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BRIDGING OF THE FOREST RIGHTS ACT WITH OTHER ENVIRONMENTAL LEGISLATIONS: TO HEAR THE VOICES OF FOREST DWELLERS

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ABSTRACT

The scheduled tribes and other traditional forest dwellers (recognition of Forest Rights Act, 2006, shortly known as the Forest Rights Act, (FRA), 2006) is a required legislation to the forest dwellers in India which aims at recognizing and protecting the rights of tribal people and others forest dwelling community over their dwelling land which they have occupied ages and ages ago and have some rights over the resources. The aim of this research paper is to understand the real application and usage of the legislation in addition to the other forest legislation which were already in existence, such as The Indian Forest Act, 1927, the Wildlife Protection Act, 1972 & The Forest Conservation Act, 1980.

The research also finds the inconsistencies that were felt in forest rights & environmental conservation. Understanding, the provisions of FRA & staying focused on Sec 4, Sec 13, certain conclusions can be drawn. Section 4 emphasizes the recognition of forest rights, independent of other prevailing laws while on the other hand, FRA has contradicting Section 13, showing ambiguity by emphasizing the supplementary nature of the FRA, which raises concerns about its implications on the existing environmental laws.

Hence, this paper, while examining prominent judicial precedents, has put out the changing interpretations of the courts, while at sometimes advocate for FRA's intention in protecting forest communities' rights, while other judgments continue to show the authority of environmental laws to ensure ecological preservation. These conflicting interpretations result in complicating the implementation of the FRA by hindering its effectiveness.

This paper after analysis, tries to adopt a critical approach into the evolving relationship between the rights of the tribals and environmental conservation in India & the need for comprehensive reforms to bridge both.

Keywords: Forest Rights Act, 2006, Conflicting Reforms, ST and OTFD, Changing Judgements

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INTRODUCTION

The Forest Rights Act, 2006 was enacted for recognizing & protecting the tribal & forest-dwelling communities over their traditional lands and resources, which they have been living for many years. Though the intention in enacting this Act is fair and aimed at rectifying injustices & promoting the well-being of these people, there is still a great challenge in reconciling the rights conferred by the legislation with the environmental laws such as The Indian Forest Act, 1927, the Wildlife Protection Act, 1972 & the Forest Conservation Act, 1980.

While the above-mentioned laws ensure ecological protection with sustainable management, the confusion is while Sec 13 states that FRA's provisions shall be in addition to (supplementary) and not in derogation of the existing laws in force, Sec 4(1) of the FRA, 2006 says that the rights of forest dwellers must be recognized, irrespective of other laws in force. So, while understanding the legislations on environment protection and the FRA, it is seen that the former laws protect environment restricting the tribals to exercise their rights while the latter gives rights to forest dwellers. The paper tries to analyze the conflicts between the FRA & other environmental laws with an aim in understanding how such issues impact the protection of tribal rights amidst the broader objectives of environmental conservation.

THROUGH THE SENSE OF PHILOSOPHY

As we know, rights & duties are jural correlatives. No right can exist without a corresponding duty or vice-versa. Every duty towards some person or persons in whom it is vested, the correlative right is also vested. And conversely, every right should be a right against some person or persons upon whom a correlative duty is imposed. There can be no duty unless there is someone to whom it is due, there can be no right unless there is someone from whom it is claimed.³

A right of a person is an interest recognized and protected by the rule of law & the state. violation of such duty leads to a legal wrong done to such person. Hohfeld's analysis says that rights in a broader sense as opposed to rights *stricto sensu* can be analyzed through related concepts such as liberty and no-right, power and liability, and immunity and disability. By examining the four fundamental pairs of jural correlative rights, legal relationships and the overall functioning of legal systems can be adequately studied.⁴

³ 1.SIR JOHN W. SALMOND ON JURISPRUDENCE(SWEET&MAXWELL,1996)

⁴ Id.

The Scheduled Tribes and other persons and communities that primarily reside in and depend on forests for their livelihood are given several rights under the FRA, 2006. The rights include the right to hold and live in the forest land, the right to own and to access, use and dispose of minor forest produce, the right of use of entitlement to fish, grazing rights, traditional seasonal resources access, etc.⁵

For these tribals and other tribal forest-dwellers, the right to life is inextricably linked to access, control and rights over customary lands, forests and natural resources. The State has the obligation to protect the rights through recognition of right to livelihood as a fundamental right under Article 21 of our Indian Constitution.⁶ Tribal rights under this rights-based legislation create corresponding duties on the part of the State & other stakeholders to recognize & uphold these rights. This, most significantly should ensure that developmental projects do not violate the rights of tribal communities. Also, the departments involved in developmental projects have certain duties not to take away the livelihood of these tribal communities and conduct proper impact assessments, consulting with affected communities & providing fair compensation for displacement before taking any developmental projects.

The rights of indigenous people have been discussed on priority in various International Conventions as their subject matter. Among these, The International Labour Organization (ILO) Convention on Indigenous and Tribal Populations Convention, 1957 (No. 107) being the first comprehensive international instrument setting forth the rights of indigenous & tribal populations which emphasized the necessity for the protection of social, political & cultural rights of indigenous people.⁷

Under the colonial laws, the rights of forest dwellers were extinguished and now these international instruments supplement the constitutional obligations of the State under Part III, IX and X of the Indian Constitution. Both Constitutional and Legislative laws recognizes the rights of forest dwellers.⁸

⁵Scheduled Tribes and other Traditional Forest Dwellers Act, 2006, 3, N0. @, Acts of Parliament, 2006

⁶ Olga Tellis & Ors. V. Bombay Municipal Corporation and Ors, (1995) 3 SCC, 545

⁷ S. Wiessner, The Cultural Rights of Indigenous Peoples Achievements and Continuing Challenges, 22 EJIL 121 (2011)

⁸ Radhika Chitkara & Kushboo Parek, THE RIGHT TO LAND : A STUDY ON LEGALITY OF FORCED EVICTIONS, 2 NLUJS JLS 69 (2020)

Forest tenure reforms are happening against the backdrop of growing evidence of the importance of a rights-based approach. To safeguard, particularly in contrast to the conventional conservation approach that is exclusive of rights & community participation.⁹

We need to understand the creations of rights, which are not creations of law but emerge in response to historical and continuing deprivations. Understanding the historical and socio legal context, it is clear that the State has obligations on the tribals for their rights to land and forests within the area of their dwelling. They were the protectors of forests till the need for development began & the tribals were considered as threat to the environment and forest and wanted to displace them from their habitat.¹⁰

Though the Apex Court is not giving a green signal for those projects which are having adverse impact on the environment and also in public interest, the hope of sustainable development may compel the Court to tolerate some level of environmental degradation and the dilution of the right to environment for the sake of the right to development. As a result, forest dwellers are dispossessed of their land rights and privileges, criminalization of livelihood, expropriation of forests for commercial and industrial purposes, accompanied by atrocities and human rights violations. The effect of these processes summed up, rendering forest dwellers as encroachers on their own lands and led to the enactment of the FRA. Although the FRA emerged as a legislative response to a national movement to secure the rights of forest-dwelling communities, the access to the rights & implementation by the state depict the failure on its part to fulfill its obligations as the corresponding duty holder.

The tribals and other traditional forest dwellers have played the integral role in the survival, sustainability of forests and in the conservation of biodiversity. The Act therefore recognizing, vests the right to use, manage and conserve forest resources and to legally hold forest land that the indigenous communities have used for cultivation and residence in forest-dwelling communities.¹¹ The Act also gives provisions which recognizes the community forest rights of the Gram Sabhas of forest-dwelling communities. The right to protect, regenerate, conserve, or manage any community forest resources which they have been traditionally protecting and conserving for sustainable use, along with the rights mentioned above, has the potential to change

⁹ RIGHTS-BASED APPROACHES: EXPLORING ISSUES AND OPPURTUNITIES FOR CONSERVATION, (Jessica Campese, Centre for International Forestry Research, & International Union for Conservation of Nature eds., 2009)

¹⁰ O Springate-Baginski et al., The Indian Forest Rights Act, 2002: Commoning enclosures?, IPPG available at <https://dlc.dlib.indiana.edu>

¹¹ S Singh, The Forest Rights Act, 2007: Implications for Forest Dwellers and Protected Areas, 10 INT, FOREST.REV.325 (2008)

the top-down centralized style of governance of forests to enable greater site-specific management by communities and provide collective livelihood security to them.¹²

To understand, the forest legislation in India has been drafted by the principles of indiscriminate extraction of forest resources, exclusion of people from the forest and centralization of the forest decision-making process. To further strengthen this argument, the Forest (Conservation) Act 1980 (FCA) was enacted only after several years of protest and campaigns by forest and wildlife conservation groups, to regulate the indiscriminate and illegal diversion of forests for non-forest purposes. While forest conservation groups deeply worshipped such an enactment, it became a challenging task to regularize the existing rights of forest-dwelling communities that they enjoyed before the onset of colonial rule in India. To overcome this, the FRA 2006 was finally enacted to recognize the paramount role of the forest-dwelling communities in the forest governance process of the country and sought to undo the historical injustices caused to them.¹³

The prolonged community struggles in the 19th and 20th centuries resulted in FRA 2006. The reason for this struggle for the community is insecurity of the schedule tribes and other traditional forest dwellers over their land, lack of their community recognition, threats from development projects and the absence of traditional governance oversight in recognizing the tribal life.¹⁴ The Act aims to confer the right to life upon the forest dwellers who have been residing and dependent on forests and forest lands for their honest needs. The absence of such rights without the regime were often utilized by private contractors under the license from the forest department. In pursuance of this right to livelihood, the Act vests other rights schedule tribes and other traditional forest dwellers that secure individual or community tenure or both.

It was widely recognized, even prior to the enactment of the FRA, that it is the Adivasis who have a “pre-eminent” right to the forest and not the state. Thus, the Act further attempts to redistribute power between communities and the State seeks to create a new democratic system of forests governance that provides for adequate safeguards to avoid any further encroachment of forests and involves the democratic institutions at the grassroots level in the process of recognizing and vesting forest rights.¹⁵

¹² Armin Rozencranz, *The Forest Rights Act, 2006: High Aspirations, Low Realisation*, 50 JILI 656 (2008)

¹³ Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Preamble, No 2, Acts of Parliament, 2006

¹⁴ Tushar Dash, *The Forest Rights Act: Redefining Biodiversity Conservation in India* (2010)

¹⁵ SINGH, *supra* note 10

LEGISLATIONS ON ENVIRONMENT AND FOREST

The Indian Forest Act, 1980 (IFA) and the Wildlife Protection Act 1972 (WLPA) do not go hand in hand with FRA 2006 in fundamental ways, for the reason that the FRA recognizes rights in categories of forest areas that are considered to inviolate or where rights are restricted under the IFA and WLPA. So, forests areas are governed by these conflicting legislations, where the IFA & WLPA operate alongside FRA.¹⁶

In addition to this, the FRA also contains provisions which states that FRA will be read in addition to and not in derogation of other laws. This has created a situation where communities have been denied forest rights on account of the area being a tiger reserve or being categorized as

a protected area under environmental protection statutes.¹⁷ For example, Critical Wildlife Habitats (CWH), recognized by the FRA are the areas that require the free, prior and informed consent of the Gram Sabha in the area before it is designated. But, the recognition of Critical Wildlife Habitat areas has not occurred as guidelines to identify such areas but have taken a long time to be agreed upon by different stakeholders and recognized. The guidelines which were subsequently formulated to identify CWH areas dilute procedural safeguards placed within the FRA for obtaining such consent of the Gram Sabha since it is the State that is empowered to define a CWH.¹⁸

Creation of national parks and wildlife sanctuaries, following the enactment of the Wildlife Protection Act, 1972 (WLPA), the high-handedness of the forest bureaucracy through the Forest Conservation Act, 1980 (FCA) and the 1991 amendment to the WLPA, further contributed to the restricting movements of schedule tribes and other traditional forest dwellers.¹⁹

Also, surprisingly, the laws, while drafting the rights of schedule tribes and other traditional forest dwellers, has very little or no guidance from Gram Sabhas and State Governments on the appropriate mechanism for the implementation of the law. Different States have used different methodologies to grant forest rights resulting in widely different levels of forest claims being accepted or rejected, leaving many in confusion about their status. Thus, FRA operates in a legal context where conflicting legislations are used to underdetermine or challenge its implementation while explicitly disregarding the rights of tribal provided under the FRA.

¹⁶ Arpita Kodiveri, *Wildlife First, People Later? Forest Rights and Conservation - Towards and Experimentalist Governance Approach*, 9 JILS 23 (2018)

¹⁷ Id.

¹⁸ Id.

¹⁹ Madhusudan Bandi, *Forest Rights Act: Towards the end of struggle for tribals?* 42 Social Scientist 63 (2023)

Historical injustice as understood by the drafters of the FRA, is embedded in a process that has led to the dispossession of schedule tribes and other traditional forest dwellers. The regime of dispossession in forest areas has been characterized by the systematic erosion of the rights of forest dwelling communities. It is this injustice that motivated the drafters of FRA to make a law where the rights of forest dwelling communities to their land and resources can be recognized.

I. FOREST RIGHTS IN THE FOREST ACT 2006

The forest laws in India are a complex and unclear issue as the existence of forest rights within the framework of legislations has far-reaching implications for the environment and also forest dwellers both. Though the new enactment of FRA 2006, is given, the Indian Forest Act, 1927 and the Wildlife Protection Act, 1972 are integral components of this Act, 2006.

II. THE INDIAN FOREST ACT, 1927

The Indian Forest Act, 1927 is a legislation which was made by the Britishers mainly for the conservation of forests. As a result, this often resulted in the displacement and dispossession of forest dwelling communities. The Act provided extensive powers to forest officials to focus on the revenue generated from the forest land and forest resources. This as a result, very frequently marginalized the traditional rights and livelihood of indigenous and tribal population. This history reveals the less importance or unrecognized rights of the forest dwellers in The Indian Forest Act, 1927.

III. THE WILDLIFE (PROTECTION) ACT, 1972

This Act primarily focuses on safeguarding the rich biodiversity of India. The Act mainly focuses on declaration of wildlife sanctuaries, national parks and the protection of endangers species. As a consequence, the rights of forest dwelling communities living in and around these protected areas are affected & their coexistence with wildlife for generations and their traditional practices and knowledge of biodiversity are less recognized or the Act at times has also imposed restrictions on these communities' creating tensions between conservation objectives and the rights of indigenous populations.

The FRA has emerged as a pivotal piece of legislation, aiming at rectifying the age-old injustices faced by schedule tribes and other traditional forest dwellers. A legal recognition to them is granted to their traditional rights and livelihood practices while also seeking to conserve and protect the forests by these schedule tribes and other traditional forest dwellers. The FRA intersects with the Indian Forest Act, 1927 and the Wildlife (Protection) Act, 1972 in complex ways, raising questions about the harmonization of these legal frameworks. The insertion of these provisions in the

existing forest law highlights the intricate balance required between conservation and the rights of forest-dwelling communities. The evolution of forest governance in India and the challenges and opportunities it presents for the sustainable coexistence of indigenous rights and environmental preservation can be studied by essentially analyzing the features and implications of the Indian Forest Act, 1927 and the Wildlife (Protection) Act, 1972 within the context of the new Act of 2006.

The marginalization and denial of the rights to utilize the resources vital for their livelihood & cultural practices, which was the historic truth, resulted in the promulgation of FRA in response to the longstanding pleas of the forest-dwelling communities. These laws prioritize conservation goals over human rights and have been invoked to justify the eviction of forest-dwelling communities from their ancestral lands. Nonetheless, there has been criticism for the potential contradictions with other environmental legislations, as elaborated above.²⁰ But the key areas of concern are the interplay between the environmental laws & the FRA, as there exists inconsistencies between these legal frameworks. The two crucial sections are section 4 and section 13 where the disparities primarily revolve while interpreting and applying these two crucial sections of the FRA.²¹

As Section 4 of the FRA is understood, it provides for the recognition of various rights, including individual and community forest rights, irrespective of other laws in force. This provision signifies a shift from their prior exclusion and dispossession to grant them unassailable rights over their traditional lands and resources.²²

Section 13 of FRA, 2006 on the other hand states that the provisions shall be in addition to and not in derogation of the existing laws in force whereby introducing an element of ambiguity as it suggests that the FRA should not or cannot supersede other environmental laws & policies.

So, there is a conflict which arises between the FRA and the regulations imposed by pre-existing laws, ultimately affecting the rights of schedule tribes and other traditional forest dwellers. The divergent interpretations of these sections as a result create significant problems. As some argue that FRA's provisions should take precedence in protecting the rights of forest dwellers, while others do not agree with this argument and contend that environmental laws should take

²⁰ Amita Baviskar, *Fate of the Forest: Conservation and Tribal Rights*, 29 EPW 2413 (1994)

²¹ Madhu Sarin & Oliver Springate-Baginski, *India's Forest Rights Act- The anatomy of a necessary but not sufficient institutional reform*, IPPG (July 2010)

²² Scheduled Tribes and other Traditional Forest Dwellers Act, 2006, 4, N0.2, Acts of Parliament, 2006

precedence, as the laws are designed to ensure ecological preservation and balance, which is required for sustainable development.

JUDICIAL PRONOUNCEMENTS ON TRIBAL RIGHTS

The Supreme Court in the initial years that is during the time of India's independence, was sympathetic and understanding the challenging lives of tribal communities and acknowledged the entitlement of tribal communities to their ancestral lands and resources by rendering numerous verdicts in support of their rights.

In *Samatha v. State of A.P.*,²³ the Supreme Court ruled that the government cannot violate the rights of tribal communities. These tribal communities have fundamental right to life and livelihood, which cannot be taken away by the government in the name of development. The direction to the government was also given by the SC to establish Grama Sabhas (village councils) in tribal villages to give tribal communities a say in the management of their traditional lands and resources.

But in *Tehri Dam* case where the petitioners contended that the submergence of villages for the reservoir would displace a large number of tribals who have lived in the area of forests for generations and the project would destroy monuments, habitats, flora and fauna and traditions. But on the opposite side when the respondents rebutted that tribals would be given a proper rehabilitation package and compensation, the SC taking into consideration the positive aspects of the construction of the dam, gave clearance with majority opinion of the court.

Looking at the shift in the recent years, the SC is more on the interests of the government and development projects, even if they conflict with the rights of the tribal communities.

This shifts is evident in the case of *Niyamgiri Hills*, where the SC gave a green signal to the mining authority to start with their bauxite project despite the opposition of the Dongria Kondh Tribals who considered the hills to be sacred and opposed the project. In this case, the SC invoked the Article 25 and 26 of the Indian Constitution read with section 13 of the FRA and section 4(d) of the Panchayats (extension to scheduled areas) Act, (PESA), 1996 and reinstated the Gram sabha to decide religious matters as PESA gives rights to Gram sabhas on religious matters. In addition to this, the SC also held that the right to worship their deity in the hilltops of the Niyamgiri Hills should be preserved and protected.

²³ *Samatha v. State of A.P.*, (1997) * SCC 191

This literature has put fourth how the Court has given due consideration to national interest over the rights of tribals. The Apex Court considered the developmental projects, contractional works, dams, mining and extracting minerals as symbol of nation's development while it has failed to understand and recognize the right to life and livelihood of these marginalized communities by giving them restricted legal access which becomes the core of judicial responsibility.²⁴

CONCLUSION

The FRA, though holds a significant role in conserving the rights of tribal communities, its practical effectiveness of the legal framework, especially community rights however relies heavily on the governmental bodies and agencies to perceive and implement it in a right way. To understand furthermore, the FRA was legislated to change the approach of exclusion of these tribal rights to the inclusion of their recognition, rights and empowerment. But the challenges still persist despite this new enactment, the continued ongoing rights deprivation.

The SC has also played a pivotal role by attempting to reconcile the conflict of the provisions of the FRA & other environmental laws. This paper tries to highlight the complementary measure that is required to ensure the balance between ecological conservation and protection of tribal communities over their forests and their practices in conservation of forests. The interpretations of the courts should be to bridge the both that is the FRA and the Environmental Legislations and not undermine the rights of tribal communities.