role of Judiciary

The Indian Courts have followed the legislators in terms of recognition of tribal rights over forests and forest produce. In the case of *Fatesang Gimba Vasava v. State of Gujarat*²¹, it was ruled that bamboo chips are different from bamboo grass, and hence can be transported and sold to tribal communities at lower prices without violating Indian Forest Act, 1927. In *Sri Manchegowda v. State of Karnataka*²², the court ruled against the private entity attempting to purchase tribal land upholding the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands Act), 1978 and constitutional rights of the tribal people. The Court in *Lingappa*

¹⁷ Trinadha Rao Palla, (Jun 26, 2016). *Defying law to uproot tribals from their habitat*. The Hans India. <https://www.thehansindia.com/posts/index/News-Analysis/2016-06-26/Defying-law-to-uproot-tribals-from-their-habitat/237600>

¹⁸ FRA (2006) https://www.fra.org.in/document/Andhra%20Pradesh_Promise%20and%20Performance.pdf

¹⁹ Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006 (Ind.)

²⁰ FRA (2006) https://www.fra.org.in/document/Andhra%20Pradesh_Promise%20and%20Performance.pdf

²¹ *Fatesang Gimba Vasava And Ors. vs State Of Gujarat And Ors*, AIR 1987 Guj 9

²² *Manchegowda Etc vs State Of Karnataka Etc*, 1984 AIR 1151

Pochanna v. State of Maharashtra²³, in the constitutional spirit of distributive justice, upheld the Maharashtra restoration of Lands to Scheduled Tribes Act, 1974 and allowed for land sold to non-tribal persons to be restored to the original tribal owner.

Despite several cases where courts have ruled against tribal land acquisition, the Supreme Court rulings in certain cases have displaced a large number of tribal families. In Narmada Bachao Andolan v. Union Of India²⁴, the Supreme Court ruled for the displacement of lakhs of tribal families, putting developmental interest above community welfare. The rehabilitation of the displaced is still incomplete. A similar decision for displacement of tribal population in an ecologically fragile area, disregarding the report of an environment committee was made in Dahanu Taluka Environment Protection Group v. Bombay Suburban Electric Supply Ltd Case²⁵. In 2019, a case was brought to the Supreme Court due to the rejection of forest rights of various forest fringe communities by the Gram Sabhas and state authorities. The SC ordered the eviction of over 1 lakh tribals in this case²⁶. The Karnataka government took cognisance of tribal welfare and constituted a committee for the rehabilitation of such people.²⁷

2.3 The World View of Tribal Rights

A community which is often overlooked when it comes to the preservation and management of biodiversity is the Tribal Community. The need for strengthening the rights of Tribal Communities and conserving their natural habitat has been realised across the globe. The need to foster Tribal rights was internationally taken into the consideration by International Labour Organisation (ILO) as early as 1957 by framing a draft for the Tribal Rights and Autonomy. The members of ILO at its sixty-sixth session held on June 26, 1989, adopted the Indigenous and Tribal Peoples Convention, 1989. The convention plays an instrumental role in protecting the Tribal Communities' rights which were jeopardised due to an increasing demand for development

²³ Lingappa Pochanna Appelwar And ... vs State Of Maharashtra And Anr. 1985 AIR 389

²⁴ Narmada Bachao Andolan vs Union Of India And Others [2000] INSC 518

²⁵ Dahanu Taluka Environment Protection Group v. Bombay Suburban Electric Supply Ltd Case, JT 1991 (2) SC 1

²⁶ Wildlife First v. Union of India, 2019 SCC Online SC 238

²⁷ R.Krishna Kumar (2020). *Forest rights claims of nearly 1,200 tribals in Hunsur rejected*. THE HINDU <https://www.thehindu.com/news/national/karnataka/forest-rights-claims-of-nearly-1200-tribals-in-hunsur-rejected/article33103593.ece>

and urbanisation. The convention places an onus on the government of the concerned state to provide sufficient amenities and opportunities to the tribal communities, so that they can be on an equal-footing with the other classes and sections of the population.²⁸ The convention lays emphasis on the need to preserve the culture, tradition and spirituality of the Tribal and Indigenous communities and suggests the governments not to impose any change to their way of living.²⁹ The convention also states that governments should realise the importance of the customs of such communities and the same should be considered and reflected through a state's customary laws.³⁰ It is also stated in the convention that the states must recognise the territorial rights of these communities and the right to access the natural resources within the ambit of their territory.³¹ Special emphasis is also laid on the adequacy of employment in such communities. The governments are required to set up handicraft and rural industries to generate employment among such sects of the society. Vocational training is also suggested as an instrument of empowerment within such groups.³² Apart from this, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is also an international declaration which aims to guard rights of Tribal Communities. It was adopted by the UN in its sixty-first session of the General Assembly on 13th September, 2007, by a majority of 144 member nations. It embarks on a vision to preserve the culture, tradition, custom and identity of the indigenous people. The Declaration states that the indigenous communities share rights and freedom as every other section of the population of the country.³³ The Declaration talks about the right of these communities to preserve their culture and utilise their land and resources without external interference.³⁴ The Declaration is unequivocal about the need for states to provide legal recognition to the rights of such communities, along with their customs, lands/territories, and resources.³⁵

Countries across the globe have formulated various legislations and provisions in interest of the Tribal and Indigenous people. The United States has the Indian Reorganisation Act of 1934³⁶

²⁸ *Indigenous and Tribal Peoples Convention 1989*, art. 2. (ILO.).

²⁹ *Indigenous and Tribal Peoples Convention 1989*, art. 5. (ILO.).

³⁰ *Indigenous and Tribal Peoples Convention 1989*, art. 8. (ILO.).

³¹ *Indigenous and Tribal Peoples Convention 1989*, art. 13,15. (ILO.).

³² *Indigenous and Tribal Peoples Convention 1989*, art. 21-23. (ILO.).

³³ *United Nations Declaration on the Rights of Indigenous Peoples*, 2007, art. 1. (UNO.)

³⁴ *United Nations Declaration on the Rights of Indigenous Peoples*, 2007, art. 9-12. (UNO.)

³⁵ *United Nations Declaration on the Rights of Indigenous Peoples*, 2007, art. 26-27. (UNO.)

³⁶ *Indian Reorganisation Act, 1934*, Pub.L. 73-383. (US).

which extends autonomy to the 550 American Tribes to enact and codify their own customs and regulations. In *Johnson v. McIntosh*³⁷, the US court also stipulated that the land of Indian or Native American people cannot be purchased or acquired by the other citizens of the US. This case also laid principles of the doctrine of aboriginal title in the United States. In countries like Australia Tribes had long been fighting for their identity, which finally bore fruit in 1992, when in the case of *Mabo v Queensland*³⁸ the right to free access and ownership of the land to the Tribal people was realised as a cornerstone to preserve the culture and identity of the indigenous community. Eventually in 1993, Native Title Act³⁹ was passed to enforce the Mabo case v. Queensland decision, and the National Native Title Tribunal was established to negotiate claims of native titles. In a similar manner the New Zealand setup Maori Courts under its Native Land Act⁴⁰, the contemporary purpose of which is to preserve the title of the indigenous people over their land. Maori Appellate Court has been established as well to handle the appeals arising out of the same. The Treaty of Waitangi, 1840, is considered one of the most significant historical treaties, and still acts as a precedent to bridge the gap between Tribal people and the state. The treaty was a remarkable step taken by the Maori tribe of New Zealand and the British Crown to reconcile their differences and adopt a path beneficial to both the state, and the indigenous population. The Canadian Law also lays down legislation to foster the rights of indigenous and tribal communities. The Indian Act, 1985⁴¹ talks about the rights of the Indians to the resources and the preservation and development of their culture. It also stipulates regulations with respect to management of their resources⁴², the powers of the band councils⁴³, election of chiefs within these communities⁴⁴ and trading⁴⁵.

³⁷ *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543 (1823).

³⁸ *Mabo v Queensland, (No 2)* ((1992) 175 CLR 1)

³⁹ *Native Title Act, 1993* (Cth) (Aus.).

⁴⁰ *Native Land Act, 1865* (29 Victoriae 1865 No 71). (Nz.).

⁴¹ *Indian Act, 1985* (R.S.C., 1985, c. I-5) (Ca.)

⁴² *Indian Act, 1985* (R.S.C., 1985, c. I-5), s. 53 (Ca.)

⁴³ *Indian Act, 1985* (R.S.C., 1985, c. I-5), s. 81 (Ca.)

⁴⁴ *Indian Act, 1985* (R.S.C., 1985, c. I-5), s. 74 (Ca.)

⁴⁵ *Indian Act, 1985* (R.S.C., 1985, c. I-5), s. 91 (Ca.)

2.4 Tribal Rights Movements in Contemporary Sense: A case analysis

There is often a juxtaposition between the environment and development. On one hand, there are groups advocating the need for development and on the other hand there are indigenous and tribal groups advocating the need to conserve the environment. Recently, the Niyamgiri Tribes namely the Dongria Khonds, who have protected and nurtured the forests in the Niyamgiri Hills in Odisha, have been scrapped from their basic right of access to land and resources.⁴⁶ The Odisha government in 2004 signed an agreement with one of the subsidiary companies of Sterlite Industries (Vedanta Alumina) to mine bauxite in these hills. This agreement did not take into consideration the plight of the Tribal and Indigenous people, who were the original dwellers of the area. Moreover, they were not even consulted, and eviction notices were served to them, coupled with myriad threats for not abiding by the government order. These hills were rich with a variety of flora and fauna. The pristine forests which are a natural habitat to many species also acted as a migration passage to the elephants. The Tribal community which cohesively existed with other forms of living were routed out initially but unequivocally protested the government's decision. Eventually, after more than a decade of struggle in solidarity for justice, the Niyamgiri Tribes were able to force the Supreme Court to take cognizance of the blatant violation of their rights and in 2013, in the case of *Orissa Mining Corpn. Ltd. v. Ministry of Environment and Forests*⁴⁷ the principles laid down in the Indigenous and Tribal Peoples Convention, 1989 and United Nations Declaration on the Rights of Indigenous Peoples, 2007 were recognised by the Indian Court and Articles 21, 25 and 26 of the Indian Constitution were interpreted as advocates of the Tribal rights. *"The conceptual basis for the judgment is the need to analyse the indigenous rights vis-à-vis human rights that are likely to provide a more understanding of indigenous rights in the future."*⁴⁸

⁴⁶ Anurag A. and Meena N. (2019). "Juxtaposition between Development and Tribal Rights: A Story of Determined Struggle of Niyamgiri Tribes." *The SCC Online Blog*.
https://www.sconline.com/blog/post/2019/08/09/juxtaposition-between-development-and-tribal-rights-a-story-of-determined-struggle-of-niyamgiri-tribes/#_ftn36

⁴⁷ *Orissa Mining Corpn. Ltd. v. Ministry of Environment and Forests*, (2013) 6 SCC 476.

⁴⁸ Dr N. Vasanthi, Case Comment on the Niyamgiri Hills Case, (2014) 3 ELPR 129.

3. Recommendations

1. Introduction of Supervisory and Regulatory Committees responsible to Central Ministries of Tribal welfare and Environment and Forests in state, to solve the problem of implementational lethargy and disregard by state governments.
2. Need to ratify the Indigenous and Tribal Peoples Convention, 1989 by all member nations of the ILO.

With respect to the FRA -

3. As they are illegal, every title in the name of VSSs awarded for CFRs must be rescinded. DLCs must recognise the CFR rights of every village possessing forest inhabitants that are eligible in favour of Gram Sabha/community, given that the filing process for due claims ordered as per the amended FRA Rules of 2012 is followed.
4. The NTFP monopoly of GCC must be rescinded, while Gram Sabhas must receive empowerment when it comes to discarding and retailing their NTFPs. The FRA should include a provision to punish officials that impede communities or individuals from practising their rights as per the FRA.

4. Conclusion

Today's Indian Legislations understand the confluence of tribal rights and environmental conservation, which is a drift from the commercializing policies of the British India. Despite that, the implementation of such is lacking. Further, government ground-level research and survey for the accurate statistics and conditions of tribal economy and their dependency on fringe forests is unavailable. The need to strengthen implementation and execution along with legislative developments, is visible from our analysis. The Indian Constitution upholds the principle of "welfare state". It is pertinent for the judiciary to note that this principle cannot be upheld with a conflict between developmental progress and tribal welfare. A middle-ground and follow-ups on rehabilitation needs to be met.

Although International Conventions and Declarations have been adopted, the ground-level implementation of these principles still remains scuffed. Tribal and Indigenous communities all across the world continue with their struggle to attain equality in terms of opportunity and freedom to continue their livelihood. In India, some success has been witnessed recently by the Tribal community, but the majority of Indian STs continue to struggle for their rights and freedom.