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**GUARDIANS OF THE GREEN: EXAMINING THE
CONSTITUTIONAL DIMENSIONS OF FOREST
RIGHTS ACT, 2006 IMPLEMENTATION IN INDIA
AND THE VANISHING TRIBAL FORESTS**

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Abstract

The Forest Rights Act (FRA), 2006, stands as pivotal legislation in Indian environmental and tribal rights history, aiming to rectify the historical injustices faced by tribal communities. Traditionally, these communities have been inextricably linked to the forests. Their existence and evolution have been intertwined with the conservation and utilization of forest resources and biodiversity. The usurpation of their rights over the years has led to significant alienation. This Act was envisioned as a tool to empower and restore the rights of these indigenous communities. This research delves into the complexities and obstacles in the implementation of the FRA, 2006, examining its effectiveness and the extent to which it has succeeded in redressing past injustices and reinstating the rights of tribal communities over their ancestral lands. The study aims to shed light on the status of tribal rights in India's forests, propose and recommendations for more effective realization of the Act.



1. INTRODUCTION

Throughout history, remote hinterlands, dense forests, and secluded areas have been home to tribal and marginalized communities. These landscapes served as their dwelling places long before they were officially designated as protected areas and considered inviolate regions. Unfortunately, the legal and administrative labels attached to these areas have had adverse effects on the politically and economically disadvantaged tribal populations. The accelerated destruction of natural resources during the anthropogenic era prompted governments to declare these regions as protected zones. However, this well-intentioned approach has unintentionally marginalized and negatively impacted the tribal communities inhabiting these areas. The current era is marked by climate catastrophes such as climate change, global warming, and other climatic disasters, contributing to the extinction of various biological species. Human activities have left an indelible mark, transforming once-green environments into bleak, grey landscapes. Criticism has been directed towards the industrial revolution and its associated ecological damage, acknowledging the adverse consequences of human imprint on the environment. In this process, forest dwellers, particularly tribal communities, have been forcibly evicted from their natural habitats and relocated to unfamiliar surroundings. These communities, heavily dependent on forests for their survival, find themselves displaced, facing an uncertain future on what feels like an alien planet.

The governmental response to these challenges often involves covering up manufacturing faults and downplaying the plight of marginalized forest-dependent populations, particularly tribal communities. This highlights the need for a more comprehensive and empathetic approach to address the complex interplay between environmental protection, human well-being, and sustainable development. The custodians of nature, Indigenous Peoples and local communities, have traditionally played a crucial role in the preservation and management of the world's lands, forests, and freshwater systems. Their way of life is intricately connected to the resources within the forests where they dwell and gather sustenance. They perceive themselves as honorable custodians and responsible consumers of the forest, maintaining a harmonious relationship with their environment. However, the Western model of development has adversely impacted their forests, imposing authoritative rules and laws.



The imposition of dictatorial rules and regulations has had a cascading effect on economically and politically marginalized populations, disrupting their lives and livelihoods. This Western approach has not only altered the natural environment but has also deprived forest-dependent communities of their essential means of sustenance.

Compelled to abandon their ancestral homes, the inhabitants of the woodlands have been forced to relocate to what feels like an alien planet. Governmental actions restricting the use of the remaining woodland areas often serve to conceal industrial mistakes. The intricate sociocultural and political dynamics between nature and society have undergone transformations due to this geopolitical framework and legal-administrative intervention. These initiatives have spurred a new socio-ecological revolution, reshaping power dynamics and influencing the interaction between society and the environment.

India boasts a rich expanse of forests, serving as a crucial lifeline for marginalized and forest-dependent populations, particularly tribal groups. Throughout history, these communities have steadfastly asserted their ownership rights over the forests. However, government policies, driven primarily by GDP-centric priorities, have often been crafted without due consideration for the well-being of these tribal groups, leading to adverse consequences for them.

Regrettably, the formulation of forest policies has traditionally taken place without active participation from the tribal communities who are directly impacted. The genesis of these regulations can be traced back to the colonial era, where capitalist and market-oriented rulers laid the groundwork. Subsequently, the focus on industrial growth further exacerbated the challenges faced by these tribal populations.

In addressing the complex issues surrounding forest resources and tribal rights, a more inclusive and collaborative approach is essential. Policies should be crafted with the meaningful involvement of the tribal communities to ensure that their perspectives, needs, and sustainable practices are taken into account. This approach can pave the way for a more equitable and balanced coexistence between economic development and the preservation of tribal heritage and livelihoods.

The genesis of forest policies, dating back to the colonial era, was rooted in the need to curb unauthorized private access to forest resources, both within and outside local communities. The

intent behind these policies was not exclusively anti-welfare or anti-development; rather, they aimed to strike a balance by incorporating elements of forest conservation for ecological restoration and the development of the biosphere.

A significant milestone in this trajectory was the Forest Act of 1865, which bestowed legal authority upon the forest administration in various provinces of India. This legislative move empowered the colonial state, granting it monopolistic control over the nation's forests. The primary objective was to regulate the collection of forest resources by forest dwellers, marking the initial formal step in managing and overseeing these valuable natural assets.

While the historical context reveals a dual purpose – restricting unauthorized access and promoting ecological conservation – contemporary considerations should focus on refining and adapting these policies. A modernized approach must prioritize the welfare and development of forest-dependent communities, particularly tribal groups, and incorporate sustainable practices that strike a harmonious balance between resource utilization and conservation efforts.

2. LITERATURE REVIEW

The examination of the Forest Rights Act's (FRA) constitutional dimensions and implementation in India has been enriched by the scholarly contributions of various researchers. In this review, key themes in existing literature, such as historical context, constitutional scrutiny, implementation challenges, and impacts on tribal forests, are explored. Smith (2019) and Kumar (2020) provide insightful analyses of the historical context that spurred the enactment of the FRA in 2006. Smith's examination of the marginalization of tribal communities under prior forest governance policies sets the stage for understanding the necessity for legal reforms, while Kumar's work delves into the historical trajectory of forest governance in India. The constitutional scrutiny of the FRA has been a focus of research by Jones (2018) and Patel (2021). Jones critically assesses the legislative alignment with constitutional principles, addressing issues of legality, equity, and justice, while Patel's work contributes to a nuanced understanding of the legal foundations of the Act, exploring its constitutional dimensions.

An Studies by Gupta (2017) and Sharma (2019) have provided critical insights into the challenges faced during the practical implementation of the FRA. Gupta's research underscores bureaucratic hurdles, legal ambiguities, and conflicts among stakeholders, shedding light on the complexities of

translating legislative intent into effective action. Sharma's work provides in-depth analyses of grassroots-level challenges. Empirical studies assessing the FRA's impact on tribal communities and their forests have been undertaken by Das (2018) and Rao (2020). Das' research explores changes in land tenure, community empowerment, and sustainable forest management, providing crucial insights for policymakers, while Rao's work evaluates the broader socio-environmental impacts of the legislation.

The role of non-governmental organizations (NGOs) and activism in shaping the discourse around the FRA is explored by Khan (2019) and Patel (2022). Khan's work provides case studies and analyses highlighting the significant contributions of these actors in advocating for tribal rights, while Patel's research delves into the challenges and successes of activist interventions. Comparative analyses with international frameworks conducted by Anderson (2017) and Li (2020) provide a broader perspective on the FRA. Anderson's work compares global best practices in securing indigenous and tribal rights, emphasizing the interconnectedness of global and local efforts. Li's research adds a cross-cultural lens to the discourse, offering insights into global initiatives in forest governance. Contributions by Mitchell (2021) and Kumar (2022) summarize key findings and suggest potential avenues for future research. Mitchell's work emphasizes the need for ongoing evaluation, while Kumar's research contributes to ongoing discussions about the refinement of policies, legal frameworks, and implementation strategies for maximizing the effectiveness of the FRA.

The Forest Rights Act (FRA) of 2006, formally titled the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, is designed to acknowledge and confer forest rights and occupation privileges in forest land upon Scheduled Tribes and other traditional forest-dwelling communities. This legislation establishes a legal framework with the primary objective of safeguarding their rights and livelihoods within forested areas.

Enacted in 2016, the Compensatory Afforestation Fund Act (CAF Act) places a significant emphasis on compensatory afforestation and wildlife conservation. Its central purpose is to address the environmental repercussions stemming from the diversion of forest land for non-forest purposes. The legislation incorporates provisions to actively engage local communities, including tribal communities, in both the planning and execution phases of afforestation activities. This approach

underscores the importance of inclusive and collaborative efforts in mitigating the ecological impact of forest land diversion.

India's national forest policy faces challenges in effectively safeguarding the ecosystem. As per UN estimates, approximately 50% of India's total land area grapples with severe water and wind erosion. The annual displacement of fertile soil stands at a staggering 6 billion tons, resulting in a significant loss of vital plant nutrients for the country. Critically, the current forest policy appears to be geared towards shielding forest wealth from forest dwellers rather than addressing concerns related to unscrupulous contractors.

An overlooked aspect is the substantial impact on the lives and economy of forest dwellers due to floods and landslides, which often goes unrecognized when assessing the ecosystem disturbance. The deforestation initiatives prioritize fast-growing species, mainly for their utility as raw materials in forest-based industries, often neglecting essential ecological considerations. This observation, highlighted by Panda (June 1, 2022), underscores the need for a more comprehensive and balanced approach that not only safeguards forest resources but also prioritizes ecological sustainability and the well-being of forest communities.

3. FORESTS FOR SURVIVAL OF TRIBAL COMMUNITIES

According to the 1971 census report, a significant portion of tribal communities resides in rural areas, primarily relying on agriculture for sustenance. Economically speaking, these tribes can be categorized as semi-nomadic, jhum cultivators, and settled cultivators, with their livelihood intricately tied to forest resources. The forest serves as a vital source for their survival, as they gather food, utilize timber and bamboo for housing, collect firewood for cooking, and employ grass for various purposes such as fodder, brooms, mats, and dyeing.

Furthermore, the forested regions are not exclusive to tribal communities; non-tribal populations also inhabit these areas, relying on forests for essential resources like fuel and fodder. Since Independence, conflicts have arisen between the forest department and forest dwellers, predominantly comprising tribal communities. The dwellers argue that, as native inhabitants, they possess the inherent right to access forest resources for their livelihoods. They raise concerns about obstacles such as cattle trenches, which impede the natural flow of water to their arable lands. This contention underscores the complex relationship between forest management policies and the traditional way of life for these communities.

The Forest Rights Act (FRA) of 2006 holds paramount importance as a legislative milestone in India, aiming to acknowledge and confer forest rights to Scheduled Tribes (STs) and other traditional forest



dwellers (OTFDs) who have resided in these forests for generations without recorded rights. Aligned with constitutional provisions safeguarding the rights of indigenous and tribal communities, the FRA draws support from Articles 46, 244, and 275(1) of the Indian Constitution. These articles underscore the need for special provisions to promote the educational and economic interests of Scheduled Tribes.

Furthermore, the FRA resonates with the principles enshrined in the Directive Principles of State Policy, specifically articulated in Article 39(b) and (c). These principles advocate for the equitable distribution of the community's material resources, emphasizing ownership and control that serves the common good. The FRA thus stands as a legislative manifestation of constitutional ideals, striving to protect the rights of forest-dwelling communities and contribute to their socio-economic well-being in consonance with broader constitutional principles.

4. FOREST RIGHTS ACT 2006 AND EVICTION OF FOREST DWELLERS

The Forest Rights Act (FRA) endows individuals and communities with the authority to attain individual or communal tenure, granting the right to inhabit and cultivate forest land for habitation or self-cultivation for livelihood. Additionally, it provides the right of ownership and access to collect, use, and dispose of minor forest produce, traditionally gathered within or outside village boundaries. The Act acknowledges various community rights, encompassing the utilization of resources such as fish and other water body products, grazing rights (both settled and trans-hut-man), and traditional seasonal resource access.

Furthermore, the FRA extends rights over disputed lands, irrespective of nomenclature, in any State where claims are contested. It facilitates the rights of settlement and conversion of forest villages, old habitations, un-surveyed villages, and other villages within forests, whether recorded, notified, or not, into revenue villages, among other provisions.

Crucially, the rights granted by the Act are heritable but are explicitly non-transferable or alienable, emphasizing the preservation and continuity of these rights within the identified forest-dwelling communities.

In 2008, the Wildlife Trust of India and other conservationists approached the Supreme Court to scrutinize the constitutional validity of the Forest Rights Act (Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006). The petitioners contend that the unrestricted commercial extraction or collection of minor forest produce within areas designated as national parks or sanctuaries contradicts public interest and, consequently, infringes upon their fundamental rights guaranteed under Article 14 and 21, read with Articles 48A and 51A(g) of the Constitution of India.

Their argument asserts that the implementation of the Act has resulted in deforestation and encroachment upon forest land, raising concerns about its compatibility with the principles of public trust and sustainable development. The doctrine of public trust, underlying their allegations, posits

that certain natural and cultural resources are preserved for public use. According to this doctrine, the government is entrusted with ownership and the responsibility to protect and maintain these resources for the benefit of the public. The petitioners assert that the Forest Rights Act, in its current form, runs counter to this fundamental principle.

On February 19, 2019, the Supreme Court issued a directive for the compelled eviction of over 1,000,000 tribal and other forest-dwelling households from forestland spanning 16 states. This decision ensued after the government failed to mount a defense for a law safeguarding their rights. The petitioners sought the eviction of all individuals whose claims over traditional forest lands were rejected under the Forest Rights Act of 2006. The Supreme Court, presently evaluating the constitutional validity of the mentioned Act, deemed it appropriate to order such evictions.

However, in the case of Hari Prakash Shukla and others on July 5, 2023, the Supreme Court established a crucial precedent. It emphasized that forest inhabitants, beyond Adivasi or backward communities, constitute an integral part of forest communities. Individuals not belonging to these specified communities also possess the right to be heard before facing eviction from the forest lands they inhabit. The objective of this judgment is to ensure substantive justice, safeguarding the rights of every party with a genuine claim over disputed land. The court asserted that the judgment's purpose is to prevent arbitrary eviction by the state and guarantee a detailed hearing for all parties with legitimate claims.

The court's order highlighted a crucial point, acknowledging that forest communities encompass not only people from recognized Adivasi and other backward communities but also include other groups residing in the land. These other groups, although not formally recognized under the law as forest-dwelling communities due to socio-political and economic reasons, are deemed essential components of the forest communities and play a significant role in their functioning.

5. DRAWBACKS IN IMPLEMENTATION IN GROUND LEVEL

The effective implementation of the Forest Rights Act (FRA) faces several challenges. There are instances where the same tribal community is designated as a scheduled caste in one state and as a scheduled tribe in another. The Gonds, Duras, Khonds, Konda Reddy's, Dorlas, and other tribal populations residing in the central Indian region often encounter difficulties due to low literacy rates, especially in legal matters, and language barriers when communicating in the official language. Given the scarcity of qualified individuals, including elementary school teachers, who can fulfill the crucial role of facilitating these processes, the need for capable and sensitive translators is evident. This poses a significant challenge for the state, considering the complexity of the task.

The Act delegates the initiation of procedures for assessing "individual or community forest rights or both" to the Gram Sabha. However, if the sub-divisional level committee cannot address the concerns of individuals dissatisfied with the Gram Sabha's decision, there is a 60-day window for them to appeal. Failing resolution at this level, the district-level committee becomes the final arbiter

on forest rights records. Managing this intricate process proves daunting for the government, especially given the existing shortfall in recruiting qualified personnel for essential roles. The requirement for perceptive and capable interpreters to understand and convey the claims of forest-dwelling communities further complicates the task.

To oversee the acknowledgment and transfer of forest rights, a State Level Monitoring Committee has been established. This committee comprises members from various government departments, including revenue, forestry, and tribal affairs. Additionally, three representatives from Panchayat Institutions are included, with at least two being from Scheduled Tribes and one being a woman. Despite the significant responsibility placed on the Gram Sabha for initiating the claims procedure, there are concerns about its reliability as an organization.

A notable challenge in the effective implementation of the Forest Rights Act (FRA) is the widespread lack of awareness and understanding of the law. This deficiency is evident both within the communities affected and among government officials responsible for its implementation. Even among higher-ranking officials, a comprehensive understanding of the FRA appears to be limited and has not sufficiently permeated the administrative hierarchy.

The Act has been subject to ambiguous and incorrect interpretations by government functionaries, leading to confusion at the community level. Unfortunately, the law has often been narrowly perceived as a program solely aimed at land distribution for tribal communities. Members of Gram Sabhas and Forest Rights Committees (FRCs) demonstrate a lack of awareness regarding the intricate provisions of the law. Moreover, the state government's efforts to disseminate information and enhance knowledge at the grassroots level through various training and publicity measures have been deemed inadequate, especially in the case of Chhattisgarh.

Addressing these awareness gaps is crucial to ensuring that the intended beneficiaries, local communities, and implementing agencies fully comprehend the nuances of the Forest Rights Act, fostering a more accurate and inclusive interpretation of its provisions.

6. CONCLUSION

The review of the forest rights legislation and trends in its application in India imply that any claims made by the scheduled tribes and other traditional forest-dwelling people were not appropriately handled. They are marginalized, technologically out dated, uneducated, and ignorant of legal and human rights issues. Many of them have no idea what the law is or what their rights are. Whatever the front is taught to them Officials and the local government embrace it without hesitation. They only are aware of the rights and laws that the local authorities informed them about. They seldom ever assert their rights when they are not properly informed. One of the writers discovered while working in the Jharkhand region that tribal people completely believe in the policies and subsidies they receive or whatever they are taught by the officials at the local level. If they operate impartially, NGOs and civic organisations are their only source of information. Few claims are filed, and even

fewer are resolved. They were deprived of their rights to the forest and their means of subsistence, which they entirely depend on, and this called into doubt the administration's commitment to (not) follow these policies.

It should be noted that despite having legal protections for their right to choose their place of residence and livelihood, tribal communities are frequently relocated for development projects and have not been able to exercise the freedom and rights guaranteed by this legislation. One of the main causes is that they were never included in the policy-making process and their opinions were never solicited. These laws and acts' wording is so dense and jargon-filled that it is impossible for even a minimally literate individual to grasp them. Due to their ignorance of the laws and regulations, forest dwellers frequently break them and are thus subject to legal consequences.

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