

# LEGALFOXES LAW TIMES

## FOREST DEPENDENTS AND ACCESS TO FORESTS RESOURCES

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### ABSTRACT:

There are human beings living in the forests for generations. They depend solely on forests for their survival. But it is also proposed that they are in fact not only contributing towards protecting and conservation of forests but are also practicing sustainable forest management(SFM), one of the aims of the international community towards achieving sustainable development. The aim of the article is therefore to study the relationship between the forests and the forest dependents and analyze the proportion of contribution made by the forest dependents towards sustainable forestry and forest conservation. The secondary aim of this article is to identify the legal mechanisms under the National and International regime which provides safeguards to the forest dependents to have safe access to forest and its resources. This article tries to prove that the Tribal people, Indigenous groups and Forest Dwellers have contributed significantly towards the conservation of forests through their cultural and traditional practices and possess knowledge on Sustainable Forest Management which is recognized by International conventions and National laws.

The term 'forest dependents' is an umbrella term used in the research in order to refer to tribal people, Indigenous groups and forest dwellers due to the sole reason that all of them are dependent on forests for their livelihood.

### I. INTRODUCTION:

While substantial policies and attention has been naturally given to both human centric urban areas and agricultural lands. The non-human life forms and humans who depend on forest have to rely on the international conventions, directions and the forest policies of the country's government. Moreover the forest dependents like the tribal people, indigenous groups and the forest dwellers become the most vulnerable in cases of forest degradation or deforestation. Even though there are plethora of international human rights instruments that protect the rights of the vulnerable and indigenous people<sup>1</sup>, the international law on the right of forest dependents over the forests is mostly ambiguous or inferred.

The world has different kinds of people with different cultures, religion, traditions and ideologies. However the basic condition which classifies the people into social strata are based on how their life has evolved throughout history. As a result different segments of population emerged such as

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<sup>1</sup> James S. Phillips, The rights of indigenous peoples under international law, Global Bioethics, 120-127 (2015).

mountains, coastal plains and forest people. They are indigenous people native to that particular place and they have differing traditions, customs, cultures and regulations which they use as a form of self-governance. To put it simply the native people are a part of the local biodiversity and their lifestyle provides them livelihood and as a whole, it is their identity. Presently there are approximately 370 million Indigenous people in 70 countries.<sup>2</sup> The ILO convention has explained the term indigenous people as inhabitants of the land before the formations of national boundaries or formations of the States. For example, the Native Americans also known as Red Indians in the United States of America and the Aadhi Dhravidas of India. The ILO further clarifies that indigenous people are not required to be the same as the tribal people under the circumstance that they might not be the original natives/inhabitants of the region and they are differentiated from other sections of their national community on the basis of social, cultural and economic conditions.

## **II. INTER-RELATIONSHIP BETWEEN FORESTS AND TRIBES:**

Tribal groups depend largely on forests for their sustenance and livelihood. The level of dependency of tribal people on forests are decided upon various factors such as the weather, topography, socio-economic status, locality, cultural and religious practices, education, etc. The tribal groups who live inside these forests are relatively economically weak and are primarily dependent upon forests and its resources to fulfill their needs. The decline in forest cover and its resources has already pushed tribal groups away from the forests and into cities in search for different menial jobs to meet their food, revenue, education requirements and to buy the bare necessities.

In a developing country housing a plethora of underdeveloped communities, forests are usually relied upon to sustain the lives of the tribes and forest dwellers throughout the year. The forest dependents can be otherwise employed to do other forest related activities which cannot be done by other manual laborers such as plantation of trees, protection of endangered and vulnerable species, collecting seeds, logging, collecting Non-Wood Forest Products, and infrastructure development due to the fact that no one knows their homes better than those living inside them.

Generally the tribal communities are self-sufficient in majority ways since they get everything from forests. The amount of timber consumption is less in comparison to the timber industries. The Non-Wood forest products are the secondary source from forests utilized by the tribes and the forest dwellers. The major functions of forests to the tribal people are mentioned below:

### **1. Fuelwood:**

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<sup>2</sup> “Who are the indigenous and tribal peoples?”, International Labor Organization. Retrieved from: [https://www.ilo.org/global/topics/indigenous-tribal/WCMS\\_503321/lang--en/index.htm](https://www.ilo.org/global/topics/indigenous-tribal/WCMS_503321/lang--en/index.htm); accessed on :25.07.2020.

Since the forest dependents and tribal people do not have provisions for modern gas stoves they have no other option but to rely on fuel wood for cooking and ancillary purposes. Due to the loss of forest area, procuring firewood has been a hard process. Even presently many interior rural parts do not have access to Electricity and consequently usage of firewood is the best alternative available. This general practice does not necessarily result in deficit in the forest cover and fuel wood. Nevertheless, the practice of utilizing fire wood cannot be banned totally as in some cases they have proven to be the only sources of income for the family. The tribal people in practice do not exploit the capacity of the forest to produce fuelwood because they are aware of the consequences that by doing so, it threatens their entire lifestyle once the forests are destroyed. This is why it is important that the unregulated exploitation of forests, especially fuel wood, cannot go on keeping in mind the interests of the tribal people.

## **2. Social & Cultural System:**

Forests not only provides wood it also has an intricate and important place in the social structure of the tribes and their lifestyle. Most tribal groups revere forests as sacred grooves. These sacred grooves are considered to be links to their previous ancestors and are worshipped as spirit of nature. The older generations of the tribal community educate the younger generations to protect and respect nature through protecting the sacred grooves. Generally, human activity near these sacred grooves will be minimal, therefore these sacred grooves are closest to nature in its purest forms. Forests have a close relationship with the tribes via the mode of rituals carried out inside the forest grounds. The tribes use particular plants and leaves mostly medicinal in their rituals and so naturally these plants and trees are protected by the tribes for the future generations.

## **3. Forest Protection:**

The recent years have witnessed more forest cover being destroyed due to various circumstances and more artificial forests are replacing the natural forests. The problem lies with what type of trees are being planted in the forests. Only giving Consideration for economic benefits, trees which have high commercial value are being planted disregarding the native species. However regardless of them being native or invasive species, the natural balance of the forest ecology is being lost. Furthermore the trees that are being artificially planted in these forests are not useful for the tribal people nor is access given to them to earn a livelihood out of these new forests. It is only planted so that it will be harvested later on by a timber company. This results in a loss of economic wealth and livelihood in the lives of the tribes as moreover they stand to lose their entire identity and lifestyle as they are dependent on the forest and its resources. By replacing the native trees with cash trees it amounts to destroying an entire tribal economy and losing the knowledge which passed down generations.

Tribal people usually have a close link to the forests. They are thus aware of the various properties of trees and plants. Their conventional information is wasted and can otherwise be used by selective large-scale forestation to grow the forests.

#### **4. Right to health and nutrition:**

Forest tribes are usually healthier and more involved than non-forestry citizens. Even within India, many professional athletes come from the eastern region, because they live in the highlands and mountain areas that have naturally made them stronger. It can be seen that they have better physical status and more optimal levels of nutrition, in addition to that, the traditional and medicinal knowledge they possess over the resources found in the forest makes them more resilient, This has also been affected as due to the fact that deforestation has pushed medicinal plants and small animals to endangered levels within the forest and has cut off the supply to the tribes as a whole the entire eastern part of the country is witnessing loss of forest cover

Typically, the tribes rely on medicinal plant forests as well as animal components that can be used to cure diseases. Owing to the loss of forests, some of these medicinal flora and fauna are not viable. Again, the harvesting of medicinal plants is now difficult because of many restrictions imposed on the use and harvesting of forest resources by the Forest Department. In addition, it is becoming difficult to obtain medicinal plants because of the forestry programs often advanced by the Forest Department and because more emphasis is placed on commercial trees, which negatively affects the health of the tribes.

### **III. CONTRIBUTION TOWARDS SUSTAINABLE FOREST MANAGEMENT BY FOREST DEPENDENTS:**

#### **1. Impact of Shifting-cultivation on forests:**

A great source of timber, fuel wood, and non-wood products are forests. Land cover has declined dramatically since 1990, from 41,282,692 Sq.km to 39,958,248 Sq.km in 2016.<sup>3</sup> While urbanization and industrialization are the major culprits of forest cover loss, this woe has also been contributed to by shifting agriculture. Shifting cultivation is a traditional activity practiced as an intrinsic part of their customs and practices by the forest inhabitants. The key concept behind this method of cultivation, while different from different regions with slight variations, is the same all over the world. In this method of cultivation, by using fire, a patch of the forest is cleared, the ashes are scattered uniformly on the land that is used as a crop fertilizer. The plants are then harvested and the cycle repeats itself every 8 -12 yrs.

Since it uses few to no technical advances, the yield is 4 times low compared to the typical agricultural field using irrigation methods and soil health habits, it is highly inefficient and of low economic value.<sup>4</sup> While experts have contrasting views on shifting cultivation with regard to its

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<sup>3</sup> Retrieved from: <https://data.worldbank.org/indicator/AG.LND.FRST.K2?view=chart>; accessed on: 31.08.2020.

<sup>4</sup> Retrieved from: [https://books.google.com/books/about/Forest\\_Management\\_in\\_Tribal\\_Areas.html?id=cWJ\\_GT6ksGEC](https://books.google.com/books/about/Forest_Management_in_Tribal_Areas.html?id=cWJ_GT6ksGEC); accessed on: 20.08.2020.

ruinous effects versus its nitrogen fixing applications, it is unavoidable that the latter is just a remedial use for the harm caused by shifting cultivation.

## 2. Forest cover Protection:

Between 1880 and 2013, India lost about 40 percent of its forest cover. 24% of its territory is in forests, or 7 lakh sq km, as per government figures. The region underneath the forest and tree cover expanded by 5,081 sq km between 2013 and 2015.<sup>5</sup> It is accurate that the world's green cover has indeed been rising, but the earth's forest area has been gradually dropping. The tribal people and the traditional forest dwellers who reside within forests and rely on forests for their subsistence are partly preventing this rapid reduction in forests. Much of the forests are protected due to their tribal status. By only being inside woods, they shield the forests from being cleared. But notwithstanding this, in order to build new infrastructure, many forest dwellers and tribes are forced out by governments and private organisations.

One man among the aboriginal tribes in the Amazon forests, Mr. Surui, the very first man to attend college from the Painter tribe, reveals the challenges faced by his tribes and the constant forest destruction in the Amazon forests. He says that maintaining their forests after the major infrastructure projects in the region are introduced, has been a huge challenge. Forests in the Amazon nowadays are found within indigenous lands. In territories that do not belong to indigenous groups, the forests do not exist anymore," said Mr. Surui<sup>6</sup>. He also stated that the demographic was about 5,000 when the non-indigenous folks came home in the forest, but only around 300 remain, which is also an indication that the area of forests is also declining with the decline in the indigenous tribal population because there is less resistance.<sup>7</sup>

ICCA- Indigenous and community conserved areas is where the territories and areas are conserved by indigenous people and local communities. In order to reach target 11 of the Aichi biodiversity goals, the position of the ICCA is considered important.

ICCAs have the following three characteristics:

- Indigenous or local community has a close and deep relationship with the area
- The people or community is the major player in decision-making related to the site and has de facto and/or de jure capacity to develop and enforce regulations; and
- The decisions and efforts of the individuals or society contribute to the protection of biodiversity, ecological functions and related cultural values, irrespective of the initial or primary motives.<sup>8</sup>

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<sup>5</sup> World Environment Day: Despite increasing green cover, India is losing its forests. Retrieved from: <https://www.hindustantimes.com/india-news/beneath-an-increasing-green-cover-a-story-of-depleting-forests/story-5uYG3ARcrMJy27hTJhnePP.html>; accessed on 26.07.2020.

<sup>6</sup> "Indigenous activist fights to save his tribe and the Amazon rainforest". Retrieved from: <https://www.un.org/esa/forests/news/2013/04/indigenous-activist-fights-to-save-his-tribe-and-the-amazon-rainforest/index.html>; accessed on: 26.07.2020.

<sup>7</sup> Ibid.

<sup>8</sup> The State of world's forest 2020. FAO, Pg 124.

There is a lack of appropriate guidance for the ICCA processes as it is regulated by both traditional laws and codified regulations. This feature gives it versatility as well as confusion.

### 3. Protection of species:

The Tribal people have vast and in-depth knowledge of the resources of the forest. They also need to know about the different herbal and medicinal plants in their area because of the absence of hospitals and primary health care clinics in order to use them in emergencies. This has helped them preserve and defend particular species selectively and keep them from becoming extinct. Tribal individuals also know how to use the resources, therefore they do not over exploit them and instead use them in a sustainable way. In the tribal people's lifestyle, resources not only play a significant part, they also have the capacity to become massive money-makers if used commercially. Pharmaceutical firms, however, use the indifference of the tribal people and manipulate them. Later, when the laws were amended and the Revenue Sharing scheme was added, this was curbed. According to this theory, companies using the biodiversity resources of a species used by the indigenous population should provide the population with a share of the benefits that help them improve their lifestyle.

The case of the Kani Tribes of the Agasthyamalai Hills of the Southern State of Kerala in India, where the Kani Tribe used the herb Arogyapacha, was one such instance. The member used the herb to increase her stamina as they walked long distances. Incidentally, scientists identified and studied the herb to find that the herb had many therapeutic properties and also had anti-inflammatory agents, non-steroidal compounds and immune-enhancing properties. They attempted later to replicate the plants in nurseries, but failed because they did not thrive in their natural habitat. The patent has been lodged by TGBRI. At that time, only a 7-year process patent was valid. They pledged to share 50 percent of the licencing agreement's licence fee and royalties, even though the CBD Act was not in effect. Originally, the elders of the tribe were against the notion of commercializing the plant. In addition, the Kani tribes from other areas were unhappy that only one section of the group had an agreement with the TBGRI. The traditional healers were also angry that their view was not even accepted.

When, with the aid of the tribes, the TGBRI tried to cultivate the herb, the forest department prohibited it as it was considered a non-forest practice. They assumed it would put the plants at risk. All collection practices, including the collection by the tribes, were forbidden due to large-scale plant removal.<sup>9</sup>

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<sup>9</sup> Dr. Mohan Diwan, "Socio-economic changes affected by Intellectual Property Rights – The Indian Perspective". Retrieved from: [https://books.google.com/books/about/Forest\\_Management\\_in\\_Tribal\\_Areas.html?id=cWJ\\_GT6ksGEC](https://books.google.com/books/about/Forest_Management_in_Tribal_Areas.html?id=cWJ_GT6ksGEC); accessed on: 20.08.2020.

Since there is an immediate need for ex-situ genetic material conservation in the Cryobank and DNA library, it is possible to use local tribal communities with diverse knowledge of such germplasm for periodic surveys to collect such genetic material. Although it is a duty that can be undertaken by the government or an agency appointed by it, it should be taken into account that the tribal groups are better versed in the ways of the forests and would be able to respond accordingly to the needs. Therefore, conservation should be understood in terms of a gene bank with potential gene flow for ecological regeneration and sustainable biodiversity management. In addition, by promoting in-situ conservation, this practise would restore cultural identities that have been greatly eroded due to external influences over the years.

#### **IV. INTERNATIONAL INSTRUMENTS PROTECTING THE RIGHTS OF ACCESS TO FOREST BY TRIBAL GROUPS:**

##### **1. International Labor Organization:**

The ILO was the first international body to focus on the issues of indigenous peoples and their rights, and its convention was the first instrument. The organizations note that, since 1921, this matter has been a primary concern. Especially after a study on the conditions of employment of indigenous and tribal workers. The Committee of Experts on Native Labour was subsequently set up in 1926 to establish international standards to protect indigenous workers. As a consequence, before the United Nations period, a variety of conventions were introduced, such as the 1930 Forced Labour Convention, the 1939 Recruitment of Indigenous Workers Convention, and the 1939 Convention on Criminal Sanctions (Indigenous Workers).

The ILO is currently one of the United Nations' Specialist Organizations. Governments, employers and staff are the parties involved. There are three organs underneath the organisation. They are the General Assembly of Member States' Members, the Legislative Body and the International Labour Office.

The first legislative structure for the defense of the rights of indigenous people was adopted by the ILO in 1957. The ILO Convention No. 107 was initially adopted and its purpose was to ensure that indigenous peoples were incorporated as well as to provide some protection. This Convention, meanwhile, omitted the self-identification relationship introduced in Geneva after a two-year revision of ILO Convention No. 169.

The organization connected the injustices of labour to the peace and harmony of the world.<sup>10</sup> It also commits to war against want and affirms that under the existing environment of freedom and equality, economic security and equal opportunity, all human beings, regardless of race, creed or sex, have the right to material well-being and spiritual growth.<sup>11</sup>

<sup>10</sup> Preamble, generally ILO.

<sup>11</sup> II(a). Declaration concerning the aims and purposes of the International Labour Organisation.

The 107 Convention and the 169 ILO Convention promise indigenous people a broad spectrum of human rights. Article 2 of the 169 Convention imposes on the government a duty to protect the people's rights and interests, and the mechanism should include the people concerned in the decision-making process. The full scope of human rights and fundamental freedoms without any hindrance or prejudice is guaranteed to indigenous and tribal peoples.<sup>12</sup> Article 4 is an important law which ensures the protection of the environment of the indigenous and tribal people. The text reads,

“1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.”

Article 7 of the convention is also important in regards to the conservation of forests. It ensures the right of the indigenous people to decide on their own the process of development and to exercise control over their economic rights as it affects their lives only. Due recognition is also given to the customs and customary law before applying the national laws on them.<sup>13</sup>

Part II of the Convention provides aboriginal people and tribes with detailed jurisdiction over their territories. Article 13 notes that it is for the government to give the people and their relationship with their lands or territories due recognition and respect, either where they usually live or in places they frequently use for their livelihood or traditional activities.<sup>14</sup> Special recognition is mandated to the nomads and the practitioners of shifting cultivation.<sup>15</sup>

The convention not only protects the tribal and indigenous people's right to land. It also protects the people from the wealth of that land. If the government wishes to take advantage of such resources, it must demonstrate clearly to the people how it would affect them and to what degree the resource would be used. The individuals must be paid accordingly and the individuals would have access to the advantages of such a venture.<sup>16</sup>

A right against displacement is Article 16. There will be no eviction of people from the property they occupy. If the government wishes to relocate the indigenous people, the free will of the people must be their own. If no consent is granted, the government should take reasonable action to ensure that a law is enforced and that a forum with sufficient representation of all stakeholders is convened. The Article also promises that they will return if the situation that led to the transfer no longer exists.

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<sup>12</sup> Article 3, 169 ILO convention.

<sup>13</sup> Article 8.

<sup>14</sup> Article 13 and 14.

<sup>15</sup> Article 14.

<sup>16</sup> Article 15.

## 2. United Nation Declaration on the Rights of Indigenous peoples

UNDRIP is a 2007 U.N.-passed foreign instrument. This details the rights of indigenous people with respect to their right to culture, heritage, literature, and much more. It helps prevent any discrimination towards them and also enables them to pursue their desired dream of social and economic development. The major aspects of the declaration are:

- a) **Fundamental Rights with no Discrimination:** Article 1 of the Declaration states that indigenous people are entitled to possess all fundamental rights and that they have the right, under Article 2, to be free from discrimination against them.
- b) **Cultural Rights:** According to the Article 7 they have right to be free from any acts of violence or genocide and also have right to live peacefully. They also have the right to maintain and strengthen their cultural rights free from destruction of their culture.
- c) **Self-Determination Right<sup>17</sup>:** This is one of the important principles because the indigenous people have continuously fought for this right. Article 3 provides the indigenous people the right to self-determination. By this right they can determine their political status and can also pursue for the development of their culture.
- d) **Rights to use land, territories and other natural resources:** They have the right to control and maintain their land, territories and natural resources for self-determination and for sustaining their culture.
- e) **Rights to ownership and control:** Article 36 of the declaration provides that they have right to land, territories and natural resources which they originally acquired. They can own, control and use of their land and various natural resources. State has a duty to protect their land and natural resources for the sustainability of their cultures and traditions.
- f) **Social and Economic Rights:** Article 21 of the declaration provides that the indigenous people have the right to continuously make improvement in their social and economic conditions for their well-being.
- g) **Certain State Responsibilities:** States are required to give financial and technical assistance to the indigenous people by consulting them. Indigenous people are also entitled to adequate grievances and effective remedies whenever their rights are violated.

## V. NATIONAL INSTRUMENTS PROTECTING THE FOREST RIGHTS OF THE TRIBES:

In India, 705 ethnic groups are registered throughout India's territory as Scheduled Tribes (STs). They are called Indian Indigenous Groups. They form 8.6 percent of India's total population, with a demographic of 104.3 million, according to the 2011 census. Around 90% of them live in rural areas. There are also several ethnic minorities who may be able to be named, but are not officially

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<sup>17</sup> Article 18, 19, 23, 32, and 38 of UNDRIP.

recognized, as a Scheduled Tribe. The majority of the tribal population are found in the eastern part of the country and in the central plains.

A symbiotic relationship between the tribal people and the forests has always been established in India. As its culture, economy and social system are dependent on it, forests are the basis for their livelihoods. The tribal people keep the forests intact in exchange for the energy consumed by protecting animals that are useful to them and also double up as an endangered species. Often both the terms forest economy and tribal economy are interchangeably used since they both have the same components. Forest resources are used by the tribal people as community resources and lands as community property. Under the pre-colonial history of India. There are no known circumstances where large-scale forests have been destroyed in order to advance humanity's goals.

The issue started in the 1790s, when the status of tribes was reduced from land custodians to mere land occupiers. In this sense, land covers forest land. Of course, there were a series of fights in the following years.<sup>18</sup> Every armed uprising, however, was suppressed, excluding the colonizers. After the British had complete control over the country, the nature of the opposition also changed. Passive demonstrations were mobilized and fighting was taken to the political stage, making no difference as the colonizers still tried to compromise the demonstrators in order to concentrate on manipulating them. India had its first forest policy in 1894, and there was no mention of the rights of the indigenous tribal people in that policy. Rather, it was in the form of rights that made it an eligible right, and the British were nevertheless arbitrarily left with the requirements of qualification. This idea of restricting rights and limiting freedoms had a profound effect on the tribal people, the Dhebar Commission said of the Forest Policy of 1894, which was the underlying cause of the fragile relations between them and the Forest Department that continue even now.<sup>19</sup>

Later, laws were enacted that caused forest dwellers to be forced out of the woods by rendering them intruders under the law's jurisdiction. Forests were essentially cash cows and resource banks for the colonizers to openly exploit without any restrictions. They implemented a new "Scheduled Districts Act, 1874" law to recognize that forest dwellers depend only on customs. The tribal people were eventually officially recognized as a group in the 1919 GOI Act and were exempt areas.<sup>20</sup>

In order to rehabilitate the different cultures in the forest, the government took different steps to preserve and improve the forest culture after independence. A parallel research was performed during this study to assess the viability of involving forest people in sustainable forest management.

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<sup>18</sup> History of Movements in Context of the Study Villages. Retrieved from: <https://shodhganga.inflibnet.ac.in/bitstream/10603/124604/3/chapter%202.pdf>; accessed on: 29.07.2020.

<sup>19</sup> The first commission established under Art. 339 of the constitution for Scheduled Areas and Tribes.

<sup>20</sup> Areas declared by the central government and to some extent the State government. Retrieved from : <http://www.tribal.nic.in/writereaddata/AnnualReport/BhuriaReportFinal.pdf>; accessed on:28.07.2020.

**Constitutional Provisions-** Article 21 of the Right to Life is the constitutional right guaranteed by the constitution for the tribal people. Article 39, on the other hand, promises the tribal people a more basic right. The Article imposes on the State a duty to allocate / distribute resources equally to the common good. Furthermore, pursuant to Article 48A, the Directive Principles of the State Policy place on the State a duty to preserve and improve the environment and forests and wildlife within it, and a corresponding duty on people to protect the environment pursuant to Article 51A(g). Another significant directive of the State for the establishment of social order also constitutes Article 38 of the Constitution.

Under Schedule 5<sup>21</sup>, the constitution protects the tribal people within India, where the schedule prohibits the transfer of land from tribes to non-tribes. Corporations are considered to use the term non-tribe. According to *Samatha v. Arunachal Pradesh*, such transference is in breach of the constitution.<sup>22</sup> The case also stressed the value of the constitutional timetables and the livelihood of the tribal people should therefore be secured at all costs and the tribal people's relationship with their lands should not be forsaken.<sup>23</sup>

Acts were passed in 1950 and 1951. The Tribes Order Schedule, 1950, and the 1951 Order of the Scheduled Tribes States. Under the directions, all the current tribes were mentioned. But no criteria or requirements have been developed to decide who constitutes the tribal population. The government commissioned the Lokur Committee under the Department of Social Security to address this issue.

**Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2007:**

The Act was initially met with several opposing critiques. Between the forest and wildlife activists and the MoEFCC on the one hand, and the human rights and tribal rights activists on the other, the most conflicting view was. The wildlife activists enunciated that the said Act will legalize the destruction of the forest ecosystem as it did not prohibit but rather have access to tribes and forest dwellers to act within forests which would disturb the otherwise natural balance of the nature and on the other end of the spectrum it was believed that since tribal people have been residing within the forests, there are no immediate and explicit dangers posed by them and but moreover they would be helpful in many ways like as preserving the forests and protecting the endangered species, act as deterrents against poachers, and serve as guardians of the forests in general because the corporations will have no authority to displace them and can no longer evict the tribal people from their lands in order to exploit the forest and its resources.

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<sup>21</sup> The recommendations of the Takkur Sub Committee established by the constituent Assembly 1946-48

<sup>22</sup> (1997) 8 SCC 191.

<sup>23</sup> Exaggerated upon the source text.

Objective of the Act according to **D. Suresh Kumar v. PIO, M/o Environment, Forests & Climate Change** are:

- The Act recognises the presence in the forests of tribal people and forest dwellers as an important feature that would promote forest conservation and sustainable forest growth.
- Build an effective system that conserves biodiversity and preserves forests and employs tribes and forest dwellers for sustainable forest management.
- Finally, due to the non-recognition of their rights to their hereditary homes and forced eviction and resettlement by both state and private enterprises due to developmental projects, the tribal people should be compensated for the previous crimes against them.

In *Kashinath and Ors vs State of Maharashtra*, another<sup>24</sup> a question that revolved around the Act was brought by the Bombay High Court. In this case, the forest dwellers approached the court to grant them legal documents and recognition in the form of Patta as they feared that the State or other parties would be evicted at any given time. But, because the question was a State Directive, the courts were powerless to interfere. This shows that the Act tries to have a dual approach of forest conservation and tribal rights protection.

The Act also aims to preserve the tribal communities' practises, use, beliefs by expanding the scope of the Act to access to resources by the tribal people. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules were adopted in 2012, taking the above considerations of the Tribal people into account.

Rights conferred under the Act includes:

- Land Rights. (Section 3).
- Traditional Community Rights.
- Right of Rehabilitation. (Sections 3(1)(m) and 4(8)).

However, these privileges are not absolute; factors such as practicality and public comfort are subject to them. In addition, forest rights are only heritable and not alienable, so they cannot be passed to non-tribal persons.

Duties imposed on the Tribes and forest dwellers<sup>25</sup>:

- To protect wildlife, forest and biodiversity in the vicinity.
- Protection of nearby sensitive zones and water bodies.
- To preserve the existing and conservative traditional and cultural practices and must not practice ecologically harmful activities.
- To ban any activities which are detrimental to the wildlife, forest and biodiversity.
- To obey the decisions of the gram sabha which will have adequate representation of tribal communities when decisions are taken.

<sup>24</sup> MH/0210/2016

<sup>25</sup> Section 5.

There are 3 levels of authorities starting from gram sabha, sub divisional level and finally district level committee.<sup>26</sup>

Scheduled Tribes are the Forest Right Committee formed under rule 2(1)(e) of the Act constituted of the Gram Sabha of 2/3. They operate to collect, consolidate and validate claims and, as a result, demarcate the region of each suggested claim.

## VI. CONCLUSION:

The role of tribal people, indigenous groups and forest dwellers (combined term 'Forest Dependents') is important in conservation and protection of forest ecosystems and forest biodiversity. In respect to forest dependents, general laws and regulations seldom apply to them as general laws are focused on the majority of the people who are not tribes or indigenous people. Therefore there arises a need for special laws which protects the special rights of the forest dependents. Forest dependents are people who have been living in forests for generations and have acquired skill sets and knowledge which are perfectly compatible with the forest lifestyle. The International forum of leaders, experts and the national leaders have all come to a realization that these forest dependents are an important element in forest conservation and development. It takes years of research and training to develop an idea of the types of forest and what each forest needs to be improved and conserved. This knowledge is passed down in generations of the tribes who employ them and live in the forests. Some of these traditional knowledges even possess medicinal qualities. Both human rights legal regime and forest protection legal regime have to be converged in order to trace out converging points which are known as the forest rights of the forest dependents. Tribal rights in India is governed by the Scheduled Tribes and other Traditional Forest Dwellers (recognition of Rights) Act, 2007. The Act has carefully derived from national and international examples in order to establish a comprehensive piece of legislation wherein it elaborates rights promised, establishes governing bodies and imposed corresponding duties on the tribal people to protect the forests.

But the need for a more inclusive and exhaustive legislation is the need of the hour, if we want to protect both the forest and its resources on one hand and the right of the tribes and other forest dependents access to forest and its resources on the other hand. But since presently the government policies cannot allow for such specific policy decisions. The existing legal framework ought to be strengthened so that the laws protect its respective areas i.e., forest protection and forest dependents rights in its own ways giving way to the formation of more better laws in the future. And the first step begins by turning away from the conventional policies which have non renewables at the center of it and moving towards renewable sources of energy.

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<sup>26</sup> Section 6.



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