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Forest rights legislation and issues in the light of requirements of land for development

Until Scheduled Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights Act was enacted in 2006, the claim for collective rights regarding forest land by the indigenous people in India, which formed an integral part of their livelihood needs and religious and cultural practices, was existing only as informal customary norm. The formal legal system failed to acknowledge the cultural and religious rights of indigenous communities over the land on which they were traditionally living for generations. The Scheduled Tribes and Other Traditional Forest Dwellers Recognition of Forest.

Rights Act, 2006 (Forest Rights Act, 2006) have led to a paradigm shift in the restrictive way customary informal norms were perceived by the forest law and policy in India. The Forest Rights Act, 2006 provides for the recognition of individual and community claims of indigenous peoples over the forest land. The section 6 of the Forest Rights Act, 2006 empowers the gram sabha (village assembly) to decide regarding the individual and collective claims of the indigenous community over the land. The Forest Rights Act, 2006 is to be acknowledged as a pioneering formal legislation, which recognizes the informal customary claims of indigenous community. It is important to note that the 'Free, Prior and Informed Consent' principle, which is well acknowledged in the United Nations Declaration on the Rights of Indigenous Peoples, 2007 and International Labour Organization's (ILO) Indigenous and Tribal Peoples Convention, 1989, is brought into section 6 of Forest Rights Act, 2006 by recognizing the gram sabha as an enabling decision-making mechanism.

Indigenous people

Indigenous people in the Indian context are usually referred to as adivasis or vanvasis. The fact is that there is no one set of people who could be considered as 'indigenous' in the Indian context. Hence, indigenous people in India do not confine to one homogeneous set of people or community. The Indian legal system refers to the indigenous people as

'scheduled tribes'. The entire power of identifying and ascertaining who would be designated as scheduled tribes, the Indian equivalent of indigenous people, completely vest with the state, based on notification by the state entity and based on criteria provided by the state.

The scheduled tribes have deep attachment and engagement with the land and ecosystem in which they inhabit. It is important to note that most of the habitation of the scheduled tribes in India is within and near the forest area. Thus, there are scheduled tribes who dwell in the forest and fringes of the forest. For these scheduled tribes, attachment to the land and forest is primarily for their livelihood, which also have close link with their cultural and religious practices. The international working group for indigenous affairs clearly captures the emotion and sentiment of indigenous people of India, which quote: 'We are people with distinct historical, political, and cultural identities. We are united by our histories as distinct societies, by our languages, laws, traditions, and unique spiritual and economic relationships with our lands and territories'.

Forest rights act, 2006

The National Forest Policy, 1988 is the first forest policy-related document that adopted an inclusive approach of recognizing the claims of the indigenous community regarding forest land. Slowly with the change in the policy approach, coupled with the active and strong civil society movement calling for recognizing the rights of indigenous people, the state enacted the Forest Rights Act in 2006. The National Forest Policy, 1988 paved the way for the Forest Rights Act, 2006 to be enacted.

The section 3 of the Forest Rights Act, 2006 clearly provides for vesting of certain individual or community-based rights to the forest-dwelling scheduled tribes and other traditional forest dwellers. The rights that are provided in the section 3 of the Forest Rights Act, 2006 include:

1. Right to hold and live in the forest land under the individual or common occupation for habitation or for

self-cultivation.

2. Rights to protect, regenerate, conserve, or manage any community forest reserves that the individual or community has been traditionally protecting and conserving for sustainable use.

The Forest Rights Act, 2006 provides proactive rights and protection to the forest-dwelling scheduled tribes. A significant part of this legislation is section 6 of the Forest Rights Act, 2006. The section 6 of the Forest Rights Act, 2006 empowers the gram sabha to decide regarding the individual and collective claims and of the indigenous community over the land. Thus, Forest Rights Act, 2006 is a pioneering formal legislation that recognizes the informal customary claims of indigenous community. Empowering the gram sabha as an institutional mechanism for decision-making helps in translating the customary norms into formal legal right.

Gram sabha's power

By way of the section 6 of Forest Rights Act, 2006, the principle of Free, Prior and Informed Consent is being incorporated into the legislation. The principle of Free, Prior and Informed Consent is a well-established and significant principle regarding self-determination rights of the indigenous people recognized by the public international law. This right of prior consultation with the indigenous people helps in furthering the formal recognition of the right over the forestland for scheduled tribes. Empowering the gram sabhas as an important formal institutional mechanism is a significant measure from juristic pluralism perspective. The gram sabhas need to be informed about the developmental activities, natural resources extraction, and other such activities likely to affect the interest of the indigenous people over the forest land resources. Forest Rights Act, 2006 also made it mandatory to take consent from the gram sabhas in case of any action that have the interest over forest land and could impact upon the indigenous community.

In the case of Orissa Mining Corporation vs. Ministry of Environment and Forest, the Supreme Court looked into the issue of rights of the indigenous people regarding forest land based on customary claim. The Supreme Court observed that the scheduled tribes 'have a right to maintain their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands'. Furthermore, the Supreme Court acknowledged the historical injustice done to the scheduled tribes considering the background objective of Forest Rights Act, 2006, which was blatantly violated. The Supreme Court noted that 'the Forest Rights Act has been enacted conferring powers on the gram sabha constituted under the Act to protect the community resources, individual rights, cultural and religious rights'. The powerful intervention of judiciary in the case of Orissa Mining Corporation vs. Ministry of Environment and Forest could happen due to formal recognition of the right of forest

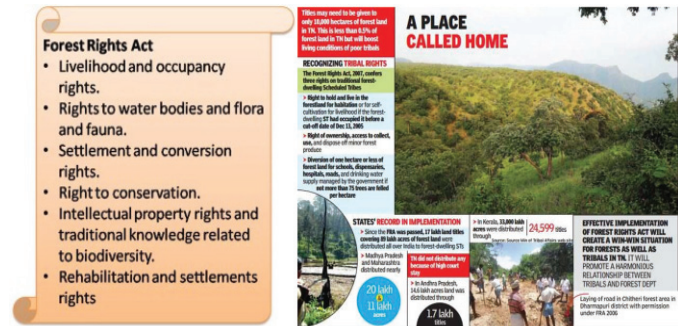


Image courtesy: Green clean guide and Times of India (Web versions)

dwellers through legislation. Without the formal recognition of indigenous peoples' right through the Forest Rights Act, 2006, hardly any effective judicial intervention would have been possible. The judiciary could assert the religious and cultural right of the indigenous people in an effective manner, due to formal recognition of the rights by formal legal system. Due to the Forest Rights Act, 2006, in the case of Orissa Mining Corporation vs. Ministry of Environment and Forest, the Supreme Court of India made it clear that the gram sabha would have the power to decide regarding the collective claims of the indigenous community. Otherwise, the story would have been of a private corporate entity grabbing the land away from indigenous people who could not assert their customary rights. Thus, the recognition of the customary rights of indigenous people under the Forest Rights Act, 2006 have led to an inclusive forest law and policy in India.

Illegal settlers and encroachers

Since enactment of the law, 4.22 million applications have been filed for the settlement of rights. Of this, 1.94 million have been rejected. Only 54,591.07sq km of forest land has been recognized, while the total forest land under occupation prior to 2005 was 112,000 sq km. This is the population, petitioners in the apex court have focused on for eviction, as they have been termed as illegal settlers. The petitioners have been asking the court to evict people whose claims have been rejected when it is also admitted that many rejections are incorrect and require review. There are three levels in FRA when a claim can be rejected or approved – gram sabha, sub-divisional and district. More than 1.75 million land rights claims filed by tribals and other traditional forest dwellers have been rejected by state governments. The latest statistics reveal that 20 states have rejected 17,52,553 claims under the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, or the Forest Rights Act, till March 2020. The number of land titles awarded, so far, is slightly more at 1.98 million.

Reference: Indian Forest Rights Legislation: Significance of Recognizing the Legal Pluralism for Indigenous Peoples Rights, Authors: Deva Prasad M, Suchithra Menon C, Statute Law Review, Volume 41, Issue 1, February 2020, Pages 78–88.