



Forest Dwellers' Rights in India: Legal Insights

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ABSTRACT

The International treaties and conventions can be considered as impetus which brought the idea of recognising rights of forest dwellers in India. Fundamental shift in forest governance came with the advent of British colonial rule. In India, the post-independence era signalled a slow but cautious shift in forest management policies which were still influenced by the colonial past over several decades. Post independence environment laws have also ignored the rights of forest dwellers. Ultimately, in order to remove historic injustice to the forest dweller Parliament enacted the Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006. Act of 2006 shows a significant shift in recognizing and restoring the rights of indigenous and local forest dependent communities. This paper examines specific provisions of FRA as well as analyse what rights it provides for the forest dwellers and also examines the processes for recognition of the rights. It further explores challenges encountered while implementing FRA.

KEY WORDS

Forest Dwellers, Indigenous People, Rights, Duties, Challenges.

INTRODUCTION

In India, the vast forests are dwelling place not only to flora and fauna but also for many indigenous populaces. The indigenous people, who are known as forest dwellers, are residing in forest for generations they have had close relations with the forests. It helps them in shaping their culture, spiritual and economic needs. However, their rights and access to these forests has been a subject of extensive debate.

Understanding the rights of forest dwellers in India requires delving into the complex legal frameworks that have governed these relationships over time, particularly in the post-colonial era.

The main focus of study is the Forest Rights Act 2006 that was a vital step towards reversing past injustices against forest dwelling communities¹. This Act represents a turning point in Indian law relating to approval of indigenous people's rights over their lands and resources. It argues that that such people should regain their entitlements as well as powers over land use within forest.

However, the journey from legal enactment to on-the-ground implementation of the FRA has been fraught with challenges. It is needed to analyse these challenges, including complicated bureaucracy, ignorance among forest people, and resistance by traditional authorities in charge of forests as well as how it interacts within other surrounding environmental and wildlife laws. It also explore the way all these features intersect in determining the realization of these rights and their implications on the lives and ways of making a living for forest dwellers.

History of Forest Rights in India

The roots of forest rights in India can be traced back to the colonial era, which significantly reshaped the traditional dynamics between forest-dwelling communities and their environment. Prior to colonization, Indian forests were managed by local communities as per their local customary laws. These laws allowed for a symbiotic relationship between these communities and their natural surroundings².

The British administration regarded forests as a source of revenue and a strategic reserve; therefore, they passed several legislations that limited indigenous communities' rights. In 1865 the Indian Forest Act was passed followed by its more repressive version in 1927. These acts vested the control of forests with the colonial state, relegating local communities to the periphery of forest governance and criminalizing their traditional practices³.

After independence, the Indian Government largely retained the colonial framework of forest management. The same Indian Forest Act of 1927 continued and it was not until 1952 that the initial National Forest Policy which emphasized on state control of forests, revenue generation and meeting industrial demands came into effect. However, it wasn't until 1988 that a significant policy shift occurred with the new National Forest Policy. This policy is remarkable for recognising the symbiotic relationship between tribal people and forests of India. It addressed environmental stability and ecological balance concerns thereby moving towards participatory and sustainable forest management. Nonetheless, these ideals have been difficult to implement. The recognition of forest dwellers' rights gained momentum towards the end of the 20th century. The Forest Right Act 2006⁴ was enacted. This act marked a paradigm shift by recognizing the rights of forest-dwelling communities to inhabit, manage, and govern forest lands and resources. It aimed to address the historical injustices suffered by these communities practices and acknowledged their integral role in sustaining forest ecosystems. But the historical context within which forest rights evolved in India indicates to a path from unfair colonial governance to more inclusionary rights based approach after independence. This is a paradigm change in forest policy where forests are not only seen as resources owned by states or sources of revenue but also how they have been crucial to livelihoods and cultures of indigenous populations.

International and National Perspective

International treaties and conventions like the Rio and Stockholm conventions lead to the development of the legal framework for the administration of environmental justice. The United Nations Conference on the Human Environment, also known as the Stockholm Declaration, can be regarded as the pivotal step in bringing together various states on environmental issues. While the Stockholm Declaration does not specifically address forest dwellers, its principles serve as a basis for promoting such rights. In India, several environmental laws were passed to incorporate the principles of the Stockholm Declaration, including the 42nd amendment that

added Articles 48A⁵ and 51A(g)⁶ to the Indian Constitution. The United Nations Conference on Environment and Development, also known as the Earth Summit, introduced the concept of sustainable development and focused on a number of environmental issues. The primary outcomes of the Earth Summit include the Agenda 21, Rio Declaration, Convention on Biological Diversity, United Nations Framework Convention on Climate Change, and Declaration on the Principles of Forest Management. Following this summit, the Aarhus Convention was created, emphasizing the importance of public involvement in decision-making processes, environmental information accessibility, and environmental justice. Additionally, the Johannesburg Declaration on Sustainable Development emphasizes the rights and contributions of local communities and indigenous people to environmental management and conservation. The United Nations Declaration on the Rights of Indigenous Peoples is another significant declaration pertaining to indigenous people and forest dwellers. The member states concentrated on rights pertaining to indigenous people as a result of this proclamation. The rights of indigenous peoples to their customary lands, territories, and resources are acknowledged. It acknowledges the importance that native American-occupied areas hold in terms of culture, religion, or spirituality. It also acknowledges the right of indigenous people to take part in decisions that affect their lives and lands.

There are several provisions of the Indian Constitution indirectly emphasize the value of ecological balance, sustainable growth, and environmental protection. Article 14 guarantees equality, while Article 19 empowers indigenous people by acknowledging their rights to speech, movement, residence, occupation, and assembly within the framework of sustainable forest management. Article 21 guarantees the right to living, and Articles 39A, 39(b), and 48A impose obligations on the state to ensure justice for all citizens, fair distribution of material resources, and an obligation to protect and improve the ecosystem in order to safeguard the forests and ecosystems. Article 51A requires citizens to protect the natural environment, and Articles 32 and 226 ensure the effective implementation of the rights granted to citizens. Finally, Article 244 reads with Schedule V and Schedule VI, acknowledging the social, cultural, and economic significance of the indigenous people.

Our Constitution incorporates the mandates of international agreements. The Indian parliament passed a number of laws to guarantee the efficient execution of laws pertaining to environmental justice and preservation. While the Forest Rights Act (FRA), 2006, is a pivotal legislation for forest dwellers in India, several other legal frameworks and policies significantly impact their rights and livelihoods. Understanding these enactments is essential to grasp the full spectrum of legal framework regarding rights of forest dwellers. The law that was passed during the British era is known as the Indian Forest Act, 1927. This is a colonial-era legislation primarily aimed at asserting state control over forests. It classified forests into various categories and regulated their use, often restricting the rights of local communities and placing significant portions of forest land under state control. The Wildlife Protection Act⁷ was enacted to protect wildlife and their habitats, leading to the creation of protected areas like national parks and wildlife sanctuaries. The Act has often led to the displacement of forest communities and restrictions on their traditional livelihood practices, sometimes leading to conflicts with the objectives of the FRA. The Panchayats (Extension to Scheduled Areas) Act⁸ extends the provisions of the 73rd Constitutional Amendment to empower Gram Sabhas (village councils) in scheduled areas. It recognizes the rights of tribal communities to manage their resources, including forests, and plays a complementary role to the FRA in empowering forest-dwelling communities. The Biodiversity Act⁹ aims to conserve biological diversity, it ensures sustainable use of its components, and promotes equitable sharing of benefits. It touches upon the rights of local communities in conserving and using biological diversity, often overlapping with the rights granted under the FRA.

The prevailing environmental legal frameworks intersect with different aspects that shape and mould lives and rights of those who live in forests, each having its own methodical focus and historical milieu. The FRA in tune of other environmental laws forms a complex legal mosaic that governs the interaction between forest communities, the state, and the environment.

The Forest Rights Act ¹⁰

This legislation marked a significant shift in the recognition of the rights of forest-dwelling communities. It was meant to right the historical wrongs occasioned to these communities more so in relation to their rights of accessing, managing and governing the forests they had been inhabiting for many generations.

1 Rights to forest Dwellers¹¹

- (i) It provides legal entitlement to land that forest-dwelling communities have been occupying traditionally but without formal rights.
- (ii) The right to own, collect, use, and dispose of minor forest produce, which has been traditionally collected within or outside village boundaries.
- (iii) It provides community rights which include grazing, fishing, access to water bodies, and traditional seasonal resource access that have been a part of their cultural and livelihood practices.
- (iv) It empowers the forest-dwelling communities to protect the biodiversity and wildlife of their traditional forest lands, maintain ecological balance, and strengthen conservation.
- (v) It provides rights of rehabilitation in cases where forest-dwelling communities have been illegally evicted or displaced.
- (vi) The FRA lays down a specific procedure for the recognition and vesting of these rights, which involves a transparent and participatory process at the community level (Gram Sabha).

2 Forest Dwellers' Obligations

Duties of forest rights holders are laid down under Section 5 of the FRA. These obligations are pivotal in promoting sustainable management of forests and conservation of biodiversity. The following are among main duties mentioned in Section 5 of this Act.:

- (i) Conservationists have assigned forest residents with a task of safeguarding habitats of wildlife as well as preserving both flora and fauna found there which an ecological tenet that supports involvement is by locals in any effective strategy towards saving them.
- (ii) Those who hold rights over natural habitats should maintain intact wilderness areas not only to preserve traditional knowledge systems but also in order to prevent environmental degradation; hence keeping a balance between conservation (protection) and sustainable development.
- (iii) The residents of the forests must not only take care of their drinking water but they should also give it back to its sources by conserving catchments that sustain hydrologic systems, thereby ensuring that the ecosystems remain healthy with pure drinking water throughout all seasons.
- (iv) The community are required to contribute to genetic biodiversity conservation in forests; there should be no activities that result in their loss.
- (v) It is aware of the fact that tribal communities have cultural practices uniquely linked with natural landscapes; therefore, forest dwellers can preserve their culture and heritage as these are part of themselves connected spiritually via different landscapes they inhabit.

Procedure for Recognising Rights

The process primarily involves forest dwellers themselves, the Gram Sabha (village assembly) and other levels of Government. The following is a detailed step by step procedure;

1. Claim Submission

Gram Sabha should receive claims from either forest dwellers or a community regarding rights over forest land and resources. These rights must be based on traditional occupancy of at least 75 years. The claims include:

- a) Right to stay in forest through habitation or self-cultivation.

- b) Collective ownership, utilization and disposal of minor forest produce traditionally collected.
- c) Community rights such as grazing grounds; seasonal use of water bodies.
- d) Rights to protect regenerate conserve or manage any community forests resource which has been protected and conserved traditionally for sustainable use.

2. Verification by Gram Sabha

In initial verification processes done by gram sabhas themselves plays an important role. They do this by verifying claims' authenticity through claimants' evidence such as oral testimonies, physical verification of land and consensus among members within community.

3 Review by Sub-Divisional Level Committee (SDLC)

After verification at gram sabha levels, sub-divisional level committee may review and cross check evidences in consultation with relevant departments.

4 Approval by District Level Committee (DLC)

The district level committee (DLC) shall take final decision. The DLC comprises representatives from Forest and Tribal among other departments headed by District Collector/Magistrate who examines claims resolutions passed SDLC before issuing after due diligent.

5 Record & Grant of Rights

Once a claim has been approved by the DLC, it is recorded as well as the title deeds are given to the individual or community claimants. These rights are put into Government records thereby giving official recognition.

6 Appeals and Redressal

In case of rejection of the appellant's claim by any of the committees gives right to such person to move an appeal to a higher level committee involved in this process.

Offence and Punishment

According to FRA, if any act is done contrary to provisions of act either by a member or a committee defined under this Act that person will be liable for committing an offence. The Act further provides fine of rupees one thousand for the accused who is found guilty¹².

Challenges in Ensuring Rights to Forest Dwellers

1. **Bureaucratic and Administrative Impediment:** The process for claiming rights under FRA is often complicated and bureaucratic, demanding comprehensive documentation, and adherence to procedural norms. There is backlog of claims dispensation in several states due to huge number of applications that are made as well as slow bureaucratic processes. This hold-up undermines the effectiveness of the legislation, and community's assurance in it.
2. **Lack of Awareness and Training:** Many forest-dwellers are unaware about their rights under FRA or how to go about claiming them. Local governance bodies and implementing agencies have a tendency not to encompass as much as necessary personnel with appropriate training. It leads to misunderstandings and non implementation of provisions contained in this law.
3. **Resistance from Traditional Forest Authorities:** Traditional authorities have been reluctant to relinquish control over forest resources because they see the FRA as undermining their authority on forest management vested on state forest departments.
4. **Conflicting Legal Frameworks:** Conflict with other environmental legislations like Wildlife Protection Act or specific state's forest acts vis-à-vis FRA is a concern in itself. This creates situations where different priorities clash between conservation objectives on one hand; while community rights on another side.

- 5. Socio-Political Challenges:** Political and Social marginalisation of the Forest dwellers are smash into efficiently asserting their rights. Assertion of forest rights have led to conflicts with other community groups, private entities, and even within forest dwelling communities leading to litigation and further delays in rights recognition.

Prospects for Forest Dwellers' Rights in India

Enforcement of the Forest Rights Act (FRA) as well as harmonization with other legal frameworks is vital for guaranteeing the rights of forest dwellers in India. It is indispensable to strengthen to FRA Implementation by making it simple, accessible, transparent and reducing bureaucratic obstacles faced by forest dwellers. This may include digitization of records and a more simplified, user-friendly process. Promoting and supporting community-based conservation models which integrate sustainable livelihoods with forest conservation can have positive results. Economic opportunities are required to be created for forest communities while ensuring biodiversity conservation. It is very important to have fair compensation measures put in place along with proper rehabilitation initiatives so that those people who get displaced by development projects are fairly treated. These must include not only financial compensation but also support for alternative livelihoods. The involvement of forest communities in the planning and decision-making processes of development projects affecting their lands can ensure more equitable and sustainable outcomes.

CONCLUDING OBSERVATIONS

The intricate story of rights of forest dwellers in India, especially within the context of Forest Rights Act (FRA) 2006 and other associated legal frameworks reveals a complex and evolving plot. The FRA symbolizes a major transform in India's approach to forest governance, since it has shifted from being state centric to a more localized outlook. It recognizes that a historical injustice was done against people living in forests. Therefore it is a time to give them legal rights which is paramount for them so that they can enjoy their right to live with human dignity. Habitation, management and control rights on their ancestral territories would significantly strengthen their claim. Nonetheless, moving from legislation into effective implementation is not straightforward. This has been occasioned by bureaucratic bottlenecks, ignorance among people, resistance by customary authorities over forests and conflicts with other environmental laws which have inhibited its full realization.

To surmount these challenges certain line of attack are requisite to be taken such as, simplification of claim process, improvement of legal coherence, endorsement of environmental principles as well as ensuring participatory approaches to such projects. When it comes to the implementation of recommendations, a team spirit is necessary whereby Government agencies, non-Governmental organizations, community groups and forest inhabitants must be engaged. This means conservationists should strive to harmonize their actions with the indigenous people's way of life while appreciating their rights so as they can be part of India's forests' protection.

Indian forest dwellers' rights are a crucial point where environmental policy, traditional ecological knowledge and social justice meet. Sustainable forest governance may be modelled after the successful implementation of the Forest Rights Act (FRA) and its harmonization with other legal frameworks, not just in India but worldwide. In order to successfully serve the needs of populations that live near forests and to support the protection and sustainable management of India's rich forest ecosystems, it is essential that these policies be continuously adjusted and improved as the nation progresses.

FOOTNOTES

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6. Article 51A(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
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8. Act No.40 OF 1996
9. Act No. 18 of 2003
10. The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006 enacted in December 2006 and the notification of rules for the implementation was released on January 1, 2008z, see “Forest Rights Act, 2006: Acts, Rules and Guidelines,” Ministry of Tribal Affairs, Government of India and United Nations Development Programme, India, 2014, <https://tribal.nic.in/downloads/FRA/FRAActnRulesBook.pdf>, Assess on 11/02/2023.
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12. Section 8 of The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
