



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Rights Issues of Forest Dwellers in India

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Received 29 July 2021; Accepted 19 August 2021; Published 24 August 2021

Rights are something that everyone poses. Rights granted by the Indian Constitution and statutory laws enacted by the legislature are available to everyone. But what if one part of the population gets the individual right and others do not? What if the two statutory laws juxtapose each other? The former question is related to the rights of tribal forest dwellers in India, which were deprived of them since the British era and after independence too. The later question is related to the issues of conflict between the Wildlife laws supporters' views and human rights supporters view regarding 'The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006'. This paper views these two points in detail. The paper is divided into four sections. The paper tries to study the rights issues of tribal forest dwellers along with the Forest Rights Act (FRA) 2006 and the views of the judiciary on it. The paper concludes by suggesting ways to implement effectively the FRA 2006.

Keywords: *statutory laws, tribal forest dwellers, human rights, wildlife laws.*

INTRODUCTION

Who are these forest dwellers? Whether forest dwellers include Schedule Tribes? What are their rights? Why their rights are important? In India, According to the data published by the Ministry of Tribal Affairs confirms that, out of 12108.55 total population of India (in lakhs), 1045.46 is the population belonging to ST people. Percentage-wise, the ST population

constitutes nearly 8.6% of the total population of India. Thus Schedule Tribes forms one of the important parts of the Indian population. In Indian Constitution, the term Schedule Tribe is defined under Article 366 (25) and Article 342. Generally, forest-dwelling people or forest-dependent people (FDP) are those tribal people who live in a group forming communities sharing a common language, customs and who survive or depend on their livelihood on forest produce. This paper deals with the rights of forest dwellers on forest land and forest produce in India and the issues faced by them for their rights.

For this purpose, the paper is divided into four sections. The first section of the paper deals with forestry and the rights of FDP's under pre-British India, early British India, and post-colonial British India. The second section deals with the evolution of forest legislature parallel to increasing rights issues of FDP's in India, followed by a brief background introduction of the Forest Right Act 2006 (FRA). The third section of the paper deals with details of the FRA 2006. Lastly, the fourth section of the paper discusses the views of the Judiciary on rights issues of FDP's and the issues of conflict between the wildlife laws and Human Rights regarding FRA, followed by a conclusion.

RESEARCH METHODOLOGY

The research methodology used in this paper is doctrinal research methodology. The information for this paper is referred from the government websites, Journals, Articles, Books, Case Laws, and Bare Acts. Along with these, some internet sources are also referred to for the research paper.

FORESTRY AND RIGHTS OF FOREST DWELLERS UNDER PRE-BRITISH AND EARLY BRITISH INDIA

During the early Indian period, the FDP's were considered as the people who were out of the Brahminical Social Order. They lived in forests in natural habitats. "The Puranas mention many FDP's, for instance, the Nisadas, the Sabaras, the Pulindas, and the Kiratas. They lived in

the forest and depended on forest produce for their livelihood.”¹ The Puranas described them as they live in mountain region habitat, but by the moving time, the Puranas describe them to live outside the mountain regions. Many Puranaic stories give a description of the Nisadas as a hunter community having least regard for the Brahmanical social norms and the power of settled society. The description of the Kiratas community can be found in the Vayu Puranas, as they live in mountain territories. Some Puranic stories view Kiratas Community as people who only collect firewood from the forest, and they didn't live in the forest.

The Varna system describes the FDP's as ‘uncivilized or animal-like’. They were beyond the four varnas. Even Mahabharata stories describe these communities. “In the pre-British era, the rural communities enjoyed untrammelled use of the forests in their vicinity. The freedom enjoyed here was extensive according to an official handbook of the Forest Department (FD), under the 'oriental governments that preceded the Raj, anyone was accustomed, without let or hindrance, to get what he wanted from the forest to graze his cattle where he liked, and to clear jungle growth for cultivation wherever he listed.”² This shows that, in the pre-British period, the FDP communities enjoy rights on the forest produce.

The British were attracted towards India seeing its vastness, the density of the population, and the immeasurable extent of its natural resources. In the early British period, the British Raj stated desiccation of Indian forest for the purpose of fulfilling the demand raised for the military purpose, teak export. During this period, the attitude of the administration was that the Indian forest act as a stumbling block in the prosperity of the country, and this forest, if removed, will add an increase in the class of land paying revenue. Thus they framed their sole purpose to increase agricultural land by clearing the forest, which was their policy of that time.

The other important aspect was that the British started building the railway network for the purpose of rapid military communication. For this purpose, they destroyed a large area covered by forest to meet the demands for railways sleepers. "The latter feature marked the

¹ Kundan Kumar Raj, 'Forest Dwellers in the Early Puranas: A Study of the Nisadas and the Kiratas' (2011) 72 Proceedings of the Indian History Congress <<https://www.jstor.org/stable/44146697>> accessed 20 July 2021

² Ramachandra Guha, 'Forestry in British and Post-British India: A Historical Analysis' (1983) 18 Economic and Political Weekly <<https://www.jstor.org/stable/4372653>> accessed 20 July 2021

beginning of a progressive curtailment of these rights and was an especially difficult task since it ran contrary not only to the traditional practices of the village and especially tribal communities but also to earlier colonial agrarian policy in India. While by and large, the British followed a laissez-faire policy that allowed the villagers to freely roam about in the forests and utilize its produce, there is also definite evidence from certain areas that all land of every description was made over in absolute right to the community, subjects only to the yearly payment of rent fixed."³

With the introduction of the FRA of 1865, the rights of FDP's over the forest were not considered as 'right' but as a 'privilege' based only on the mercy of the ruler. Thus the British tried to establish a monopoly over the Indian Forest, and by this Act, they called themselves the sole owner of the forest land. This diminution of rights of FDP's faced huge criticism and revolts. "J A. Voelcker, an agricultural expert called in by the colonial authorities, summed it up thus: "The tendency of our system of government has, to a considerable extent, been to break up village communities, and now, for the most part, they are heterogeneous bodies rather than communities."⁴ A good example of the post-colonial forest policy of India is that it has not yet replaced the British system with a new and more socially and environmentally scientific forest management strategy suitable for the country.

EVOLUTION OF FOREST LEGISLATURE IN PARALLEL TO THE INCREASING RIGHTS ISSUES OF FDP'S IN INDIA

The Indian Forest Act (IFA) 1865, which empowers the British administration to declare any forest land as the government forest and govern that region. This IFA of 1865 was an Act of setting up a British monopoly on Indian forests, which had a bad impact on the lifestyle, customary practices of FDP's. Thus the IFA of 1865 had faced huge tribal agitation, protest but they were soon suppressed by the British.

The legislature which came after the IFA of 1865 was the IFA of 1878. The new Act of 1878 provides for the categorization of the forest into three types, i.e. the reserve forest, protected

³ *Ibid*

⁴ *Ibid*

forest, and village forest. Under this act, the rights of FDP's on the forest land and forest produce were declared as privileges at the mercy of rulers rather than their rights. This Act of 1878 faced huge criticism. The British Government, with the introduction of the IFA of 1927, had extended the state's control on the forest land. This Act of 1927 also aims at diminishing the rights of the FDP communities.

The IFA of 1927 had a great impact on the life of FDP's as firstly, it aims to diminish the rights of FDP, and secondly, it had given immense power to the forest bureaucrats, which result in misuse of power and increase in harassment of FDP. Further, the Indian Forest Policy (IFP) 1952, which came up after independence, was an extension of the British Colonial forest policies. "The IFP of 1952 focused on protecting forest resources with centralized control while exploiting its resources commercially by subsidizing community rights through minor forest produce (MFPs) and depriving the livelihoods of the FDP. By the 1970s, unrest in the forest areas started growing, following the Chipko Andolati ('hugging the tree' movement) and protests in Bastar."⁵

The other Act which put restrictions on the movement of FDP's was the Wildlife Protection Act of 1972. The National Forest Policy (NFP) 1988 aims at "Conservation which includes preservation, maintenance, sustainable utilization, restoration, and enhancement of the natural environment."⁶ "The principal aim of Forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which is vital for sustenance of all lifeforms, human, animal, and plant. The derivation of direct economic benefit must be subordinated to this principal aim."⁷

The NFP also focused on resolving the FDP's disputes encroachments, but due to the bureaucratic mindset of FD's policy could not be implemented properly. Therefore, with the evolution of forest legislature in India from British colonial Raj and after independence, the rights of the FDP's can be seen as gradually decreasing, resulting in an increase in rights issues

⁵ Madhusudan Bandi, 'Forest Rights Act: Towards the End of Struggle for Tribals?' (2014) 42 Social Scientist <<https://www.jstor.org/stable/24372999>> accessed 03 June 2021

⁶ National Forest Policy 1988

⁷ *Ibid*

of FDP's. Thus, the FDP had struggled for their rights throughout Indian History. This struggle came to an end after the Indian legislature introduced the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, which recognize the rights of Forest Dwellers Schedule Tribes (FDST) and Other Traditional Forest Dwellers (OTFD).

BACKGROUND OF FOREST RIGHT ACT 2006

The Government of India with the FRA tried to cure the wounds of forest FDP's which they had got from the gross injustice with them since the British era and after independence too. Between 2000 and 2003, the 'eviction drive' was carried out on a large scale by the FD to remove the 'encroachers' from forest land. Accordingly, an eviction order notices dated May 03 May 2002, was issued by the Ministry of Environment and Forest (MoEF) for the eviction drive.

The eviction order had created havoc in the life of FDP's all over India, and the FDP's were forcefully evicted from the forest. The forest tribes in this period faced the same atrocities which they had been facing since the British period or even worst. The MoEF justify this eviction to protect the environment and forests and to remove encroachers who cultivate land pre-1980. The MoEF's order for eviction and justification for such order had faced huge criticism. The MoEF, in October 2002, issued a clarification on the previous order that not all FDP's were considered as encroachers.

On August 16, 2004, in Parliament, the MoEF agreed that eviction was carried out from 1.52 lack hectares of forest land. The MoEF, further on the onset of parliamentary elections in February 2004, issued new circulars, first was "Regularization of the right of the tribals on the forest lands", this was circulated for extending the date of regularization of encroachment drive to December 1993 and the second circular was titled as "Stepping up of process for conversion of forest villages into revenue village".

"These were promptly stayed by the Supreme Court. In an affidavit filed in the court to get the stay vacated, MoEF finally admitted that during the consolidation of the forest, the rural

people, especially tribal is who has been living in the forests since time immemorial, were deprived of their traditional rights and livelihood and consequently, these tribals is have become encroachers in the eyes of law and that it should be understood clearly that the lands occupied by the tribal are in forest areas do not have any forest vegetation.”⁸ Further on December 21 December 21, 2004, the MoEF issued an order which stated that no eviction would be carried out until the rights of FDP’s were verified. In spite of these orders, the forceful eviction of FDP’s was carried out in many states.

Therefore, on January 19, 2005, the Prime Minister of India decided the drafting the Scheduled Tribes (Recognition of Forest Rights) Bill 2005. The responsibility of drafting the bill was given to the Ministry of Tribal Affairs instead of MoEF as the senior officer's claim that the MoEF will frame the bill under the forestry laws, which will be injustice with the forest tribes. "It is important to mention here that the Bill had to cross several hurdles created by the MoEF, wildlife conservationists, as well as non-governmental organizations (NGOs) working for the environment. They were apprehensive that this Bill would cause severe damage to the forest cover and wildlife, and to the environment."

A Joint Parliamentary Committee was set up in December 2005 for suggesting recommendations on the bill. "The JPC suggested certain changes: shifting the cut-off date to 1980; inclusion of non-STs; raising the land ownership ceiling from 2.5 to 4 hectares per family; and removal of penal provisions for forest dwellers." With the JPC's recommended changes, a new draft came, which was titled 'The Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.

“An Act to recognize and vest the forest rights of FDST and OTFD’s and occupation in forest land in who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of

⁸ Manju Arora Relan, 'The Forest Right Act, 2006: Victory and Betrayal' (2010) 52 Journal of The Indian Law Institute <<https://www.jstor.org/stable/45148536>> accessed 03 June 2021

evidence required for such recognition and vesting in respect of forest land.”⁹ This Bill was passed by the Parliament in December 2006, and it came into force in December of 2007.

THE FOREST RIGHTS ACT 2006

“The FRA of 2006 recognizes the rights of the FDST and OTFD’s to forest resources, on which these communities were dependent for a variety of needs, including livelihood, habitation, and other socio-cultural needs.”¹⁰ “The Act encompasses Rights of Self-cultivation and Habitation which are usually regarded as Individual rights; and Community Rights as Grazing, Fishing and access to Water bodies in forests, Habitat Rights for PVTGs, Traditional Seasonal Resource access of Nomadic and Pastoral community, access to biodiversity, community right to intellectual property and traditional knowledge, recognition of traditional customary rights and right to protect, regenerate or conserve or manage any community forest resource for sustainable use.”¹¹

The Act also provides the rights for land allotted for the purpose of basic infrastructure developments. In conjunction with “the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Settlement Act, 2013 FRA” provides the right to rehabilitation in case of any illegal or forced eviction subjected to restrictions of forest protection.

WHO CAN BE RECOGNIZED AS ‘FOREST DWELLING SCHEDULE TRIBES’ AND ‘OTHER TRADITIONAL FOREST DWELLERS’?

The definition of FDST and OTFD are given under Chapter I Section 2 (c) and Section 2 (o), respectively. Under Section 2 (c), the FDST is defined as "The members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities."¹² The OTFD’s are defined under Section 2 (o) as "any member or community who has for at least

⁹ Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

¹⁰ Dhanush Samvaad, 'Ministry of Tribal Affairs, Government of India' (*Tribal.nic.in*)

<<https://tribal.nic.in/FRA.aspx>> accessed 23 July 2021

¹¹ *Ibid*

¹² Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

three generations prior to the 13th day of December 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.”¹³

DUTIES OF FDST AND OTFD.

There is one popular saying, i.e. 'Where there are rights, there are duties' as rights are provided by the FRA of 2006, then the people who claim that right are also given some duties. Under the new Act, the FDST and OTFD's, gram Sabha is vested with some duties which they have to follow. These duties are as follows,

- To protect wildlife, forest, and biodiversity;
- To ensure that adjoining catchments area, water sources, and other ecological sensitive areas are adequately protected;
- To ensure that the habitat of FDST and OTFD's is preserved from any form of destructive practices affecting their cultural and natural heritage;
- To ensure that decisions are taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest, and biodiversity are complied with.

THE ISSUES OF CONFLICT BETWEEN WILDLIFE LAWS AND HUMAN RIGHTS

The FRA of 2006 had become a ground of tussle between its supporters and opposition. Though this legislature is considered a milestone in the history of the Indian Legislature. On one side, the Human Rights supporters had happily welcomed the FRA of 2006, but on the other side, it had faced criticism from environmentalists and conservationists claiming the possibility of forest degradation.

The supporters of the FRA's point of view:

- The Act provides relief to the FDP communities from the gross injustice which they had been facing since the British period and after independence too.

¹³ Guha (n 2)

- The Act empowers the FDP's to access and use forest resources in a manner that they were traditionally accustomed to, to protect, conserve and manage forests, protect FDP's from unlawful evictions, and also provides for basic development facilities for the community of FDP's to access facilities of education, health, nutrition, infrastructure, etc.¹⁴
- The Act helps to prevent security concerns of Naxal Movements by identifying the FDST and OTFD's, because of which the administration and government had faced huge alienation of tribes.
- It has the potential to democratize forest governance by recognizing community forest resource rights. The act will ensure that people get to manage their forest on their own which will regulate the exploitation of forest resources by officials, improve forest governance, and better management of tribal rights. The environmentalist supporters' opposition was faced by the FRA.
- The Act had excluded many other tribes and people who do not fit under the definition of FDST and OTFD's. The Act became a problem for those community people who had not lived at the same place for more than three generations or moved to another place in the forest.
- The Act provides the FDP's a right to protect and conserve any community forest resource, but at the same time, the act had not given the specific power to execute that right. Though the Act had banned hunting, the act does not provide any explanation on those tribal communities whose tradition is itself hunting.
- The non-FDP will dominate the tribal communities. Providing rights on forest land to the FDST and OTFD's will result in the deterioration of Indian forest cover.

JUDICIARY VIEWS ON RIGHTS ISSUES OF FDP'S.

In the history of the Indian Justice System, through a various number of cases, it can be noted that the rights of tribes or Adivasi rights have been taken seriously by the Indian Judiciary. The trend of Judiciary while dealing with those cases can be seen through three angles. Firstly,

¹⁴ Samvaad (n 10)

whenever the FDP's rights are upheld, those are not in conflict with 'sustainable development' or 'greater common good. For example, in cases such as *Fatesang Gimba Vasava vs the State of Gujrat*.¹⁵, *Sri Manchegowda vs. State of Karnataka*¹⁶ and *Lingappa Pochanna vs the State of Maharashtra*¹⁷, and many more.

“There was famous *Samata* Judgement. In a prior case (*P Rami Reddy vs State of Andhra Pradesh*¹⁸), the Supreme Court had ruled that prohibitions against the transfer of Adivasi land to persons who were not Adivasis were necessary given the poor economic status of Adivasis. The Supreme Court in the *Samata* case went further by saying that persons included the constitutional government.”¹⁹ In these cases, the judiciary had ruled in favor of the tribes. Secondly, whenever the FDP's rights are in conflict with the developmental projects, then the FDP's rights are redefined or very often limited to some extent.

For example, in the context of large-scale development projects, the courts have tended to privilege development both at the expense of social rights and the environment. The *Narmada* and *Tehri* cases and many more similar cases related to power projects, mining, and industrialization, etc. More often than not in such cases, Adivasi rights to place (and culture) are denied and re-imagined in terms of rights to resettlement and rehabilitation.²⁰ Thirdly, many times from the judgements, it can be seen that the judiciary had given more importance to the environment as protection of 'pristine nature' and limited the rights to use natural resources.

But in many cases, the judiciary, in the name of sustainable developmental projects, had ignored the environmental impacts, for example, in the case of the *Dahanu Taluka Environment Protection Group vs Bombay Suburban Electric Supply Ltd Case*.²¹The Balco

¹⁵ *Fatesang Gimba Vasava v State of Gujarat* AIR 1987 Guj 9

¹⁶ *Sri Manchegowda v State of Karnataka* 1984 AIR 1151

¹⁷ *Lingappa Pochanna v State of Maharashtra* AIR 1985 SC 389

¹⁸ *P Rami Reddy v State of Andhra Pradesh* AIR 1998 SC 1626

¹⁹ Ajit Menon, 'Engaging with the Laws on Adivasi Rights' (2007) 42 *Economic and Political Weekly* <<https://www.jstor.org/stable/4419702>> accessed 08 June 2021

²⁰ *Ibid*

²¹ *Dahanu Taluka Environment Protection Group v Bombay Suburban Electric Supply Ltd* (1991) 2 SCC 539

Employees Union vs Union of India case²². Besides these three trends, the Supreme Court, on February 13, 2019, had taken a balanced judgement in the case of Wildlife First vs Ministry of Forest and Environment. "The petitioners, mainly wildlife NGOs, had demanded that State governments evict those FDP's whose claims over traditional forestland under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, known simply as the Forest Rights Act (FRA), had been rejected."²³ The Supreme Court on February 28 had ordered the states to file an affidavit stating the procedure in which FDP's claims were decided and the authorities to pass the rejection orders. The Supreme Court had also clearly ordered that no forceful eviction of FDP's and it should follow the due procedure established in the FRA of 2006.

SUGGESTIONS

These are some suggestions that would help in the proper implementation of the FRA 2006. The suggestions are as follows:

- One of the problems faced by any Act or Law is the lack of awareness among the masses. Thus for FRA awareness, programs and campaigns must be conducted at the local level.
- A detailed strategy of training must be made to provide proper training to the people responsible for the FRA implementation.
- There must be data (maps and documents) transparency and clarity between the forest department and the Gram Sabha, panchayats.
- For awareness drive, the NGOs can help to conduct such programs.

CONCLUSION

The History of India is itself evidence of Injustice faced by the tribal forest-dwelling population. Since the British period, the rights of FDP's were greatly suppressed, and the time

²² *Balco Employees Union v Union of India* (2002) 2 SCC 343

²³ Bahar Dutt, 'Failing the Forest' (*The Hindu*, 2019) <<https://www.thehindu.com/opinion/op-ed/failing-the-forest/article26424970.ece>> accessed 27 July 2021

came when the FDP's had faced forceful eviction from their own land. The rights issues of FDP's remain as it is even after the Indian independence. As in the process of evolution of legislature, the rights issues of FDP's were increased in parallel. The Government of India, with the FRA of 2006, had tried to confirm the rights of FDP's. Thus the Act was considered as the watershed movement in the Indian legislature history. Many Social thinkers, Human rights followers, and other people are of the view that the FRA would prove a silver line in the life of tribal FDP communities.