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## Access to Justice Vis a vis Forest Rights in India

Krushna Badade<sup>380</sup>

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*Abstract- Forest Rights Act 2006 aimed to improve the lives of indigent tribes by recognizing their right to inhabit and live off forests where their ancestors had settled, and to govern them. The Forest Rights Act is the only legislation hoping to correct historic injustice done on the tribes. Access to justice remains always patchy and subtle for indigenous peoples dispossessed of their lands. Under the law, at least 150 million people could have their rights recognized to about 40 million hectares of forest land. But states have been slow to implement the law, and more than half the claims were rejected, often on flimsy grounds. Recently the Supreme Court of India has ordered concerned State Governments to evict the forest dwellers whose claims have been rejected. However the court later stayed its order to give states more time to examine the rejected land claims.*

*The Covid 19 and lockdown measures have had a drastic effect on a large population of poor and tribal communities as it has caused loss of livelihoods, physical hardships, lack of food and shelter and economic distress. There have been several reports from across the country stating that severe hardships being faced by migrant workers, shortage or lack of supply of ration to the communities combined with a loss of income. Tribal and other forest-dwelling communities are inevitably getting affected by COVID 19 and the lock down measures. This Paper is an attempt to establish a new analytical framework which contextualizes control of indigenous forest rights through access to justice. This paper is also an attempt to assess the impact of covid 19 on tribal communities with reference to forest rights.*

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*"At his best, man is noblest of all animals, separated from law and justice he is worst"*

– Aristotle

As Aristotle said very aptly that man is just an animal without being governed by laws and justice remains fantasy without the law. Laws are made to regulate the behavior of the people and also considered as a means to protect the equality in the Society. Tribal people who were isolated from the rest of the society and living in forests in backward conditions from several decades, Indian Government has laid down several laws and policies to bring them into flow of Society and for their upliftment.

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### **Introduction:**

Schedule Tribes constitute 8.6% of the country's population which works out approximately 105 million people. Greater diversity in scheduled tribes is found in Madhya Pradesh, Rajasthan, Orissa, Chattisgarh, West Bengal, Andhra Pradesh, Jharkhand, Gujrat, Maharashtra and Karnataka. The total population in these states is nearly 83% of the total population of Scheduled Tribes in India. Many Tribal communities/ Adivasis<sup>381</sup> are still resides in forests. Tribals are always dependant on the forests and had symbiotic relationship with the forest . They have safeguarded the forests and used them sustainably to ensure their own survival. However, the issue of community rights over resources has always been controversial. Before Independence, forests were viewed as crown land by the British and extensive tracts of forest lands were declared as Reserved Forests. This declaration led to extinguishment of traditional rights of forest dwelling communities, tribals and non tribals. After Independence, the Government started to control the forest in the name of Protected areas which further eroded the rights of tribals. In absence of clearly defined property rights, millions of forest dependent tribal families living in and around forest areas have been branded as either encroachers or illegal occupants. The state has established monopoly control over important resource and it resulted into the total alienation of tribals from forest. Tribal communities are forced to migrate to outside regions for the survival. This is indeed a historical injustice which was done on them. In order to undo this historical injustice the Government of India has enacted *The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*<sup>382</sup> supplemented by *The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Rules 2008* (amended in the year 2012).

### **Forest Rights in India**

The Forest Rights Act of 2006 has been "India's largest statutory development" in the field of Adivasi rights<sup>383</sup>. The Forest Rights Act is a result of the long-drawn-out struggle by the marginal and tribal communities of our country to assert their rights over the forestland they were traditionally dependent on. This Act is fundamental to the rights of millions of tribal people and other forest dwellers in different parts of our country as it

<sup>381</sup> Adivasi term indicates a sense of the community members being the original inhabitants of a region. However, the term Adivasi is not accepted by people throughout India. In northeast India, the term Adivasi applies only to tea-tribes imported from Central India during colonial times. All tribal groups collectively refer to Tribes. ([http://factsanddetails.com/india/Minorities\\_castes\\_and\\_regions\\_in\\_india/sub7\\_4h/entry-4210.html](http://factsanddetails.com/india/Minorities_castes_and_regions_in_india/sub7_4h/entry-4210.html))

<sup>382</sup> Hereinafter called as Forest Rights Act .

<sup>383</sup> Velayutham Saravanan, 'Political Economy of the Recognition of Forest Rights Act 2006: Conflict between the Environment and Tribal Development' (2009) 29 South Asia Research 199

for the restitution of deprived forest rights across India, including individual rights to cultivated land in forestland and community rights in common property resources. Community rights conferred by the Forest Rights Act include nistar rights, right of ownership over minor forest produce and other forest produce, grazing rights and rights of traditional seasonal resource use of nomadic or pastoralist communities. All the rights conferred under the Act shall be heritable but not alienable and transferable. The objectives of the Act are historic in the sense that not only do they recognize for the first time the rights of forest dwellers but also recognize the shortcomings of the Forest Conservation Act in denying the forest dwellers their rights for so many decades. The Act seeks to link the rights provided to forest dwellers with the authority for forest conservation and sustainable use, using this as an opportunity to further reform the forest conservation regime. The Act provides a platform for systematic decentralization of forest governance in the country.<sup>384</sup>

The Forest Rights Act recognizes four different forms of rights.

**Land rights or ownership rights-** Land rights under the Act available if the person claiming such right satisfies the eligibility criteria laid down under the Act. No Land rights can be granted under the Act unless the person was cultivating the land as on December 13, 2005. The Act further requires claimants must be for personal cultivation by the claimant and ceiling limit is of four hectares.

**Community Rights or user rights-**

Community rights are rights which have been traditionally exercised by the communities over their own forest resources such as drinking water, collection of non timber forest produce, grazing grounds etc. these rights are communal in nature and can be exercised by all members of community equally. The Act also provides for customary habitat rights for Particularly Vulnerable Tribal Groups (PVTGs) who led a nomadic lifestyle characterized by shifting cultivation.

**Management and Conservation rights-**The Act vests scheduled Tribal Communities with rights to conserve and manage forest resources. This right reinvests the control of the forests in the communities who have been historically deprived of these rights. This right is exercisable by the Panchayats<sup>385</sup> and provides for the saving of the rights recognized by any state laws and autonomous district councils in the North Eastern States through the operation of Schedule VI of the constitution.

**Traditional and customary Rights-** The Act recognizes the rights of communities over biodiversity, traditional knowledge and intellectual

<sup>384</sup> Vijender, A critique of the Scheduled Tribes and other Traditional Forest Dwellers (Forest Rights) Act, 2006, *Journal for Environmental Law*, Vol. 1, Research and National Law University and Judicial Academy, Assam (2016)

<sup>385</sup> Panchayat (Extension to Scheduled Areas) Act, 1996

property of the community and also recognizes other rights customarily exercised by the communities over biodiversity. However, it excludes any hunting or Poaching activities which may have been customarily undertaken by the community<sup>386</sup>.

The Act recognizes various rights which the community were deprived of and reinvests the same with communities upon the existence of the rights. The Rules provide for a regime of evidence production for the establishment of these rights making the Act an important and landmark legislation towards tribal welfare in the country.

### *Vesting of Rights - A most crucial Aspect of Forest rights-*

Gram Sabha is the authority to initiate the process for determining the nature and extent of individual and community rights which may given to forest dwelling communities and Scheduled tribes within their local limits of jurisdiction by receiving, consolidating and verifying claims and have to prepare a map by delineating of the area of each recommended claims. Gram Sabha has to pass resolution to the sub divisional level committee. Any person who is aggrieved by such resolution may submit an appeal to the Sub Divisional Level Committee within sixty days from the resolution by the Gram Sabha. Sub divisional Committee shall consider and examine the appeal and prepare the record of forest rights and forward it through the Sub divisional Officer to the District Level Committee for a final decision. The decision of District Level Committee on the record of forest rights shall be final and binding.

### *Evidence for recognition of forest rights-*

The evidence for recognition and vesting of forest rights shall, inter alia, includes public documents, Government records such as survey, settlement reports, maps forest enquiry reports etc., Government authorized documents such as voter identity card, ration card etc., judicial or quasi judicial records, record of rights, privileges, concessions, genealogy tracing ancestry statements of elders other than claimant etc.<sup>387</sup>

### *Issues relating to Implementation-*

Interdepartmental conflicts, bureaucratic unwillingness and lack of information and adverse publicity hampered the implementation of Act. In most of the cases interests of forest department officials are not in consonance with those of tribal communities and they often act under conservationist approach of limited human interference. Most of the cases are settled at Panchayat level whereas settlement should be done at Gram Sabha Level.

<sup>386</sup> Sec 3(1)(l)

<sup>387</sup> <https://tribal.nic.in/FRARulesBook.pdf>

<sup>387</sup> Scheduled Tribes and other traditional Dwellers (Recognition of Forest Rights) Amended Rules, 2012

Despite the contribution of tribal women to the tribal economy through the collection of minor forest produce, their participation has been limited in the settlement process. Most of the verification committee does not have the women member and often requirement<sup>388</sup> is waived on the ground that there is no woman interested. In most of the cases, the district authorities ignored community rights. This led to the community resources being left to the management of none as the tribal Gram Sabhas continued to perceive that the regulation of community forest vested with the Government. Under the Act Forest Dwelling communities defined as any person or community not being scheduled tribe has to provide occupation over forest land area for at least three generations and one generation is defined as 25 years and thereby requires to give the proof of possession for more than 75 years. This provision presents various difficulties as there were no land records or forest records which would present the case for the communities leaving oral evidence in the form of narratives and testimonies which are not reliable before the court of Law.

The process of documenting tribal claims is not an easy one, since it involves democratically elected Gram Sabhas. This is compounded by the ongoing power struggle between the Government Departments and tribal Communities, where the latter is likely to lose unless there are strong political interventions on their behalf. One of the manifestations of this has been a limited interpretation of the Act, with the government recognizing mainly individuals' claims as neglecting community claims. There is a lot of ineffectiveness in the formation of Forest Rights Committees. In many places the Panchayat System is not very strong and in some cases the Panchayat elections are not even held often. In that case the Gram Panchayats are not functional to the desired level essential for implementation of Act. There is total lack of awareness about community forest rights among the scheduled tribes as well as government officials<sup>389</sup>. The Tribal Department is the nodal agency for implementation of this Act, unfortunately the records for the forest lands are in possession of either forest department or revenue department and there is lack of coordination between these three departments. As per the provisions of the Act it is responsibility of the Government Departments to provide essential documents to the tribal person and communities as evidence but it is not taken up by the respective departments. The tribal people seeking rights individually or community have to struggle to produce written evidence. In absence of authentic and reliable documentary evidence in such situation, the tribal revenue people also have to face grave problems in claiming their

of Scheduled Tribes and other traditional Dwellers (Recognition of Forest Rights) requires the Gram Sabha to constitute a verification committee with 1/3<sup>rd</sup> Women

Bhullar, Indian Forest Rights Act, 2006: A Critical Appraisal, (Law, Development Journal, Vol 4/1, 2008)

Recently on 13<sup>th</sup> February 2019 Supreme Court ordered State Governments to evict over ten lakh tribal people from forest land who have claimed under Forest Rights Act and their claims have been rejected. This number is estimated and the actual number can go beyond fifteen lakh. However, the Supreme Court stayed this matter and soon after that lockdown was declared because of Covid 19. This order raises serious questions about priorities of the Government in doing justice with tribal causes. The people versus environment debate needs to be investigated objectively considering the fact that the tribal people have always taken initiatives to protect the forests while timber mafia and development projects devoured the forests in connivance with the forest department officials.

### *Impact of Covid 19 on Forest Rights*

The Covid 19 and lockdown measures have had a drastic effect on a large population of poor and tribal communities as it has caused loss of livelihoods, physical hardships, lack of food and shelter and economic distress. Tribal people whose rights have been either rejected or they have been evicted from the forest and went into cities face many problems in the Pandemic. There have been several reports from across the country stating that severe hardships being faced by migrant workers, shortage or lack of supply of ration to the communities combined with a loss of income. Tribal and other forest dwelling communities are inevitably getting affected by COVID 19 and the lock down measures. Lack of health facilities in Tribal areas poses a major threat to tribal populations and it increases the chance of infections to tribal communities who were already deprived. Tribal migrant workers being stuck in cities who were with either no ration or eating merely one meal a day. It has been pointed out by various organizations and individuals in Jharkhand, Bihar and Chhattisgarh that the tribal migrant workers stuck in cities due to the sudden lockdown are more vulnerable than those who are in their own villages. In the villages some support systems exist in the form of community being together, surrounding ecosystems including forests and agricultural produce helping them cope better. Those who are stuck in the cities however were without any support system, shelter, food, or water and facing acute hunger and almost a starvation like situation. In addition they have to often face police atrocities, and criminalization, causing mental and psychological distress.<sup>390</sup>

### *Forest Rights as a mean to access to justice -*

Access to justice remains uneven and elusive for tribal peoples dispossessed of their lands. The Forest Rights Act promises land security for forest peoples displaced from ancestral lands by the combined forces of colonial forest resource extraction and contemporary free-market economic development, which have disregarded customary tribal land rights. Justice is a moral and

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<sup>390</sup> <https://tribal.nic.in/COVID-19%20Assessment%20Report>

legal concept. The concept of Justice is given in National and International instruments. Access to justice can be seen as the ability to use legal instruments in order to ensure that legal rights are recognised and awarded, and "the means by which rights are made effective." If rights to land are enacted by law, in order to claim these rights an individual or community needs access to justice. Legislation, especially ones that are rights-based, incorporates substantive rights. Land rights include the right to hold the land, to live on it, and to conserve and manage it, which are substantive rights. Procedural rights draw the rules and regulations that allow an individual or a group to be supported by the judiciary. The framing of these rules as legislation, the courts, the lawyers, the government bodies and civil society organisations who assist people to claim their rights are all part of the procedural process. These institutions within the legal system have to be effective and functional in order to provide solutions, which are fair for citizens seeking justice and in order for access to justice to be realised. The problems arise when these expectations are thwarted by dysfunction and justice becomes inaccessible.

The Forest Rights Act goes through several steps before it can be employed to access justice: A prolonged advocacy campaign, which, for the Forest Rights Act, was launched by both the forest communities and civil society; an acceptance by the government of the concept of these particular legal entitlements and the ensuing process of drafting, followed by the enactment; and then the administering of the law. The missing element in the instance of the Forest Rights Act was the preparation by the government of its staff who were entrusted with administering the legislation. Despite this it is important to acknowledge that the existence of progressive substantive rights is a huge step forward as a chapel for the community to secure legal redress for land violations, and has to be protected by honing and strengthening these factors, in particular administrative justice which is so vital for the success of the Forest Rights Legislation.

### *Conclusion*

The transformative potential of Act<sup>391</sup> represents the largest land and revenue reform in the country, to not only restore to forest dwelling communities their historical rights but also to democratize forest governance through empowered Gram Sabhas, conforms with the country's Constitutional Obligations, International commitments and departmental goals. However, more than one and half decades after the enactment of Act only 3% of the minimum potential has been achieved. To prevent the promise of remedying historical injustices to the marginalized forest dwelling communities from turning into yet another historical betrayal, both the Central and State

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<sup>391</sup> Scheduled Tribes and other traditional Dwellers (Recognition of Forest Rights) Act, 2006