

FOREST RIGHTS ACT, 2006: A DEMOCRATIC AND DECENTRALIZED APPROACH IN THE MANAGEMENT OF FORESTS

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Abstract

Environmental Jurisprudence has been guided by the anthropocentric approach toward sustainable development since 1972. However, legislators have acknowledged the rights of Scheduled Tribes and forest-dwelling tribal communities in 21st-century extending such rights with care, caution, and duties which affirms the faith in an eco-centric approach toward sustainable development. Constitutionally available rights and ignorance of environmental duties have induced the environmental jurisprudence to develop and apply absolute liability upon the defaulting agencies bearing in mind precautionary and punitive approaches. Innately the tribal communities have marked a significant cohesiveness towards the forest ecosystem which resulted in the extension and acknowledgment of Forest Rights in the form of the Forest Rights Act, 2006. Democratic and inclusive participation in the protection and management of forests have been one of the fundamentals of the Forest Rights Act, 2006. Constitution of committees and the functions assigned to these committees brings in the stakeholders to arrive at a common platform for the acknowledgement of historically ignored rights of such tribal and other forest dwelling tribal communities.

“The sublime prospect that unfurls before civilization through advances of science is darkened by the devastating misuse of technology to poison and to pollute the biosphere and thereby to hold humanity in terrible peril of total liquidation of the life process. Man blinded by myopic profit-making is matricidal towards mother Earth and is rapidly making himself an endangered species”.

VR Krishna Iyer

Introduction

For the generations to sustain in any environment, the resources must be utilized in such a manner that is long-lasting. The religious approaches and practices have been an environmental code of conduct that guides at achieving this long-lasting approach through eco-centrism. Cohabitation with biotic and abiotic elements of the environment must be balanced in such a manner that each generation gets a chance to have first-hand interaction with all the living and non-living elements which constitute a significant part of the environment. The eco-centric approach keeps all the organisms at an equal pedestal in its approach to their growth and environmental conservation. This highlights the equality and dignity of all the organisms ignoring the higher significance to the human race under Anthropocentrism. We the people of India have given to ourselves the constitution but we as human beings have ignored our human responsibility towards the fellow organisms of our ecosystem who have played their undeniably significant role in maintain ecological balance. Development guided by an anthropocentric approach has so far failed as a concept because of global competitiveness.

Before claiming any right over the environment and its resources, human beings must understand themselves to be part of the environment and its master. With the advancement of technology, human beings have gained control over environmental resources to their advantage which has at times thereby invited unavoidable disasters. Those who mastered the control over these resources gained monetary benefits thereby creating a huge gap amongst not just as the class of individuals but countries as well. Exploitative controlled disparities in the first half of

the 19th century made the global community realize the common but differentiated responsibility of the countries as well as individuals. Environmental jurisprudence witnessed a milestone in the year 1972, imbibing the anthropocentric approach toward sustainable development giving importance to the human environment. This approach may however be instrumental, but it ignores the ancient religious philosophy across the world which cherishes the existence and interdependence of biotic and abiotic elements of society.

Public Trust as a result of the social contract theory obligates the state to use the natural resources in such a manner that is equitable as it belongs to res communes. Fundamentally this doctrine cherishes the right of human beings but explicitly ignores the rights of other shareholders of the ecosystem who have a pictorial representation in their children's science books.

Nature is strongly considered to be at center-stage in the cultural landscape of Indian cognizance. An average Indian's birth to his death, via marriage, family life, earning livelihood, participating in public life, etc., are found to be extensively permitted by the mother Nature. It is for this reason that from ancient times, nature has been associated with various dimensions like spontaneity, purity, freshness, sacredness, fertility and divinity. Nature worship, therefore, continues in one form or another in different spectra of society: tribal, rural, urban and even the Diaspora settled in around one hundred odd countries of the world. Nature worships is not merely to propitiate Mother Nature to seek her favors for pursuits, but more importantly, to signify one's faith in the invigorating value of nature to ensure continuity of life endowed with safety, vitality, and bliss.¹

Table 1.1 Tribal Population Profile in India

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¹Vidya Bhagat Negi, ENVIRONMENTAL LAWS ISSUES AND CONCERNS, 44 (2011).

S. No	Population in Lakhs in India	Scheduled Tribe Population in Lakhs	Percentage of ST Population in India
1	12108.55	1045.46	8.6

Source: [Ministry of Tribal Affairs](#)

FOREST RIGHTS ACT: AN OVERVIEW OF RIGHTS AND DUTIES

Interdependency of human beings on the environment has been acknowledged under the Forest Rights Act 2006 thereby legitimizing the rights of the primitive and traditional forest-dwelling communities over the environmental resources. This act decentralizes² the management of the forest resources to those tribal and other communities who have from generations utilized the environmental resources keeping in mind the principle of sustainability.³Sustainable development principles in the 21st century have been instrumental in shaping the environmental jurisprudence across the world applying some of the fundamental concepts of Public trust, polluter pays principle, precautionary principle, and the concept of use and conservation of natural resources. These principles have their roots in ancient environmental codes and have been applied in number of cases by the Judiciary taking into consideration the facts and circumstances of the case.

The symbiotic relationship between the forests and tribal people has been acknowledged and pressed upon in the National Forest Policy, 1988. The symbiotic relationship between the tribal people and forests, the policy mandates that the agencies responsible for forest management, to

² Draft Working Committee Report on Guidelines for Conservation, Management and sustainable use of Community Forest Resources under Forest Rights Act, 2006, available at [Draft_Report06012021.pdf \(tribal.nic.in\)](#) (last visited at 25/06/2022). As per the Forest Rights Act 2006 (FRA in short), Gram Sabha as the grass root level democratic institution is empowered to decide the overall framework of forest conservation and management keeping in view the interests of the forest-dwelling communities, The Rules under the said Act also reflect this spirit.

³PS Jaswal & Nishtha Jaswal, ENVIRONMENTAL LAW: ENVIRONMENT PROTECTION, SUSTAINABLE DEVELOPMENT, AND THE LAW, 119-127 (2009).Sustainable Development constitutes, Polluter Pays Principle, Precautionary Principle, Principle of Inter-generational Equity, Public Trust Doctrine and Use and Conservation of Natural Resources.

associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest.

The forestry programs under the National Forest Policy mandated to focus a special attention on the illegal cutting and removal of forests by contractors and their laborers. Traditional role of the tribal communities has been acknowledged by the policy framers who recommended the role of guardian of forests to the tribal communities. Protection of customary rights of the tribal communities have been one of the primary concerns under the policy and in furtherance of same protection, regeneration, and optimum collection of minor forest produce has been advocated in the favor of tribal communities in the policy document. One of the primary concerns of highlighted under the act mandates for the schemes for improving the status of the tribal beneficiaries.⁴

Democratic Features of FRA

The Forest Rights Act (FRA), 2006 is an enabling act that recognizes the rights of the forest-dwelling tribal communities and other traditional forest dwellers to environmental resources, on which these communities were dependent for a variety of needs, including livelihood, habitation, and other socio-cultural needs.⁵ The forest management policies, including the Acts, Rules, and forest policies of participatory Forest Management in both colonial and post-colonial India, did not, till the enactment of this Act, recognize the symbiotic relationship of the STs with the forests, reflected in their dependence on the forest as well as in their traditional wisdom regarding conservation of the forests.⁶

“The forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting

⁴National Forest Policy 1988, No. 3-1/86-FP 6-7, GOVERNMENT OF INDIA, available at [nfp \(moef.gov.in\)](http://nfp.moef.gov.in) (last visited on 26/06/2022).

⁵ Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, S. 3.

⁶ Forest Rights Act, 2006.

in historical injustice to the forest-dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.”⁷

The preamble to the Act acknowledges the concept of sustainable development keeping in consideration human beings as a component of the Environment. Development of individuals as well as of a community has been highlighted under the Act to such an extent which is necessary but not evil as such. Ten different social developmental activities accredited for the diversion of land is subject to the ceiling of land available for diversion.⁸The rights under the act extends to livelihood and common occupation for habitation, community rights, ownership rights, usage right, etc.

“An Act to recognize and vest the forest rights and occupation in forest land in forest-dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land”

The legislative acknowledgment of the symbiotic relationship of these primitive communities’ with the forest ecosystem has followed the Gandhian philosophy of need and not greed. Much celebrated, modern-day principles of sustainable development including the principle of inter-generational equity has been practiced by these communities which resulted in the enactment of this act. The language of Para 1 to the preface of the Act, acknowledges these native communities as a part of the forest ecosystem who have followed an eco-centric approach in their development.

A precautionary approach has been applied by the legislators with the list of rights under Section 3 of the Act which sets a tone of caution.

“any other 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 clauses (a) to

⁷ Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Para 3 of Preamble.

⁸ Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, S. 3 (2).

(k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;”⁹

Besides the constitutionally available directives and duties to protect and preserve the environment,¹⁰ the Forest Rights Act attaches some legal duties upon the holders of such rights wherein they are empowered to protect, preserve and avoid such practices that are detrimental to nature and wildlife.¹¹The legislative duties enshrined under the act, point at care and caution towards the other biotic and abiotic elements of the ecosystem. Judiciary in one of such cases made an attempt to balance the ecological and developmental needs.

“The pressing need to preserve ecology and bio-diversity cannot be sacrificed to promote the self-interest of a few. Law enacted by Parliament to protect the Indian Elephant, keeping in view the international convention, cannot be flawed as imposing unreasonable restraints. Surely, India cannot be a party to the decimation of the elephant. It is documented that some member countries have even burnt and destroyed tonnes of ivory in order to discourage ivory trade and to protect the elephant which is on the brink of extinction.”¹²

Further in the same case the test of reasonableness was applied in order to balance the human and ecological interests.¹³

“Whereas the recognized rights of the forest-dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity,

⁹Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, S. 3 (1) (l)

¹⁰ Constitution of India, Art. 51 A (g).

¹¹Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, S. 5

Duties of Holder of Forest Rights:

The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to –

(a) protect the wild life, forest and biodiversity;

(b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected;

(c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;

(d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.

¹²*Ivory Traders & Manufacturers Association v. Union of India*, 1997 SCC Online Del 323 (India).

¹³*Ivory Traders & Manufacturers Association v. Union of India*, AIR 1997 Delhi 267(India).

and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest-dwelling Scheduled Tribes and other traditional forest dwellers;"

The connotation of sustainable use, conservation of biodiversity, and maintenance of ecological balance lie in the minimal use of resources ensuring the livelihood of the forest-dwelling tribes and communities. A precautionary approach is discernible in practice and legislative intents of Judiciary as well as legislature setting a tone for the use and conservation of resources in such a manner which is sustainable in its approach.¹⁴

Different committees have been setup under the act for the receipt and processing of the claims of such communities. The rule 3 of the Scheduled Tribes and other Traditional forest dwellers (Recognition of Forest Rights) Rules, 2007 directs for the constitution of a committee from amongst the members of the Gram Sabha with one-third representation of women, and 2/3rd membership of Scheduled Tribe. The principle of natural justice forbids the participation of a member from participating in the verification of the claims in which he is the claimant.

Rule 3, 5 and 8 highlights the constitution of the Forest Rights Committee, Sub Divisional Level Committee and District level committees respectively. The minimum number of members constituting a Forest Rights Committee shall be ten with an upper limit of 15, while the Sub Divisional Level committee shall be headed by a Sub Divisional Level Officer, and other members representing forest Department, Scheduled Tribes, women and an officer in charge of Tribal welfare in the sub division.¹⁵ Rule 5 provides an opportunity to the members of the respective areas in decision making. This Sub Divisional level committee is entrusted with the duty to examine the resolution¹⁶ and hearing the petitions from the individuals and state agencies.¹⁷ Similar membership is seen in the higher appellate authority i.e., District level committee making the administration of claims more transparent and participative.

¹⁴*Sushila Saw Mill v. State of Orissa*, (1995) 5 SCC 615(India).

¹⁵Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Rights), Rules 2007, R.5.

¹⁶Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Rights), Rules 2007, R.6 (e).

¹⁷Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Rights), Rules 2007, R.6 (g).

A procedure for the processing the claims and functions of the respective committees have been covered under the Rules. The participative decision making under the Act makes the act democratize, inclusive and participative in its nature and functioning. The Forest Rights committee has been assigned the function of receiving and retaining the claims and evidence in support thereof. The FRC is shall prepare the record of claims and evidence including maps, preparing the list of claimants, verification of claims and present the findings on the nature and extent of claims before Gram Sabha,¹⁸ additionally, the committee shall, after due intimation to the concerned claimant and the Forest Department: visit the site and physically verify the nature and extent of the claim, receive any further evidence or record from the claimant and witnesses.¹⁹ Fundamentally the FRC has an onerous duty to perform from receiving the claims and evidence to record its findings on the claim. In order to the interest of the forestand revenue department, the Forest Rights Committee shall give a prior intimation to the respective officials of the concerned Department.

A comprehensive list of evidence in the support of claims has been provided under the rules. More than one of evidence in support of the claim is to be produced by the claimant to substantiate his/ her claim over the forest land to an upper limit of 4 hectares. Collective/ community rights under the Act are to be processed according to the Rule 12 B of FRA Rules, 2007.²⁰

¹⁸Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Rights), Rules 2007 R 11 (2).

¹⁹Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Rights), Rules 2007 R12.

²⁰ 12 B. Process of Recognition of Community Rights.- (1) The District Level Committee shall, in view of the differential vulnerability of Particularly Vulnerable Tribal Groups as described in clause (e) of sub-section (i) of Section 3 amongst the forest dwellers, ensure that all Particularly Vulnerable Tribal Groups receive habitat rights, in consultation with the concerned traditional institutions of Particularly Vulnerable Tribal Groups and their claims for habitat rights are filed before the concerned Gram Sabhas, wherever necessary by recognizing floating nature of their Gram Sabhas.

(2) The District Level Committee shall facilitate the filing of claims by pastoralists, transhumant and nomadic communities as described in clause (d) of sub-section (i) of Section 3 before the concerned Gram Sabhas.

(3) The District Level Committee shall ensure that the forest rights under clause (i) of sub-section (1) of Section 3 relating to the protection, regeneration or conservation or management of any community forest resource, which forest dwellers might have traditionally been protecting and conserving for sustainable use, are recognized in all villages with forest dwellers and the titles are issued.

(4) In case where no community forest resource rights are recognized in a village, the reasons for the same shall be recorded by the Secretary of the District Level Committee.

Conclusion

To undo the historical injustice the Forest Rights Act came in as one of the milestones with some doubts in the mind of environmentalists. The act came in the favor of a class of communities who have been from generations been in a close proximity and symbiotic association with nature. The eco-centric approach to their livelihood needs came up in the form of the Forest Rights Act that is inclusive and democratic in nature. The participation of the tribal and other traditional forest dwelling tribal communities brings in the administrator and the administered in a close involvement for acknowledging the rights of the communities who have been from past three generations living in close association with forests and are dependent upon the forest resources for their livelihood. The tribes have guarded the forest and the natural resources and the national forest policy recommended the responsibility of protection and conservation of natural resources to these symbiotic communities.

(5) The conversion of forest villages, unrecorded settlement under clause (h) of Section 3 shall include the actual land use of the village in its entirety, including lands required for current or future community uses, like, schools, health facilities and public spaces.