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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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Description

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DEVELOPMENT OF LAND RIGHTS FOR TRIBAL LAW

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ABSTRACT:

Tribal people natively also known as Adivasis in India. India has the second largest tribal population in India the Constitution under article 341 authorizes the president to notify the tribes that can be called schedule tribes in different states and union territories schedule five also provides for the tribes to be self-governed where there is a clear majority of tribes. The tribes are majorly located in forest and hilly regions. The paper aims to see what were the conditions relating to land both prior to the independence that the tribal people lived in and what has independent India insured for the tribal people and what are the short comings that need to be solved both in the policy aspect and execution of already prevent laws.

Key words: Tribal people, Adivasis, Constitution, Forest and Hilly regions.

INTRODUCTION:

The word Adivasi is derived from Sanskrit and is a conjunction of two words: Adi meaning Original and Vasi meaning inhabitant¹ Adivasis are people who lived in the India sub- continent from the beginning before even the Aryans came in 1500 -2000 BCE. The term Adivasi was only coined in the 1930s and doesn't indicate a single group of tribes but is a collective way of calling all the indigenous tribes present in the sub-continent .each tribe has their own identity and working custom etc. the official census of 2011 accounts for nearly 8.6 percentage of Adivasis in the Indian population which amounted to nearly 104 million² then but since most Adivasi live in hilly and forest areas, they are hard to be accounted. the land rights of these people majorly focused from the forest rights act and the constitution of India.

¹ Definition Of Adivasi, <https://www.lexico.com/definition/Adivasi>

² <https://censusindia.gov.in/Census.Website/Data/Census-Tables>

HISTORY:

The tribal people also known as Adivasis are people who came before Aryans in the 1500 BCE to 2000 BCE. The Aryans and Adivasis are two different set of people even in the Rig Veda and other historical documentary used the word „asura“ to describe Adivasis and they were portrayed to be subservient to the Aryans³ there was possible conflict between both of them due to the cultural, ecological, religious, social ways so the Aryans stayed in the plains and the Adivasis moved towards the hills and forest and were treated below the Aryans and were asked to menial jobs by the Aryans Anthropology defined and described Adivasis as primitive, savage, uncivilized and jungle which led to the communities being colonized, marginalized and ostracized⁴ these words show how the Aryans and other middle eastern rulers , European countries treated the Adivasis who faced the brunt of the exploitation that they are facing today.

The shift to the forest and hills didn't help the Adivasi community grow much which landed them in the position of being one of the most economically backward groups existing in India. It becomes difficult for them as some of them live in remote areas to connect with and co relate with modern society. This kind of social and physical separation or seclusion has declined their development. The welfare schemes, government schemes do not even reach these people because of the isolation. So the tribal people must be protected from leading an isolated and segregated life away from the mainstream society living in cities, towns and villages.

The idea of owning a land only came after the British invaded us and the company started owning land and started to build factories etc. for the growth of the east India company they were a lot of rebellion to gain back the land from the late 18th century to the early 19th century like many other colonized countries like Australia north America and many other countries the protection of rights of Adivasis was started by Mahatma Gandhi he treated the Adivasi equally. Today they are protected by both their constitutional and rights given by land laws.

CONSTITUTIONAL PROTECTION:

In the 1950 Constitution of India, special protective provisions were established for Adivasis and those referred to as 'untouchables.' The majority of indigenous peoples were categorized as

³ Manish Meena, The Brahminical And Colonial History Behind Adivasis“ Demonisation And Criminalisation (AUGUST 29).

⁴ Christopher Binay Nag, Adivasis And The Indian State: Stereotyped As 'Primitive' And 'Savage', Tribal Communities Fight For Right To Choose Social, Cultural, Land-Ownning Systems, Firstpost

'scheduled tribes.' Article 341⁵ granted the President of India the authority to designate 'castes, races, or tribes' as scheduled tribes under the Constitution. Under Article 244⁶ the fifth⁷ and sixth⁸ Schedules of the Indian Constitution provided for self-governance in specific tribal-majority regions.

The Fifth Schedule focused on the administration and control of tribal lands known as "Scheduled areas" within eight Indian states. It aimed to safeguard Adivasi (tribal) communities in these areas by protecting their lands and natural resources from non-tribal. The governors were granted special powers in Fifth Schedule areas, enabling them to exempt specific laws or parts thereof from applying in these regions and to establish regulations for governance and peace. These powers extended to matters such as land transfer restrictions among Scheduled Tribe members, land allotment, and money-lending activities, all in consultation with the Tribes Advisory Council.

Land rights have been a pivotal issue for Indian Adivasis since the colonial period. The Constitution addressed indigenous land rights through the Fifth and Sixth Schedules. The Fifth Schedule provided special protection to 'Scheduled Tribes' in the 'Scheduled Areas,' which initially covered only eight states. However, today, ten states, including Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, and Telangana, have Fifth Schedule Areas. This omission of several states, particularly in the south with significant Adivasi populations, raises questions about the rights of Adivasis in those states.

The Sixth Schedule of the Constitution granted autonomy to specific tribes in the North East, specifically in Assam, Meghalaya, Tripura, and Mizoram. Under the Sixth Schedule, autonomous bodies known as District Councils and Regional Councils were empowered to legislate on matters related to Adivasi land rights, including land allotment, forest management, property inheritance, and money-lending regulation.

The Scheduled Tribes reside in contiguous areas, setting them apart from other communities. This geographical cohesion simplifies the implementation of development initiatives and regulatory safeguards tailored to their needs. Under Article 244(1) of the Constitution, the Fifth Schedule defines "Scheduled Areas" as regions that the President can designate through an order after consulting the respective State Governor.

⁵ INDIA CONSTI Art 341

⁶ INDIA CONSTI Art 244

⁷ Indian constitution fifth schedule

⁸ Indian constitution sixth schedule

Article 244(2) of the Constitution pertains to the Sixth Schedule, which applies to certain areas in Assam, Meghalaya, Tripura, and Mizoram. These areas are labelled as "tribal areas," and they establish District or Regional Autonomous Councils with substantial legislative, judicial, and executive authority

Focusing on the Fifth Schedule Areas, the identification of "Scheduled Areas" within a State is accomplished through an official order by the President, following consultation with the concerned State Government. This same process applies to any adjustments, expansions, contractions, incorporation of new regions, or the revocation of Orders related to "Scheduled Areas."

The particularly vulnerable tribes are more vulnerable sections among the tribal. Among the tribals, more assertive and relatively developed tribal groups take the major chunk of development assistance and vulnerable are left behind. This was recognized by the Dhebar commission which created a separate category named primitive tribal groups in 1973 which was renamed in 2006. The tribes are selected by the central government after a careful check on the requirements as the state government and union territories submit the proposal most of these are from Odisha out of the 75 existing ones⁹.

LAND ALIENATION:

The rights of tribal communities over forests are an undeniable and deeply rooted historical reality. However, the issue of land alienation from tribes to non-tribal entities go way back and it starts with British colonial rule in India. During this time, British authorities entered tribal regions to exploit the abundant natural resources held by the tribe. Due to the absence of legal land rights for tribal people, non-tribal individuals found it easier to acquire their land, these not only included the government entities but private entities such as the money lenders etc. also found it easy.

The colonial policy was very focused on profit making it and had little to no regard to the interest and welfare of the tribal communities, which lead to displacement of the tribes from their ancestral lands. Forest which was previously home to the tribes became government properties because it was abounded with resources and only authorized people could go in which distanced the tribes from their livelihood also.

⁹ <https://www.iasexpress.net/tribal-rights-in-india-constitutional-legal/>

Tribal communities predominantly rely on forest resources for their sustenance, engaging in activities like agriculture, hunting, and gathering. However, the intrusion and exploitation of these resources by outsiders disrupt the delicate balance of tribal life. Over time, tribal communities lost control over communal resources such as forests. In Jharkhand which is tribal majority, tribes suffer disproportionately due to state government-led mining operations and hydroelectric projects that exploit resources in tribal areas, rendering the tribes strangers in their own land.

Attempts to acquire tribal lands often involve non-tribal individuals marrying tribal women, with evidence pointing to these individuals belonging to upper castes and the ruling class in coastal Andhra.

Tribal people often find themselves ousted overnight of their homes and land property because there is no proper documentation so government declares their property as national parks, sanctuaries or reserved forest without proper registration. There rules imposed on them that they cannot use the other lands that they have been using regularly for feeding the animals are using to cultivate crops. They often face the chances being homeless, lacking substantial legal rights. Their demands for rights often face suppression by forest authorities, and any attempts at protest are met with extreme force, even depriving them of their basic right to life.

FOREST RIGHTS ACT 2006¹⁰:

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, or the Forest Rights Act (FRA), is a milestone legislation enacted by the Indian Parliament to redress the historical grievances of tribal communities and other forest dwellers. For centuries, Adivasis and indigenous forest dwellers have coexisted with forests in mutually beneficial relationships, depending on forests for food, livelihood, and cultural practices. Colonial and post-colonial forest policies, however, worked systematically to alienate these groups from their land, labeling them as encroachers instead of legitimate custodians. The FRA was promulgated to correct this long history of dispossession by granting legal recognition of the rights of forest-dwelling communities over land and resources. Although its intention was progressive, the FRA's implementation has been uneven, with resistance from bureaucratic institutions, unawareness among beneficiaries, and opposition from industries interested in gaining control over forest land.

¹⁰ <https://www.indiacode.nic.in/bitstream/123456789/8311/1/a2007-02.pdf>

The passing of the Forest Rights Act was based on the historical struggle of tribal and forest-dwelling communities against exploitative forest governance regimes. Prior to British colonization, these groups had traditional rights over forests, regulating them through their traditional governance systems. Colonial policy, specifically the Indian Forest Act¹¹ and its stricter amendment¹², made forests state property, criminalizing indigenous activities like shifting cultivation, grazing, and collection of forest products. The British colonial administration saw forests as mainly a revenue-raising resource, and this resulted in mass displacement of indigenous peoples.

After independence, the Indian state prolonged these exclusionary practices, further excluding Adivasis by assigning huge tracts of forest areas as reserved or protected areas without acknowledging the rights of those dwelling there for generations. The Forest Rights Act of 2006 was brought into being as a corrective legislation to reverse these colonial-era injustices. It sought to identify and vest forest rights in Scheduled Tribes (STs) and Other Traditional Forest Dwellers (OTFDs) who had occupied forest land prior to December 13, 2005. The Act recognized three broad categories of rights: individual rights (for habitation and cultivation), community rights (over common resources such as grazing lands and non-timber forest produce), and rights to protect and manage forests.

One revolutionary feature of the FRA was its decentralization of forest governance, giving Gram Sabhas (village councils) statutory power in deciding and regulating forest rights, thereby decentralizing power from the forest bureaucracy to local communities. The Forest Rights Act has some revolutionary provisions aimed at reclaiming autonomy and livelihoods for forest-dwelling communities. Individual Forest Rights (IFRs) allow eligible claimants to secure legal recognition for land they have been cultivating or residing on before the 2005 cutoff date¹³.

Community Forest Rights (CFRs)¹⁴ go a step further by recognizing collective ownership over resources such as minor forest produce (MFP)¹⁵, pastures, and water bodies. Such rights allow communities to harvest and sell forest products in a sustainable manner, ensuring economic empowerment and de-linking from exploitative middlemen. Yet another revolutionary provision

¹¹ 1865

¹² 1927

¹³ Section 4(5)

¹⁴ Section 3(1)(b) and section 3(1)(c)

¹⁵ Section 2(i)

is the right to protect and conserve forests, which vests Gram Sabhas with the responsibility to be the custodians of their immediate ecosystem. It involves the power to control deforestation, halt illegal mining, and manage biodiversity based on traditional knowledge. The Act also guarantees judicial protection from arbitrary displacement, ensuring no forest dweller will be uprooted till their claims have been validated and addressed. Further, the FRA recognizes the tribal knowledge base of community-conserved spaces as the very essence of conservation, replacing the colonial theory that the tradition of the locals destroys forests.

Through enunciating such rights, the Act attempts to bring democratization in the regime of the forests and fuse ecologic sustainability and social justice together. Although the FRA holds the potential to be transformative, its implementation has been extremely diverse across India. While some states have moved ahead to recognize forest rights, others have been slow due to administrative inertia or vested opposition. Maharashtra is one state that takes a commendable lead here, having granted more than 5,000 Community Forest Rights (CFR) titles, most notably in areas such as Gadchiroli and Chandrapur. These names have empowered tribal societies to take charge of forests, harvest bamboo and tendu leaves in a sustainable way, and even earn income through community-based enterprises. Odisha has also made significant progress by acknowledging both community and individual rights in areas that have high tribal populations¹⁶.

Conflicts remain in locations where forest areas coincide with wildlife sanctuaries or with mining areas, with tensions between conservation officials and local communities. Gujarat has recorded successful CFR implementation in the Dang district, where Adivasis have attained control of forest resources and thereby enhanced their livelihoods. Kerala too has accorded rights to tribal people in the Wayanad area, although landlessness continues to be a deep-seated issue. Even with these achievements, the general implementation is not consistent. Large tribal-population states such as Chhattisgarh, Jharkhand, and Madhya Pradesh have been slow to process claims. In most instances, even when titles have been issued, communities are unable to exercise their rights because of resistance from forest departments or lack of cooperation from state administrations.

Despite its progressive framework, the FRA faces numerous challenges that hinder its effective execution. One of the biggest obstacles is the resistance from the forest bureaucracy. The Indian

¹⁶ Securing Forest Rights and Livelihoods of Tribals Challenges and Way Forward T. Haque

Forest Department, shaped by colonial-era laws, has traditionally viewed forests as state property and has been reluctant to cede control to tribal communities. Most forest officials view the FRA as eroding their powers, resulting in intentional delays in claim processing or technical rejection. There have been cases where forest departments have contested Gram Sabha decisions in court, creating legal obstacles for claimants. The second significant challenge is the lack of awareness and capacity building among forest-dwelling communities. A number of tribal communities are still uninformed about the rights under the FRA or are without the records necessary to bring claims. Verifying occupation prior to 2005 is in many cases arduous with the kind of evidence that much of the marginalized population lacks. Gram Sabhas, which were meant to serve as a linchpin to verify claims, also tend to be inadequately trained and equipped to function as they ought to. The FRA also encounters conflicts with conservation legislation, specifically the Wildlife Protection Act¹⁷ and the Forest Conservation Act¹⁸. In many cases, tribal rights have been dismissed on the argument that they fall under national parks, tiger reserves, or "critical wildlife habitats." Although conservation is vital, the denial of traditional forest inhabitants from these territories frequently results in forced evictions without rehabilitation, contravening the intent of the FRA. Corporate and industrial interests are another key challenge. Mining corporations, plantation businesses, and infrastructure projects often oppose the assertion of forest rights because these might limit their access to land and resources. State governments, spurred by the need to encourage industrialization, also tend to favor corporate projects at the expense of tribal rights, resulting in land alienation and displacement. Lastly, inadequate political will has stalled the FRA's implementation in many regions. While some state governments have taken proactive measures, others have shown little interest in empowering tribal communities, fearing backlash from industrial lobbies or forest officials. The lack of a robust monitoring mechanism to ensure compliance with the FRA further exacerbates these issues.

In order for the Forest Rights Act to meet its aims, a multi-faceted strategy is essential. Strengthening Gram Sabhas ¹⁹is essential—local bodies must be given legal, administrative, and financial backing so that they are able to successfully manage forestland. Awareness and capacity-building schemes need to be implemented to create awareness among the tribal communities of

¹⁷ 1972

¹⁸ 1980

¹⁹ Article 243(b)

their rights as well as about the claims procedure. Renovation of forest governance is another urgent action. The Forest Department's response should change from a policing action to a synergistic one in which officials cooperatively work alongside communities to implement sustainable forest management. The bureaucracy that sees the tribal people as encroachers needs to shift to acknowledging the role they have played as and continue to play as conservationists. Expediting outstanding claims in a transparent and equitable manner is imperative. Sufficient resources should be provided by governments to simplify the verification process and prevent actual claimants from being deprived of their rights as a result of bureaucratic delays. Independent monitoring mechanisms need to be put in place to track the FRA's implementation and resolve complaints. A conservation approach of balance should be adopted to reconcile tribal rights and wildlife conservation. Rather than displacing forest inhabitants, conservation policies must embrace traditional knowledge ²⁰and engage communities in biodiversity management. The idea of coexistence reserves, wherein tribal livelihood and wildlife conservation are balanced, may be a good model. Last but not least, resisting corporate encroachment necessitates robust legal protections. The state needs to uphold laws prohibiting land grabs under the guise of "development" and ensure compliance of industries with the FRA's provisions. Public interest litigation and campaigns by civil society organizations can serve as the crucial link to keeping authorities on their toes.

The Forest Rights Act, 2006, is a historic chance to undo centuries of injustice done to India's forest-dwelling and tribal communities. By asserting their rights over land, resources, and self-governance, the FRA can change forest governance from an unjust, exclusionary system to one that is just and sustainable. Yet, the promise of the Act remains unfulfilled in most regions of the country owing to bureaucratic opposition, absence of political will, and corporate intervention.

For the FRA to be effective, there has to be a determined effort to decentralize forest governance, strengthen Gram Sabhas, and give precedence to tribal rights over exploitative industrial interests. Only then can India transition to a model of development that is inclusive, equitable, and ecologically sustainable. The real test of the FRA is not in its enactment but in its enforcement—ensuring that the rights of forest-dwelling communities are not merely enshrined on paper but enforced in practice.

²⁰ Traditional act 2013 aiming to protect indigenous rights

CONCLUSION:

Through the paper what comes into attention of the author is that adivasis were the one to suffer from the Vedic age to the modern age back then they were differenced and allotted menial jobs but now there right to stay over their property that belongs to them being taken away and most often it is done under the pretext of development these are the people who lived all their lives in the forest and are asked to vacate their homes overnight for the development of the state but are they being fairly compensated is their loss of livelihood being considered some of these tribes have zero connection to the outer world and have a zero knowledge in what their rights the government has its intention to protect the indigenous people but the problem is with the administration the gram sabha is not doing its work properly as the system has flaws with respect to bribes and being party to alienation. The right over land for adivasis is not only a mere property but also a right to live their way practice their customs and continue to grow the heritage of their tribes without being misplaced from where their ancestors worked.

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