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Rights of Indian tribal population and implementation of Forest Rights Act, 2006—a critical analysis

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Abstract

The history of land acquisition, including forests, is not new in India. The same has been in existence since the conquest of British. A number of laws and policies were framed from time to time which restricted the rights of tribes and forest dwellers. Some laws even displaced them. The Forest Rights Act, 2006 was enacted to give recognition to rights of scheduled tribes and traditional forest dwellers. The paper intends to analyse the implementation of the Act and understand the impact of change it may have brought.

Keywords: Tribes, forest, dwellers, rights, India, implementation.

JEL Classification: K28

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1. Introduction

The issue of forest rights in India can be interpreted from different perspectives depending on whether one is a forest dweller, forest official, environmentalist, economist or social activist. The problems with rights of forest dwellers and protection of forests are not a new one. The issue has been in existence even before the independence. United Nations Development Program (UNDP) highlights that 'The issue is of crucial importance considering that forest landscapes cover over 23% of the country and affect the livelihoods of around 200 million citizens or 20% of the population in our democratic polity.' (UNDP n.d.). The paper tries to analyse the level of implementation and how the lives of tribes and forest dwellers have changed/impacted with the introduction of Forest Rights Act, 2006.

1.1. Background

The history of acquisition of forests can be traced back to the Forest Act of 1864, which was used as a tool by the British to name any area as a forest land, which in turn meant government controlled forest. It differentiated forests into 'protected forests', 'reserved forests' and 'village forests'.

The National Forest Policy, 1894 mentioned that forest dwellers can use the forests for specific purposes. It regulated and restricted the use of forests by the public. The Land Acquisition Act, 1894 gave powers to the British government in India to acquire any land in the name of public purpose. (Forest Rights Act and NGO n.d.). The Indian Forest Act, 1927 was enacted which exists till today and restricts the use of forests. After independence, there have been various policies and legislations with respect to forests and environment which may have deprived the forest dwellers their rights. Some of them are National Forest Policy of 1952, the Forest Conservation Act of 1980, Wild Life Protection Act of 1972 and its 1991 amendment, etc. (Ministry of Environment and Forests, n.d.).

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was enacted in the year 2006 which accords several rights to the scheduled tribes and forest dwellers. Dr. Sunil Kumar Verma remarks 'The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006' is a result of the protracted struggle by the marginal and tribal communities of our country to assert their rights over the forestland over which they were traditionally dependent. This Act is crucial to the rights of millions of tribes and other forest dwellers in different parts of our country as it provides for the restitution of deprived forest rights across India, including both individual rights to cultivated land in forestland and community rights over common property resources.' (Verma, 2010) The notification of Rules for the implementation of the Forest Rights Act, 2006 on 1st Jan 2008, has finally paved the way to undo the 'historic injustice' done to the tribes and other forest dwellers. (Forest Rights Act and NGO n.d.).

1.2. Rights accorded/recognized

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 provides access to land resources and livelihood for the tribal people through various rights under the Act. The rights are as under:

1. 'right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;
2. community rights such as nistar, by whatever name called, including those used in erstwhile b. Princely States, Zamindari (landlord system) or such intermediary regimes;

3. right of ownership, access to collect, use and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
4. d. other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
5. rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
6. rights in or over disputed lands under any nomenclature in any State where claims are disputed;
7. rights for conversion of Pattas (a property document conferring right) or leases or grants issued by any local authority or any State Government on forest lands to titles;
8. rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests;
9. right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
10. rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council (bodies framed through special laws as provided under the Indian Constitution for administration) or which are accepted as rights of tribes under any traditional or customary law of the concerned tribes of any State;
11. right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
12. any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in above clauses but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;
13. right to *in situ* rehabilitation, including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December 2005'.

However, there are certain exceptions or situations where the felling of trees is permitted/allowed by the Central Government. The Central Government will provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding 75 trees per hectare: schools; dispensary or hospital; anganwadis (government-run child day care centres where food is given to children, teenage girls and pregnant women); fair price shops (a system to distribute grains and other eatables by the government); electric and telecommunication lines; tanks and other minor water bodies; drinking water supply and water pipelines; water or rainwater harvesting structures; minor irrigation canals; non-conventional source of energy; skill upgradation or vocational training centres; roads and community centres.

And such diversion of forest land will be allowed only if,

- a. the forest land to be diverted for the purposes mentioned above is less than 1 hectare in each case and
- b. the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha (village level government).

2. Methodology and statistical data

Doctrinal method of research has been adopted for the paper. Primary sources include reports of the Central Governments, legislations and policies of the Government. Primary data collected from various reports have been included. Secondary sources including various authored/independent research on the topic have been analysed.

Table 1. Implementation of the Forest Rights Act, 2006 in 20 Indian states

S. No.	States	No. of Claims received up to 31.07.2017			No. of Titles Distributed up to 31.07.2017		
		Individual	Community	Total	Individual	Community	Total
1	Andhra Pradesh	1,69,153	4,711	1,73,864	85,678	1,413	87,091
2	Assam	1,48,965	6,046	1,55,011	57,325	1,477	58,802
3	Bihar	8,022	0	8,022	121	0	121
4	Chhattisgarh	8,43,539	25,977	8,69,516	3,73,718	12,714	3,86,432
5	Goa	9,372	361	9,733	0	3	3
6	Gujarat	1,82,869	7,187	1,90,056	81,178	3,516	84,694
7	Himachal Pradesh	591	68	659	53	7	60
8	Jharkhand	99,224	3,286	1,02,510	54,458	1,723	56,181
9	Karnataka	2,98,795	5,741	3,04,536	12,421	628	13,049
10	Kerala	36,140	1,395	37,535	24,599	NA	24,599
11	Madhya Pradesh	5,75,639	39,828	6,15,467	2,17,245	27,510	2,44,755
12	Maharashtra	3,52,950	11,408	3,64,358	1,06,898	5,748	1,12,646
13	Odisha	6,14,863	13,483	6,28,346	4,06,919	5,952	4,12,871
14	Rajasthan	70,556	691	71,247	36,184	75	36,259
15	Tamil Nadu	18,420	3,361	21,781	0	0	0
16	Telangana	1,83,107	3,427	1,86,534	93,494	721	94,215
17	Tripura	1,98,238	277	1,98,515	1,25,020	55	1,25,075
18	Uttar Pradesh	92,520	1,124	93,644	17,712	843	18,555
19	Uttarakhand	182	0	182	0	0	0
20	West Bengal	1,31,962	10,119	1,42,081	44,444	686	45,130
	TOTAL	40,35,107	1,38,490	41,73,597	17,37,467	63,071	18,00,538

Claims received and distributed as on August 31, 2017

BEST PERFORMERS			WORST PERFORMERS		
State claims	Received titles	Distributed	State claims	Received titles	Distributed
Odisha	6,28,346	4,12,871	Tamil Nadu	21,781	Nil
Chhattisgarh	8,43,539	3,86,432	Uttarakhand	182	Nil
Madhya Pradesh	6,15,467	2,44,755	Goa	9,733	3
Tripura	1,98,238	1,25,075	Himachal Pradesh	659	60
Telangana	1,86,534	94,215	Bihar	8,022	121

Figure 1. Best and worst performers in implementation of the act. Source: Indian Express, 29 December 2017

	Categories	States
1	Laggard states No or extremely poor performance	Assam, Bihar, Goa, Himachal Pradesh, Tamil Nadu, Uttarakhand, Haryana, Punjab, Sikkim
2	Low performing states Achieved less than 2% of minimum potential	Rajasthan, West Bengal, Karnataka, Jharkhand
3	States with only IFR Implementation	Tripura, Uttar Pradesh
4	States which have ignored CFRs but implemented CRs and IFRs	Telangana, Andhra Pradesh, Madhya Pradesh, Chhattisgarh
5	States with both IFR and CFR implementation	Maharashtra, Odisha, Kerala, Gujarat

Figure 2. The state-wise promise and performance of community forest rights. Source: Promise & Performance: 10 Years of the Forest Rights Act in India, 2016, Report by Oxfam India

3. Data findings

3.1. Problem of implementation

Forest Rights Act, 2006 was enacted to recognise rights of the tribes and forest dwellers. Traditionally, India has millions of population which reside in forests and depend upon forest for livelihood. However, with recent developmental activities, people were displaced and not rehabilitated effectively. This can be blamed to the fact that there was no law which accorded rights to these dwellers/tribes. To ease this, the Forest Rights Act, 2006 was enacted.

The Forest Rights Act intends to provide not only rights but also social justice. It has been a decade since the enactment. It is necessary to know the current status of implementation and what is the impact of the enactment from a socio-legal perspective.

The Government has failed to understand the heterogeneous and culturally diverse society of tribal people living in the forest areas. The Government has never identified the reasons for abandonment of the land and nomadic ways of life of tribes and why the food security has failed in this section of the society. The displacement of the tribes has been the core of problems faced by the Central Government. The forest dwellers and tribes have been living for centuries (in some cases generations). The forest land, produce, livelihood, etc., through the forest has always belonged to these people. This Act accords the rights both individually, as well as collectively. But the Central Government through the exceptions can displace the people who mainly depend on the forest with a notification. This does render the action as horrendous and inhuman. The recognition of the right ensures the protection of people but in truth supports the industrialisation, especially mining. The fact that environmentalists supported the Act is now being seen as a bane to the society. Earlier the environmentalist and supporters of the nature claimed that the tribes as a reason for loss of ecology and poaching has caused danger to the wild animals to a great extent.

The real question is will the displacement and rehabilitation work for the tribes and traditional dwellers? There is no single instance of a successful rehabilitation in India. The tribes are the vulnerable and weaker sections of the society and are being hunted down by the forest officials and being thrown out of their lands in the name of the protection of forests and this is just not the answer to the settling of environmental issues in India. The rehabilitation is in no way going to improve the lives of the displaced. It is not question of money for these people. They have been living the same way for generations and it is the matter of their livelihood and survival. If the forest is taken away, in no other manner their lives can be brought to normalcy.

The harassment of registration of claims and settling of claims has been prevalent and these vulnerable people are in no position to contest the authorities. In most of the claims, the non-contest or poor contest of these people have impacted their lives to a great measure. Improved economic positions and access to education or skill development or social integration have never been concentrated upon by the Government. Instead trying to provide a livelihood and ensuring food security, they are being vacated from their homes and chased away. Investment in land or human capital or access to credit is unheard to both the tribes and the public. Customary rights and usufruct (ownership) rights, i.e., community or individual rights are another area of conflicts created by the Act.

The only positive step towards serious implementation of the Act was taken up by the Supreme Court in the Vedanta Case (decided by the Supreme Court on April 18th, 2013, in the case Orissa Mining Corporation vs. Union of India and Ors). The Wildlife Act, Forest Conservation Act and other Acts could take care of the preservation of the forests. There are numerous social security legislations which need to be implemented for the benefit of the tribes and traditional forest dwellers. The Panchayat Raj Acts at the state level could take care of the local governance. The right to livelihood has been declared as a fundamental right and the right indirectly protects the rights of the tribes for the minor produce of the tribes and other traditional forest dwellers and ensuring livelihood and food security.

The recognition of rights is fine but the action of trying to bypass the Act in the recent times is not showing of good faith and against the beliefs of the Constitutional makers and faith of the public in the Government. These are the most weaker and vulnerable section of the society and their understanding as to why they are being evicted and chased away from their home is unclear to them. Their idea of livelihood and shelter and survival is the forest itself.

In some cases, the tribes and traditional forest dwellers are asked to prove their inhibition in the forest for three generations. How are they are supposed to prove when they are illiterate living in parts of the country where there is no proper recognised language. Some tribes don't even know who to approach and what to claim for. The task is not simply impossible, infeasible but ridiculous.

The legal question of differentiation of individual forest rights and community forest rights and how they intertwine meticulously has not been taken into observation by the Government. There can never be a proper determination of the outcome and achievement of the Act without bias either towards the government or the tribes and traditional forest dwellers.

On the other hand, the people are starving, children are dying because of malnutrition and women are suppressed, especially in these tribal areas. Other concerns are the availability and access to water resources, infrastructure, education, decreasing the gap between the rich and poor (financial disparity) and ensuring cultural security. These are the real problems the society is facing in real, including the tribes and traditional forest dwellers. The government should be more concerned upon the climatic variations, disasters, agricultural issues and management of natural resources. The most deprived, disadvantaged and marginalised having no alternative means of income generation than forests are treated as a burden and hindrance to industrialisation, which is a pseudonym for development taking into account the actions of the Government.

There was no proper participation of the tribes during the framing of the Act. The convergence for implementation of the various schemes of the Government in the forest tribes and traditional forest dwellers is very poor. There is a need for individual/family impact assessment and effective consultation to determine the nature of rights to be given to a particular claimant under the Act. Although there are sufficient resources, the collection, concentration and use of the resources adequately and effectively are not done.

3.2. Claims and administrative efficiency

The Act stipulates that filing of claim is necessary to entitle him/her/community to receive certificate of distribution of forest land. The efficiency of the administrative agencies in clearing these claims is to be looked at.

4. Suggestions

- a. The first and foremost thing is educating the tribes and dwellers and creating awareness about the rights recognised and the procedure to obtain the land.
- b. The governments at State and Central level must collaborate with not-for-profit organisation and student and youth organisations to create awareness.
- c. c. A robust monitoring system is required to oversee the implementation of the Act at the ground level.
- d. The Government and the people need a better support system to ease the implementation.
- e. The Governments must bring out a policy which provides support post allotment of land and settlement of claims.
- f. The governments need to acknowledge the fact that strengthening the forest-based livelihood is the need of the hour.
- g. Existing laws should be brought in line with the Forest Rights Act, 2006. Better allocation of finance and other resources is important.
- h. Allocation of full-time staff, including a directorate, is necessary considering the number of claims filed and unresolved.

5. Conclusion

The polarisation and politicisation of the basic human rights of the tribes and traditional forest dwellers, i.e., right to livelihood, shelter and food, etc. The environmentalists call them poachers, the government tags them obstruction to development and the don't care attitude of the public is shameful. Access to land and access to credit can be termed to be key determinants in improving the food security in the forest tribes and the traditional forest-dwelling households. The Act is a sham and mockery of the principle of participatory democracy. Positive impact on the food security can be seen through legal recognition of the rights. The Act empowers and strengthens the local self-governance; addresses the livelihood security of the people, leading to poverty alleviation and pro-poor growth, and addresses the issue of conservation and management of natural resources and conservation governance of India. The Government is supposed to obtain the consent of the grama sabha before allocating the forest land for industries. It is contended that the Act to some extent has been holding back the development in these areas. The Act if implemented effectively has a great potential to put the economy of the tribes and traditional forest dwellers, as well as the country on a new path of economic development with social inclusion.

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