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Analyzing the Forest Regulation and Legislative Framework Post-Independence Era

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ABSTRACT

Forests are crucial to Earth's life. They cleanse the air we breathe, filtrate the water that we drink, prevent soil erosion; also, serve as a critical buffer against climatic changes. Till, the year 1976 forest came under the state list. According to the Forest Act of 1927, forests are under the supervision of forest departments. The 42nd Amendment to the Constitution chose to add both forests and animals to the Concurrent list due to their importance, bringing them under the control of both the Central and State governments. The States and the Centre can now enact legislation on matters pertaining to forest areas and wildlife protection. The author in this Art has explained the evolution of the forest laws post colonial era. In this Art emphasis is also given on forest rights. There has been lack in regulation of forest rights. The author has analyzed the laws that are made for the protection of forest and its implementation in current scenario. The author has also discussed the movement in brief that led to development of forest laws. Along with this the author has pointed the loopholes of forest bureaucracy in implementation of various acts and policies. The author has given suggestions pertaining to protection of forest and wildlife through forest right act.

I. INTRODUCTION

India occupies 2.4% of the Earth's total land area, making it the seventh biggest country on the planet. However, India only accounts for 1.8% of the world's forest cover. Only little more than 21 percent of India was covered by forests in 2007, despite recent attempts to improve forest cover via replanting, carried out mostly under “Compensatory Afforestation Management and Planning Authority (CAMPA).” Only 12% of the Earth's surface is covered by dense forests. 33 percent of the country's landmass must be covered by forest, all of which must be closed forest, to meet the policy mandate. We have yet to even come close to reaching this target. Recent decades have seen a sharp decline in India's forest cover as a result of a number of factors. Forestry and wildlife were seen as State concerns while the Constitution was being written. The departments of forestry were formed as oversight entities which are mentioned in the Forest Act of 1927. Forests and animals were transferred from “*State list to the Concurrent list*” by 42nd Amendment, making them susceptible to control by both central government and

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individual states. The “*Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006*”, also called “*the Forest Rights Act, Tribal Rights Act, Tribal Bill, and Tribal Land Act*”, protects “*the legal rights of forest-dwelling communities, particularly the indigenous Adivasi tribal community, over the territory and natural resources they have been dispossessed of since colonization.*” Thus, changing socio-political realities in India have necessitated periodic review of forest regulations.

II. DEFINITION OF FOREST

In India, presently no conventional definition of what constitutes a forests. It is up to the states to define what constitutes a forest. The Forest Advisory Committee (FAC) of the Ministry of Environment, Forest and Climate Change discussed the concept of a forest during its September 2019 meeting. The FAC noted hereby that “*there cannot be any uniform criteria to define forest which can be applicable to all forest types*” in all parts of the country. The environment ministry wrote all state governments in November 2019. India has several forest types, each with modifications. “*As far as developing criteria for ‘deemed forests’ is concerned, there cannot be any uniform criteria applicable to all forest types or all states. There has to be different criteria for different forest types or states,*” that has been said by ministry.² It went so far as to emphasize that states ought to establish standards for their forests because they are better equipped than the Ministry of Environment, Forest and Climate Change to comprehend the own forest and requirements since they have established forest departments. It was made clear that the parameters so chosen by a state did not need consent of the ministry. The right which the states have to describe forests dates back to the year 1996 SC decision known as the *T.N. Godavarman Thirumulkpad v. UOI*³ in which the issue of how to define a forest was raised. T.N. Godavarman Thirumulkpad submitted a writ to the SC in 1995 to prevent illicit wood operations from destroying the Nilgiris forest. “*The former ruler of Nilambur, the teak-bearing wooded western slopes of the Nilgiris mountain massif, was Thirumulkpad. The forests around Nilambur, which are now in the states of Kerala and Tamil Nadu, belonged to his family until Kerala and Tamil Nadu nationalized them.*” This petition, which began by calling for the cessation of unlawful activities in a Tamil Nadu forest, later influenced the country's forest policy and has subsequently sparked debate over the judgment's potential effects on India's forests. The definition of the term "forest" is one of the factors that went into the decision. According to the ruling, the term "forest" must be construed in accordance with its "dictionary

²Aditi Tandon, “[*explainer*] what is a forest?”, MONGABAY (2020), <https://india.mongabay.com/2020/02/explainer-what-is-a-forest/> (last visited Oct 14, 2022).

³ WRIT PETITION (CIVIL) NO. 202 OF 1995.

definition." All legally recognized forests, whether they are listed as reserved, protected, or otherwise, are included by this description. The court ordered states to organize a committee of experts to "*identify, notify, and demarcate forests.*" The 1980 Forest Conservation Act included additional requirements for exploiting forest lands, including diverting property from non-forest uses. Although the watershed legal intervention's efficacy has been contested, it has served as the foundation for national forest policies in the lack of a common definition of what constitutes a "forest."

III. EVOLUTION OF FOREST LAWS IN PRE-COLONIAL ERA

The forest was preserved by the tribal people before to the British colonial period, but at that time, the forest was exploited to generate income rather than as a source of natural resources. "*In the interest of agriculture and the necessity for more area for cultivation, many forests were decimated.*" Later, forests were heavily cleared to provide the required amount of wood for ship construction, iron smelting, and tanning. In India, the period of British control was primarily a period of significant forest degradation and destruction, as well as a period of declining plant cover. In order to support the imperial cause, the Forest Act and the Forest Department were established in 1865. This act's primary goals were to establish the state's title to the forest land and to make it easier to acquire the Indian forest tracts needed to provide railroads with wood. However, the Act lacked safeguards to safeguard the pre-existing rights of those who lived in the forests. It quickly became apparent that the Act's provisions were ineffective since the forest officers were given minimal authority and no deterrent penalty. So, after a heated discussion, a new forest statute was approved in 1878 that declared the state had complete ownership and authority over all forests.⁴ The rights of the forest nomads and other adjacent residents in diverse locations were also acknowledged. These rights included those of the Himalayan region's villagers, the tribals of Chhattisgarh, the Santhals of Midnapore, the Bhil of Rajasthan, and other north-eastern Areas, among others. In order to address the shortcomings of the Indian Forest Act of 1865, a new version was approved in 1878. A new comprehensive Forest Act, which superseded all earlier legislation, was approved in 1927 to modernize the forest laws and the forest Act of 1875. The Act is made up of 13 chapters and 86 sections. The Act's primary goals were:⁵

- 1) To combine the legislation governing forests.

⁴ *Forest policy reforms in India - evolution of the Joint Forest Management Approach*, <https://www.fao.org/3/XII/0729-C1.htm> (last visited Oct 14, 2022).

⁵Supra note 3.

- 2) To control and transportation of forest products.
- 3) To impose taxes on wood and other forest products

IV. EVOLUTION OF LAWS IN POST-COLONIAL ERA

When the Constitution of India was formed in 1950, the framers were unaware that forest conservation issues may emerge in the future. In the Constitution's Forty-Second Amendment, Art 48A was added to the portion of DPSP, and Art 51A was inserted as a basic obligation of every Indian citizen. Art 48A mandates that the state enact laws to safeguard and develop the environment in order to preserve our nation's forests. According to Article 51A(g), every Indian citizen has a responsibility to protect and develop the country's natural environment, particularly its forests. Thus, the President of India signed into law the 1980 Forest (Conservation) Ordinance. *"In accordance with Section 5 of the Forest (Conservation) Act, 1980, which went into force on October 25, the ordinance was finally abolished."* It was passed to protect the nation's forests and the issues related to them. Additionally, it resolves issues raised by the prior legislation. The 1980 Act prohibited the use of the forests for non-forest purposes. The Forest Conservation Act of 1980 was used in the 1990s to launch a number of ongoing interventions and create a governance structure that is particularly relevant to the landmark cases of *MC Mehta v. UOI*⁶, *ICELA v. UOI*⁷, and *TN Godavarman Thirumalpad v. UOI*⁸. *"Popularly known as the Godavarman and Council for Environmental Law cases, both involved the application of the Forest Conservation Act (1980) and, as a result of the Supreme Court's intervention and governmental innovation, resulted in a web of national relations on the one hand and citizen rights and aspirations on the other."* States and even statutorily permitted federal authorities could not de-notify (i.e., open to private exploitation) forests and parks without judicial review, according to both the original rulings from December 12, 1996, and the supplemental judgment from November 13, 2000. After several twists and turns, the forest act of 2006 was implemented so as to clear some air on the stated aspects.

V. DEVELOPMENT OF FOREST LAW THROUGH CHIPKOO MOVEMENT

The Chipko movement in the middle Himalayas in the early 1970s marked the beginning of Indian environmentalism. Himalayan forests were safeguarded by the Chipko movement before independence. Early in the 1900s, demonstrations against colonial forest policies had place. Villagers wanted benefits from the forest, notably fodder, during these demonstrations. These

⁶1987 SCR (1) 819.

⁷1996 SCC (3) 212.

⁸Supra note 2.

conflicts have persisted because independent India follows the same forest restrictions as colonial India. The Dasholi Gram Swarajya Sangha (DGSS), a Chamoli-based cooperative, requested ash trees for agricultural machinery in the beginning of 1973, but the forest department refused. Ash trees were given to Symonds Co., a private business, by the forest service. As a result, the DGSS decided to protest the injustice by collapsing in front of log trucks and setting fire to warehouses of resin and wood, much like the Quit India movement. Following the failure of these strategies, Chandi Prasad Bhat, one of the leaders, proposed building "Chipko" by hugging trees. This protest assisted in preventing the private business from felling the ash trees. Following its success, the Chipko movement extended to neighboring communities and gained international recognition. The Chipko movement is significant because it sparked a number of enduring initiatives to uphold local communities' rights to natural resources. These conflicts sometimes included mineral, fish, grassland, or forest resources.⁹

VI. FOREST RIGHTS ACT, 2006

As was previously noted, the Indian Forests Act's distorted, colonial notion of "forests" was long used as the basis for the legal system. Even such regions were labeled "government forests" under the Forest Act because they were subjected to erroneous surveillance and information gathering on their inhabitants, land use, etc. Sometimes the lands were officially recognized as belonging to the government despite the lack of data or a thorough inquiry. Nearly 60% of India's national parks are yet to complete their inquiry and settlement of the rights process. This exposed a scheme of illegal land acquisition under the guise of forest protection. This legislation was passed in 2006 to counteract the same and, in particular, to protect the symbiotic link between the indigenous people and their natural environment.¹⁰

The Forest Rights Act (FRA) was established in 2006 to safeguard indigenous forest-dwelling people' admission to the means that were indispensable to the ability of own to get together a range of requirements, which includes those for nourishment, housing, and cultural expression. The "*Acts, Rules, or Forest Policies of Participatory Forest Management*" in either colonial or post-colonial India did not previously recognise the STs' reliance on the forest or their traditional expertise of forest protection. Rights of the community such as "*grazing, fishing, and access to water bodies in forests; rights to habitat for PVTGs; access to traditional seasonal resources for nomadic and pastoral communities; access to biodiversity; community rights to intellectual property and traditional knowledge; recognition of traditional customary rights;*

⁹ Prakash Chandra Jain, "*Social Movements Among Tribals*" (RAWAL PUBLICATIONS, 1991).

¹⁰ *Scheduled tribes and other traditional forest dwellers (recognition of Forest Rights) Act, 2006*, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=108222> (last visited Oct 14, 2022).

and rights to protect, regenerate, and sustainably use natural resources” are all protected under the Act. In addition, it ensures the community's access to allocated forest land for construction purposes, which is necessary for the provision of essential public services. Together “the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Settlement Act of 2013”, the Forest Right Act safeguards *“indigenous communities against displacement without the opportunity for rehabilitation and settlement.”* The Gram Sabha and other rights holders are required under the Act to refrain from engaging in any activities that endanger the sustainability of these resources and the cultural and natural legacy of the indigenous people. Among these duties is the safeguarding of environmentally vulnerable places including forests, watersheds, catchment areas, animal habitats, and other areas rich in biodiversity and wildlife. The Act also grants the Gram Sabha significant jurisdiction, enabling the indigenous community to have a significant part in determining regional policies and projects that affect them. Therefore, the Act allows forest dwellers to continue using forest resources as they always have. The goals here are to keep people from being compelled to abandon their homes in the forests and to provide for their fundamental necessities in terms of infrastructure and development.¹¹

Issues in implementation of Forest Rights Act

One of the key things that make this Act contentious is the high rate of claim rejection. It is argued that the three-tier committee level review process is rigid and, sometimes, arbitrary. The system has been criticized for being anti-people and for being bureaucratic. Regarding India's Forest Rights Act, there are far too many diverse opinions. A suitable legislative and popular consensus was not reached, not even at the time of its passage and subsequent implementation. Numerous NGOs, rights-based organizations, campaigners, environmentalists, and other intellectuals have been actively involved in the Act. The political divide between the Right (pro-capitalist) and Left (pro-tribal) has also played a significant role in the same. The organizations that support “Ministry of Environment and Forests and Forest Department” and those who support tribal rights have long been at war with one another. It was and still is believed that the ecosystem, forests, and other natural resources are directly threatened by the expansion of human rights into areas that are covered by forests. However, it is important to highlight that there are a number of misconceptions or myths about this act, and they have also been included here:

¹¹Supra note 9.

- Degradation of forests: The FRA scarcely accounts for the majority of the reduction in forest cover. *“There is no connection between the implementation of the FRA and the loss in forest cover, as detailed in a recent research by Sharachchandra Lele and M.D. Madhusudan.”* While there are undoubtedly rare instances of local encroachment, there are several studies and a wealth of data that show how forest inhabitants all around the nation have managed their surrounding forest responsibly. Parties with vested interests in corporate business and tourism may be behind the campaign against the FRA, which has less to do with protecting forests and more to do with them.
- Disappearance of tigers: The tigers have not vanished as a result of FRA implementation in tiger reserve regions. In reality, since the FRA entered the scene, there are more tigers and other species in the reserves where the Act has been put into effect. *“For instance, a 2013 official study reveals that the Soliga tribal population in the BRT Hills of Karnataka now has forest titles and that its tiger density is 11.3 tigers per 100 square kilometers, second only to Kaziranga”.*

VII. CURRENT SCENARIO IMPLEMENTATION STATUS OF FOREST RIGHTS ACT

As per the report of 2015 by Resources and Rights Initiative, Vasundhara, and Natural Resources Management Consultants, *“the FRA has the potential to restore the rights of forest dwellers over at least 40 million hectares or 100 million acres of forest land in 170,000 villages, or one-fourth of all villages nationwide.”* A significant number of individuals are expected to gain from the FRA, including 90 million members of tribes, totaling at least 150 million. *“Comparatively, since the Act's passage, just 14.75 percent of the minimum potential forested areas for India's forest rights have been acknowledged.”* There is a long road to go to get there. Even with this decreased recognition rate, FRA is being applied inconsistently in different states. For instance, Andhra Pradesh has recognized 23% of its minimum potential forest claim of 29,64,000 acres, whilst Jharkhand has only recognized 5% of its minimum potential forest area of 52,36,400 acres. States are seeing a similar scenario, where certain districts have outperformed others. For instance, a district like Nabarangapur in the high-performing state of Odisha has a 100% IFR recognition rate, compared to 41.34% in Sambalpur. The overall number of FRA claims received has decreased since 2016, according to the MoTA's monthly FRA progress report. Supporters of the act believe that rather than a backlog in claim submissions, this is a result of state administrations not doing enough to expedite the claim process. Implementing the FRA at the state level is a continuing challenge apart from that of party which is in power which is lacking of administrative and political support.

Suggestion put-forward for implementation of Forest Rights Act

To fully get the benefits of Forest Rights Act, this is essential. Various alternatives exist for achieving the goal of the legislation. Every state's interference strategies should be tailored in terms of specific forest conditions and historical context of that state. In order to ensure that people living in the forest are afforded their rights, it would be beneficial for there to be coordinated administrative and political intervention to improve the local level of law enforcement. It would be very important for the state to provide conditions under which gram sabhas may use their FRA-guaranteed rights as they work hard to submit their claims. Realizing the FRA's bare minimum potential calls for attention to local difficulties, coordination among departments, a robust system that monitors data which is accurate sets and maps of the forest and revenue environment, proper training for officers, and a firm deadline. Lack of a centralized database that can be used by all governments to identify and address implementation gaps over time is unacceptable. Although the MoTA database is the most complete available, it still includes significant holes in some areas, including claims that are still pending or have been carried over, claims that have been separated throughout the multi-level title recognition process, and others. Post-recognition policies that help landowners succeed would also improve the quality of life and agricultural output for those people. The creation and execution of line department schemes, as well as the integration of forest rights titleholders into such schemes, are two more instances of administrative programs.

VIII. CONCLUSION

Despite its contentious and divisive nature, “the Scheduled Tribes and Other Traditional Forest Dwellers Act (Recognition of Rights) Act, 2006”, cannot entirely disregard. The rule of law is much more crucial when a nation's economy is expanding and it is completely committed to the road of capitalism. This makes it even more crucial to find a way to protect marginalized and vulnerable community and group, like the Adivasis and other tribe, from necessary evils of infrastructure growth and development while still preserving their civilization, custom, and individuality, which are crucial to the nation.
