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## CRITICAL ANALYSIS OF LEGAL FRAMEWORK ON FOREST RIGHTS ACT (2006) AND ITS IMPLEMENTATION IN TRIBAL AREAS

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### **ABSTRACT:**

The Forest Rights Act 2006 (FRA) was implemented to protect the forest dwellers who were solely depended on the forest and the forest produce. The historical progression is the interaction between forests and forest inhabitants. According to the forest policy, the forest was set aside, preventing inhabitants from accessing their own lands. This practice has persisted up till the present. The Forest Rights Act holds forth hope for resolving tribal and other forest inhabitants' rights over the habitation and farming grounds they now occupy. Moreover, they will profit from full ownership rights over minor and non-timber forest products, as well as management and protection rights over forest resources, including community rights. Despite the fact that there are a number of forest legislations, there is still environmental degradation and the rights of the forest dwellers aren't protected. The paper examines how, following a protracted battle, the FRA was ultimately established when the government admitted to historically wrongdoing the impoverished, tribal people. It also covers the country's implementation status for the FRA. Lastly, it considers how this Act can affect the livelihoods of those who depend on the forest, as well as upcoming difficulties and also the human rights discussing the governmental policies and steps made to safeguard those who live in forests.

**KEYWORDS:** Tribal Rights, Human Rights, Forest, Environmental Degradation.

## INTRODUCTION

In India, the Forest Dependent People (FDP) are a group of tribal people who are consistently disregarded. They were designated for special protection by notice as "Scheduled Tribes" under the Constitution (Scheduled Tribes) Order, 1950 because the Indian Constitution's drafters recognized their deplorable state.<sup>1</sup> There are roughly 370 million indigenous peoples living in 90 nations around the world. They are among the world's most excluded peoples, and their geographical isolation, as well as their unique histories, cultures, languages, and traditions, often isolate themselves politically and socially within the countries where they live. They constitute a considerable proportion of the world's poorest people, and the poverty gap between indigenous and non-indigenous peoples is increasing in many countries. This has an influence on the effectiveness of life and right to health of indigenous peoples.<sup>2</sup> According to the United Nations Declaration on the Rights of Indigenous Peoples they consider themselves distinct from other sectors of communities now prevailing on those regions, or segments of them, do so because they have such a historical continuity with pre-invasion and pre-colonial communities that developed on their lands, their ancestors' lands and ethnic identities serve as the cornerstone for their continuous existence as peoples, and they are determined to protect, develop, and transfer these to future generations in conformity with their very own cultural traits, social structures, and legal systems. Indigenous peoples have always cherished a symbiotic relationship with their natural environment. They've always worked to ensure that nature is conserved and thrived. The indigenous people's social and cultural rituals and customs are focused on protection of environment.<sup>3</sup>

In the second half of the nineteenth century, when colonial expansion was at its pinnacle and evolutionary theory was fashionable, anthropologists codified the concept of tribe. Endogamous groups of people were described as 'Tribe', which lived in their own regions, had political autonomy, spoke their own languages, had unique religious and economic systems, and used

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<sup>1</sup> Forest Rights Act: Towards the End of Struggle for Tribals? Madhusudan Bandi *Social Scientist*, Vol. 42, No. 1/2 (January–February 2014), pp. 63-81

<sup>2</sup> UN Report on Indigenous People, [www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/SOWIP\\_Health.pdf](http://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/SOWIP_Health.pdf).

<sup>3</sup> Vinding Diana and Mikkelsen Cæcilie, *The Indigenous World 2016*, The International Work Group for Indigenous Affairs (IWGIA), 2016

local technology. <sup>4</sup>According to an anthropological perspective, tribes were classified as pre-state societies due to “their independence and lack of integration into a larger social unit.”

### **INDIAN POSITION: PRE-INDEPENDENCE**

Ever since dawn of creation, the forests and tribal people have coexisted in peace and have a close bond. Forests have supplied the residents with opportunities for economic and social growth. By continuously producing a range of products and ecological services, they have functioned as a rich reservoir of biological diversity. For millions of forest communities, they have been the source of sustenance since the dawn of humanity Forest economics and tribal economy are thought to be mutually exclusive. Aside from that, animism, or the worship of nature, has long been a component of forest culture and is said to be the oldest type of religion. As a result, the tribal communities and the forest have a symbiotic and mutually beneficial connection. They've lived a basic existence with only the bare necessities since ancient times. In India, the tribes are various. Despite the fact that each tribes have their own customs and cultures, the following basic common tenets can be applied to all of them:

- Their strong ties to the place or ecosystem in which they dwell.
- A long history of community ownership and individual use<sup>5</sup>.

At the beginning of the nineteenth century, the colonial government was in charge of substantial portions of India's forested territory. Thus started a history of hardship for the indigenous people in all ways, notably with regard to their right to a living, in addition to upsetting traditional methods of forest conservation and management. This was also the period when planned forest management, often known as centralised forest administration, began to take hold in India. The first Forest Act laws were passed in 1864 and 1865. With the passage of the 1878 Act, the colonial administration gained enormous authority to reserve forests by designating any forest land as "government land." The tribals agitated, protested, and revolted during this process but were ruthlessly put down. The forest treasure has long been seen as a shared property resource by the indigenous people who live in the woods. They had been relishing their freedom to hunt and eat what the wilderness had to offer. However, no proof has been found that poor people are

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<sup>4</sup> Talukdar Saiki, Crisis to the Forests –People Relationship, 4(4) Research J. Humanities and Social Sciences, 470-473 (2013).

<sup>5</sup> Relan, ManjuArora, *The Forest Right Act,2006: Victory and Betrayal*, 52 JILI (2010)

destroying trees to meet their basic needs. The Chipko movement and many more examples of local groups intervening for the protection of wildlife may be found throughout Indian history.

### **POST-INDEPENDENCE**

Many policies were established with the proper emphasis on the engagement of the forest inhabitants and tribal people in order to stop this trend and with due recognition of the significance of conservation, preservation, and sustainability of forest culture as well as resources. At the same time, it was recognized that the goals cannot possibly be attained unless these communities are treated equally as participants in Sustainable Forest Management (SFM)<sup>6</sup>. Moreover, measures in the Constitution were written to achieve the goals of preserving tribal culture and safeguarding their connection to the woods. "India identifies 461 ethnic groups as Scheduled Tribes, which are considered India's original peoples." Scheduled Tribes are known as Adivasis in mainland India, which means "original peoples." They represent for 8.2% of the total population, with an estimated population of 84.3 million people. Many more ethnic groups, however, might qualify for ST status if they were formally acknowledged. According to some calculations, there are up to 635 tribal divisions. The seven states of north-east India, as well as the so-called "central tribal belt," which runs from Rajasthan to West Bengal, have the highest populations of indigenous peoples.<sup>7</sup>

### **PROTECTIVE MEASURES PROVIDED BY THE CONSTITUTION**

First and foremost, in Article 21, there is a basic Fundamental Right to Life, which has been broadly defined to include all aspects of leading a dignified life in all aspects.<sup>8</sup> Article 39 of the constitution, which is more precise, instructs the state to share ownership and management of the community's material resources for the benefit of the entire community. As a result, land reforms are proposed in accordance with the Directive Principles. It is a legal obligation on the part of the state to protect the natural environment and forest eco-system, according to Article 48A of the Directive Principles. Article 38 of the Constitution imposes on the state the responsibility of

<sup>6</sup> [https://nhrc.nic.in/documents/LibDoc/Tribes\\_Indigenous\\_Peoples\\_A.pdf](https://nhrc.nic.in/documents/LibDoc/Tribes_Indigenous_Peoples_A.pdf)

<sup>7</sup> Diana Vinding and Cæcilie Mikkelsen, *The Indigenous World 2016*, The International Work Group for Indigenous Affairs (IWGIA), 2016..

<sup>8</sup> *Olga Tellis & Ors. vs. Bombay Municipal Corporation & Ors.*, AIR 1986 SC 180.

promoting a social order in which social, economic, and political justice are accorded to all citizens equally.<sup>9</sup> According to the 5th and 6th Schedules of the Constitution, the state has a specific responsibility for the preservation and progress of tribal people, notably in relation to the management of scheduled territories, as well as for maintaining peace and good governance. Following independence, the Constituent Assembly established two sub-committees, the Thakkar Sub-Committee and the Bardoloi Sub-Committee. This was a continuation of the de-regularization regime that began in 1874, which was based on the philosophy of "particularization in tribal government" rather than "generalisation". The Thakkar Commission dealt with issues pertaining to the Central Tribal Communities, specifically those involving prohibited and partly excluded areas. This resulted in the adoption of the Vth Schedule, which extended political as well as state support to tribes' interests. The Bardoloi Committee, on the other hand, came up with a self-management module, which eventually took life in the shape of the VI Schedule. Through the establishment of committees and the dissemination of reports, various government initiatives were observed to be successful.<sup>10</sup>

Presidential orders, namely, the Constitution (Scheduled Tribes) Order, 1950 (for Part A and Part B States) and the Constitution (Scheduled Tribes) Order, 1951 (for Part C States), were promulgated in accordance with Articles 341 and 342 of the Constitution, respectively. As a result of the rise or establishment of new states, these were updated and amended to meet the needs of the time. However, other parties opposed to the grounds on which it was chosen, claiming that it was unscientific and lacking in uniformity. Due to the fact that these laws do not establish any specific principles or eligibility requirements, this was the case. As a result of this unhappiness with regard to the inclusion or exclusion of tribal members from the lists, in 1965, the Lokur Committee was established underneath the Department of Social Security. In order to offset the disadvantage of a lack of consistency, this Committee conducted a thorough examination of the tribes' historical backgrounds by measuring their social, academic and economic circumstances. The preambular aims, as well as the broader framework established by the Constitution, served as sources of inspiration. Article 46 of the Constitution states that According to it, the state is required to properly address the distinctive requirements of

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<sup>9</sup> Report of the Scheduled Areas and Scheduled Tribes Commission, Government of India, GOI, 16, (2002-2004), <http://www.tribal.nic.in/writereaddata/AnnualReport/BhuriaReportFinal.pdf>.

<sup>10</sup>MANU/SC/1325/1997 : (1997) 8 SCC 191.

Scheduled Tribes, including safeguarding them from abuse and providing them with access to social justice systems. <sup>11</sup>A further provision of the Constitution, Article 15(4), expressly enables the state to create specific provisions for members of the Scheduled Tribes. Specifically, Article 335 of the Constitution provides for the reservation of Scheduled Tribes in the government's services and administrative positions. Furthermore, the Constitution provides for the appointment of a Special Officer to monitor the operation of the safeguards intended for tribals as well as the establishment of a Commission to report on the situation of tribal welfare and to bring out any flaws in welfare administration. Aside from this, one of the most important parts of the Constitution is Article 275(1), which assures that funds are available for tribal development projects.

As part of the grant-in-aid, the Union is required to pay to the States the capital and recurrent funds necessary for them to achieve their specified targets under various initiatives for the welfare of tribals under which they are participating. When these laws were read, they revealed the rules and concerns that should be taken into account when designating any group as a Scheduled Tribe. Extreme social, economic, and academic backwardness were the most important characteristics to take into consideration. Since 1931, the government has published a formal set of lists based on a variety of criteria such as backwardness, barbarism, territorial seclusion, and social estrangement, among other things. It has been a challenging undertaking to define the term tribe because there has been no formal set of criteria available due to the fact that they are in a transitional state in India.

### **POLICY MEASURES WHICH WERE TAKEN**

India's first Forest Policy Resolution, passed in 1952, was the country's first forest policy resolution. In reality, Gandhiji had identified the 'welfare of the tribes' as one of the most pressing issues in the 14-point rehabilitation plan when it was first proposed in 1942. Instead, Pandit Jawahar Lal Nehru made the first significant effort in independent India when he

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<sup>11</sup> Department of Social Security, The Report of The Advisory Committee on The Revision of The Lists Of Scheduled Castes And Scheduled Tribes, GOI, 1965. This Committee was chaired by Mr. B.N. Lokur. Appendix VII of the report gives a state wise list of tribes which have been declared as scheduled. For details see <http://hlc.tribal.nic.in/WriteReadData/userfiles/file/Lokur%20Committee%20Report.pdf>.

articulated the five principles of tribal advancement, known as the Panchsheel, which served as an intellectual framework for the country's development. Alternatively, it might be referred to as the first informal Policy related to the issues of the tribals in general. As previously noted, the 1952 Policy concentrated on forest as a resource for the country's industrial development and made no mention of the relationship between forests and the people who live in them.<sup>12</sup> The Policy placed a strong emphasis on the supply of forest products on a long-term basis. Forests were considered to be a significant source of growing revenue. At the same time, analyses and reports were being prepared that recommended modifications, and the concept of a Tribal Sub-Plan began to take shape. This was implemented during the Fifth Plan Period with the goal of implementing an integrated multi-sectoral strategy to benefiting specified recipients. As a result of the gaining momentum, a National Forest Policy was drafted in 1988, which constituted a significant divergence from the previous policies in place. Beyond the core principles of the previous policies, environmental conservation and the interaction between indigenous peoples and their natural environment were now considered to be high-level priority. Regarding tribal rights, a special emphasis was placed on 'inclusive forest ecology development,' which included replacing contractors and middlemen, active direct participation of forest dwellers, recognizing their sustenance needs, which were met by the Minor forest Produce, and establishing institutional arrangements for the marketing of the produce.<sup>13</sup>

Furthermore, the establishment of Joint Forest Management (JFM) in 1999 was a significant step forward in the achievement of the objectives of the 1988 Forest Policy. Its purpose was to build a broad movement for environmental conservation, with a particular emphasis on the participation of women. A management strategy was developed in which the government, represented by the State Forest Department, collaborated with the village community with the objective of safeguarding and maintaining forest area, and which was implemented. In this case, a culture of appropriate exploitation of the indigenous knowledge of the rural community was envisaged, which would be put to use for the benefit of the community as a whole.

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<sup>12</sup> Local Community Attitudes toward Forests Outside Protected Areas in India. Impact of Legal Awareness, Trust, and Participation Biljana Macura, Francisco Zorondo-Rodríguez, Mar Grau-Satorras, Kathryn Demps, Marie Laval, Claude A. Garcia, Victoria Reyes-García *Ecology and Society*, Vol. 16, No. 3 (Sep 2011)

<sup>13</sup> Report to the People on Environment and Forests, Ministry of Environment and Forests, Government of India, 2010-2011

**LEGISLATIVE INITIATIVES TAKEN BY THE GOVERNMENT**

With the increasing demand for goods and services, the country's forests are being overutilized, which is detrimental to the economy. Although the forest cover has largely stabilised and modest improvements have occurred since the 1990s, there is still worry about the integrity of the resource in general.<sup>14</sup> The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, which was passed by Parliament on December 21, 2015, is a significant step forward in the preservation of tribal interests. Individuals who are engaged in crimes against SCs and STs would be subjected to harsh punishment under this law.<sup>15</sup> In a similar vein, the government has requested that a land acquisition ordinance be scrapped since it would have significantly undermined the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013.<sup>16</sup> Aside from that, there were no special regulations pertaining to forest inhabitants in place until the passage of the Forest Rights Act of 2006, which will be examined in greater detail below. This gap was bridged by forest legislations governing forest preservation and de-reservation, which were enacted after World War II.

**THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006**

The Ministry of Tribal Affairs was tasked with writing the Scheduled Tribes (Recognition of Forest Rights) Bill 2005. (MoTA). The ministry established technical resource groups with representatives from other ministries, legal professionals, and members of civil society to provide their experience in developing the Bill for enactment. It is crucial to note that the MoEF, advocates for wildlife conservation, and environmental non-governmental organizations (NGOs) all put obstacles in the way of the Bill's passage. They were concerned that this Law would seriously harm the surrounding forest, animals, and ecosystem. But later The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was enacted. It is a significant piece of legislation and a significant step forward in the protection of interests and

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<sup>14</sup> CR Bijoy, Policy Brief of Forest Rights Act, 2006, UNDP (2012)

<sup>15</sup> Report to the People on Environment and Forests, 21 (2009-2010), (Feb. 20, 2022, 4:30 PM), <http://moef.nic.in/downloads/public-information/Report%20to%20the%20People.pdf>.

<sup>16</sup> Sumit Guha, States, Tribes, Castes - A Historical Re-exploration in Comparative Perspective, 1 Nos. 46 & 47 EPW.



rehabilitation of forest residents. Despite the fact that it was not an easy effort to bring it into existence and put it into effect. There were a variety of issues that needed to be addressed prior to the passage of the Act: -<sup>17</sup>

- 1) The wildlife conservation lobby and the Ministry of Environment, Forest, and Climate Change (MoEFCC) described it as a "perfect recipe" for ensuring the destruction of India's forests and animals by "legalising encroachments."
- 2) For of their concern about losing control over forest products, the forest department and the wood mafia worked tirelessly to prevent the Act from becoming law.
- 3) Corporations also posted significant obstacles to the passage of the Act, as the eviction of tribals on the pretext of being unlawful tenants, as well as the land acquisition process, would be rendered null and void.<sup>18</sup>

The practise of conducting eviction operations in the name of removing so-called encroachers had become standard practise. The forests declared to be government forests under the Indian Forest Act, 1927 had rarely been surveyed in order to determine who lived there or who had rights in them, resulting in the poor forest dwellers being incorrectly labelled as 'encroachers' and 'illegal migrants,' thereby depriving vast numbers of people of a critical source of livelihood. There have been countless instances of the use of forced methods to evict the impoverished and powerless residents of the city.

### **OBJECTIVES OF THE ACT**

In addition to the numerous benefits conferred by this Act, it properly recognises forest dwellers as being essential to its very survival of the forest ecosystem, with the target of objectives and addressing the area of inquiry to properly recognise the authenticity of such forest dwellers who have actually lived in the forests for generation to generation but whose rights have still not been properly recorded due to a variety of practical difficulties.<sup>19</sup> A system for properly recording forest rights should be put in place so that it can serve as proof for such recognition if it is ever

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<sup>17</sup> The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Act No. 2, Acts of Parliament, 2007

<sup>18</sup> *ibid*

<sup>19</sup> The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Act No. 2, Acts of Parliament, 2007.

required.<sup>20</sup> A method of complementarity should be developed, with the duty for biodiversity protection and ecological balance being delegated to those who retain forest rights for long-term usage. By doing so, the forest conservation symbiotic relationship on the one hand, and the provision of food security and livelihood needs for forest residents on the other, can be strengthened.<sup>21</sup> We must remedy historical wrongs that have resulted in immense resentment and the rejection of the legitimate rights of Scheduled Tribes and other traditional forest occupants as a result. In both colonial and independent India, indigenous peoples have been denied acknowledgment of traditional forest rights on ancestral homelands and in their natural habitat during the construction of state forests.; And

Forced migration as a consequence of state development interventions, as well as the necessity to address their lengthy instability of tenure and accessibility rights for instance, of state development efforts."

According to expectations, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 will perform the following essential functions:

- It is necessary to offer legal acknowledgment to the rights of traditional forest dwelling communities in order to partially repair the unfairness;
- Indigenous peoples, local communities, and the general public should be given legislative representation and a participation in the forest conservation and wildlife in their near vicinity."<sup>22</sup>

According to a reading of the aforesaid aims, it is clear that the fact that tribals have not claimed their rights to forest resources because of a lack of knowledge and a general lack of understanding of modern legal framework was taken into account while drafting this legislation. The involvement of locals, i.e. community participation, will also be the most effective strategy for forest protection and regeneration, according to the authors. It is also intended to address another issue that indigenous groups are concerned about: the uncertainty of term and fear of eviction that they are experiencing, which is causing them to feel both emotionally and

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<sup>20</sup> Chaturvedi A.and Kumar P.G. et.al., Community Based Forest Management and its Impact on Vegetation: A Case Study, iForest (2009)

<sup>21</sup> Tiwari, G.S., *Sustainable Development as a Socio-Economic Growth Strategy: Expanding Horizons of Environmental Law in India*, 52 JILI (2010)

<sup>22</sup> D. Suresh Kumar v. PIO, M/o Environment, Forests & Climate Change. MANU/CI/0230/2015

physically alienated from their land. Clearly, the Act seeks to establish a balance between forest protection and tribal rights, as well as the rights of indigenous people who have traditionally lived in forest areas. *Orissa Mining Corporation Ltd. v. Ministry of Environment and Forest and Others*, a landmark case decided by the Supreme Court, said that<sup>23</sup>

"It is important to remember the aforementioned purposes and reasons while interpreting the various sections of the Forest Rights Statute, which is a social welfare or remedial act." Among the rights of forest dwellers and indigenous peoples (STs) are customary rights to use forest as a common forest resource, which are not restricted to property rights or geographical areas of residence. Customary rights to use forest as a common forest resource are also protected under the Convention. Aiming to preserve the traditional traditions of forest dwellers and their conventions, usages, forms, practises, and ceremonies, the Act establishes a framework for the protection of such traditions.<sup>24</sup>

In order to make the aforementioned aims a reality and to accomplish meaningful implementation of the Act's purposes, *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012* (hereinafter referred to as the *Rules*) have to be read with the provisions of the Act."



## CHALLENGES FACED

The title of the original law, "Scheduled Tribes (Recognition of Forest Rights) Bill, 2005," which was tabled in the parliament on December 13, 2005, recognised the symbiotic relationship between tribals and forests. The original law said in its preambular paragraph: "A Bill to recognise and bestow the forest rights and occupation in the forest land of forest dwelling Scheduled Tribes who have been inhabiting in such forest for generations but whose rights could not be registered."<sup>25</sup>

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<sup>23</sup> MANU/SC/0396/2013.

<sup>24</sup> *ibid*

<sup>25</sup> India's Forest Rights Act Of 2006: Illusion or Solution? Indigenous Issues – The Occasional Briefing Papers of AITPN (Jan. 30, 2023, 5:30 PM), [www.aitpn.org](http://www.aitpn.org).

Although 'other traditional forest dwellers' were included in the final Act that was passed, the interests of forest dwelling Scheduled Tribes were diluted by the inclusion of the "Other Traditional Forest Dwellers" in the Act. It is widely believed that the forest-dwelling Scheduled Tribes, who were once the sole legitimate claimants, have lost their focus, and that the goal for which this law was written has been achieved.<sup>26</sup>

Alternatively, while the cut-off date for determining occupation of forest land is the 13th day of December, 2005, some argue that the criteria for determining occupation under the Forestry Act are different for "forest dwelling Scheduled Tribes" as opposed to "other traditional forest dwellers" under the Act. The "forest dwelling Scheduled Tribes" have sufficient land to occupy as of December 13, 2005, and they rely on the forest areas for their legitimate subsistence needs. Instead, the 'other traditional forest dwellers' should be in possession of the property but should have relied on that forest or land for their legitimate livelihood for at least the past three generations, according to the law. In light of the foregoing two conditions, it is reasonable to conclude that, in the case of "other traditional forest dwellers," they would be entitled to benefits under the Act only if they can prove that they have been in profession of the forest or forest land for a period of 75 years prior to the 13th of December, 2005 and that they have been legitimately reliant on the forest or forest land for their livelihood.

In addition, this Act exhibits ambiguity among beneficiaries since it is unable to draw a distinction between the requirements and nature of tribals and other forest residents, as it is difficult to distinguish between the demands and nature of non-tribals. While tribals and forest dwellers are virtually indistinguishable from each other, that's not the case with "other traditional forest occupants," which relates to those who are not tribal and are not considered to be traditional forest inhabitants. They have powerful emotional, physiological, and cultural ties to the forest, and they have spent the most of their lives there, according to the forest's inhabitants. The other traditional forest residents, on the other hand, have made the forest their last source of income when all other options have been exhausted. However, by legitimizing their occupation of forest areas under the pretext of "Other Traditional Forest Dwellers," the Act went against the spirit of the many safeguards given to members of the Scheduled Tribes under the Constitution

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<sup>26</sup> ibid

and other applicable laws of the country. As a result, there is an unavoidable worry of a clash of interests between the two, and the goal of bettering the tribals may not be achieved.<sup>27</sup>

The problems of naxalism and Maoist violence have developed in response to the injustices meted out to tribal people. Their indigenous right to forest products, a source of subsistence, and the preservation of their culture has been in constant jeopardy. Atrocities against scheduled tribes have escalated, and the abuse of forest resources has become rampant in the pursuit of development. In order to address this issue, the aforementioned Act was enacted. However, because of the delays in the settlement procedure and other gaps, the government must conduct additional research and examination.<sup>28</sup>

A significant number of Schedule Tribes and other Traditional Forest Dwellers are completely uninformed of their legal rights. As a result of their distinct culture and little contact with mainstream society, they also face significant challenges in obtaining effective access to the legal system. When development projects are taking place near their homes or in the forest where they live, they sometimes lack the financial resources to pursue legal action against those initiatives. In part because of their cultural knowledge and traditional practises, they have a significant role to play in the conservation and enhancement of the environment. In order for people to be able to properly engage in the attainment of sustainable development, the state has a responsibility to recognise and adequately promote their identities, culture, and interests.<sup>29</sup>

### **PROBLEMS FACED BY THE FOREST DWELLERS**

Several research investigations have brought to light the difficulties that forest dwellers are experiencing. Because the forest people live a subsistence lifestyle, they contribute to maintaining the area's natural balance, which is beneficial to everyone. A great deal of the religious and cultural rituals carried out by forest dwellers revolve around the preservation of this delicate equilibrium. A recent decision by the Supreme Court, while rejecting the Criminal

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<sup>27</sup> Das, Smriti, *The Strange Valuation of Forests in India*, 9 EPW (February 2010)

<sup>28</sup>K.S. Subramanian, *State Response to Maoist Violence in India: A Critical Assessment*, EPW32 (2010).

<sup>29</sup> TalukdarSaiki, *Crisis to the Forests –People Relationship*, 4(4) Research J. Humanities and Social Sciences, 470-473 (2013).

Appellate Jurisdiction<sup>30</sup>, said that Scheduled Tribes are indigenous peoples of India who have traditionally been subjected to tyranny. It went on to outline the history and horrors that indigenous peoples have been subjected to in the following paragraphs:<sup>31</sup>

Human rights violations: In the last year, there has been a significant upsurge in crimes against indigenous peoples. As reported in the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs' most recent report, "Crime in India 2014," which was published in 2015, a total of 11,451 cases were reported in the country during 2014, as compared to 6,793 cases reported in 2013, representing an increase of 68.6 percent from 2013 to 2014. The displacement of a person from their home or the displacement brought on by development.<sup>32</sup>

One of the most serious threats is the threat of land grabbing. Driven by unrestrained consumerism and capitalism, a big part of property is bought by/for outsiders for commercial or industrial purposes in the guise of development, with or without consultation with the local people. It is common for minimal compensation (if any) to be provided to the affected populace, which results in substantial and lasting environmental harm to the surrounding environment. There are only limited direct advantages for the impacted populace as a result of such development measures in place.<sup>33</sup>

According to the requirements of projects in tribal regions, land has been acquired for mining, industrialisation, and non-agricultural reasons. The tribals, according to the government, bear a far greater burden of relocation. In the sake of protection of animals, plants, and other natural resources, and occasionally in the name of development, forest people have been driven from their homes on several occasions. Affecting the Rabhas, who live in the buffer zone between the Manas National Park in Assam and the Buxa tiger reserves in West Bengal, who are in hypothesis partners in wildlife conservation, the tiger project has curtailed their employment

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<sup>30</sup> Special Leave Petition (Crl) No. 10367 of 2010) (Kailas & Others. Appellant (s) -v.- State of Maharashtra, January 2011)

<sup>31</sup> When the Forests Disappear, We Will Also Disappear, 17 EPW 1901-02(1982).

<sup>32</sup> [https://www.iwgia.org/images/publications/0693\\_fact\\_sheet\\_land\\_grabbing-pr.pdf](https://www.iwgia.org/images/publications/0693_fact_sheet_land_grabbing-pr.pdf)

<sup>33</sup> Taneja Bansuri, Biodiversity Planning Support Programme Integrating Biodiversity into the Forestry Sector India Case Study, (2001)

opportunities as well as their access to the forest in practical terms.<sup>34</sup> Many times, such attempts by the government to evict people from their lands are met with fierce opposition by the residents, resulting in a conflict-like scenario between them and the government itself. There are several stories from the field, such as the case of Tripura, in which over 1,200 tribal families have been threatened with eviction as a result of attempts by the state government to acquire land in order to establish a firing range for the Assam Rifles in 13 villages in Dhalai district, according to the report. Eviction orders were allegedly given to the families by the state government in September 2015.<sup>35</sup>

Additionally, it has been shown that efforts have been made by the state as well as the central governments to weaken the necessity for informed gram sabha approval for forest diversion by resorting to unlawful and flawed technique in order to accomplish this. A number of states and businesses have been shown to collaborate with one another throughout the world by refusing to recognise the rights of forest dwellers living in forest regions targeted for conversion or unlawful cancellation of rights that have previously been recognised. Another factor for non-compliance with FRA regulations has been linked to the bureaucratic control regime in place at the time.



## CONCLUSION AND SUGGESTIONS

The Indian Constitution offers the most distinctive environmental and forest protection. It includes environmental policy recommendations for parliament, as well as a guarantee of life that the Indian Supreme Court sees as a right to a safe environment. Unlike other common law countries, India uses its most basic legal instrument to directly address the issue of forest protection. By propounding the Public Trust doctrine and sustainable development, the judiciary has contributed to forest protection and conservation. Various laws have been enacted for the goal of forest protection and conservation, but all of these laws have been given life by various judicial pronouncements. The judiciary has played an role of the activist in the protection and

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<sup>34</sup> B. G. Karlsson, *Ecodevelopment in Practice: Buxa Tiger Reserve and Forest People*, 34 EPW, 2087-2089, 2091-2094 (1999).

<sup>35</sup> G. Seetharaman, *Down Memory Lane: Forest Rights Act Yet to Achieve Major Milestones*, *Economic times*, Eco Times, 31st Jul. 2016, <http://economictimes.indiatimes.com/news/politics-and-nation/down-memory-lane-forest-rights-actyet-to-achieve-majormilestones/articleshow/53469538.cms>

conservation of the forest in cases such as Godvarman.<sup>36</sup> The court has bridged the gap between the lacunas and the implementation of numerous laws and statutes themselves. Furthermore, based on the aforementioned examination of numerous case laws, it can be determined that the judiciary has attempted to strike a balance between economic progress and environmental protection. The judiciary has also enacted many laws relating to forest protection through various judgements. This demonstrates that judges do make the laws. All of the precedents given above clearly demonstrate that the Supreme Court of India has played a special role in the protection and conservation of India's forests.<sup>37</sup>

The level of mobilisation and cohesion faced by the forest-dwelling communities in a particular area, the sensitivity of state government officials administering the Act, and the ecological fragility of the area, will all influence how the Act is implemented in different parts of the country. The FRA is undeniably a landmark piece of legislation, laying the groundwork for massive pro-poor institutional transformation in the management of the country's forests. The Act also provides substantial provisions for major improvements in tenure and forest governance, and it covers the redressal of rights. There are concerns with precise phrasing, but the main question is in whose interpretation will this Act prevail. Whether it will be taken up and executed in its spirit, or if the provisions will be read narrowly in order to deflect the intent. While the state is attempting the most restricted interpretation, grassroots movements are demanding implementation in accordance with the Act's spirit.

Given India's federal structure, there is a great deal of variety in how the Act is implemented across the country. In order to determine the extent of interpretation of inclusions and exclusions in implementation, the text's wording is crucial. Due to the arbitrary criteria of proving 75 years of residence, non-tribal forest inhabitants are plainly among the most likely to be disqualified. Many others who have had their rights violated are likely to be rejected due to a lack of evidence of their eligibility. With severe omissions, the rules have only half-completed their task. They have failed to give any direction on how to recognise the more sophisticated rights. They have enabled state governments to breach a critical provision of the law meant to ensure that claims are made in an open, transparent, and democratic forum by not clarifying the Gram Sabha

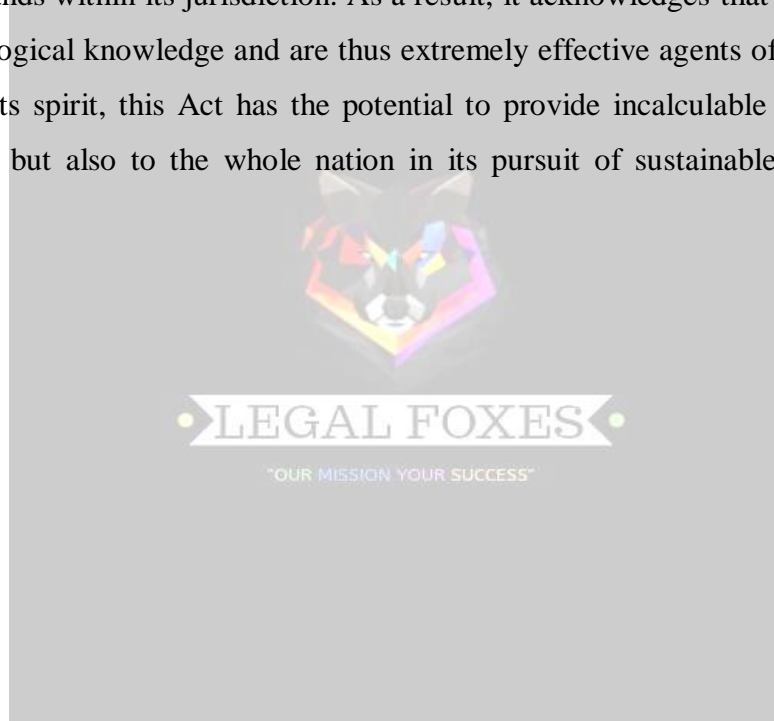
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<sup>36</sup> T.N. Godavarman Thirumulpad V. Union of India & Ors., (2006) 1 SCC

<sup>37</sup> JAGDISH KISHWAN & DEVENDRA PANDEY, *et.al.* (eds.), INDIA'S FORESTS 28, 71(2007).



responsible for starting the process of recognising rights for various types of villages.<sup>38</sup> It is also evident that, even if the law is executed without any faults, additional institutional changes in a variety of other laws and structures is required to accomplish the law's full pro-poor objective. There has been no indication of this happening to date. As previously stated, the problem of overexploitation can be addressed by correct forest value. The indirect and intangible advantages obtained from the forests are not accounted for, and hence their significant contribution to the national income is not obvious. As a result, the forestry sector does not receive its proper part of the budget. Without a doubt, the FRA respects the rights of communities to their forest resources and places the gram-sabha in a pivotal position by permitting it to make decisions about the use of their forest lands within its jurisdiction. As a result, it acknowledges that forest residents have specialised ecological knowledge and are thus extremely effective agents of forest conservation. If executed in its spirit, this Act has the potential to provide incalculable benefits not only to forest dwellers, but also to the whole nation in its pursuit of sustainable forest management goals.



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<sup>38</sup> MOEFCC, State of Environment Report 15, (2009).