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Forest Dwellers' Rights Under the Forest Laws: Recent Developments

by
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Introduction

Trees are friends of mankind and forests are necessary for the human existence either for the development or for providing place for habitation. In ancient times and as per some religious belief trees are worshipped and prayers are offered for up-keeps of the forests. Forests help in maintaining the ecological balance. They render the climate equable, add to the fertility, prevent soil erosion and promote perennial stream flow in rain-fed rivers. They shelter wild animals, preserve gene pools, maintain biodiversity, protect the tribal people and exhibit cultural diversity. Tribe in cultural anthropology is a type of human social organisation based on small groups defined by tradition of common descent having political integration above family level and shared language, culture and ideology. In the ideal model of a tribe, members typically share a tribal name and a contiguous territory. They work together in such joint endeavor in trade, agriculture, house construction, and warfare and ceremonial activities. Tribes are usually composed of a number of smaller local communities. Modern anthropologists have replaced it with ethnic groups as they have common ancestry and language, shared cultural and historical tradition and an identifiable territory. Indian tribes constitute roughly 8% of the national population¹. The States in Central India States have 75% of the total tribes population. There are 573 communities recognised by the Government of India as Schedule Tribes. It has the largest population in the world but unfortunately, the most-exploited and disadvantaged community.

Besides these benefits from environmental and ecological standpoints, forests bring revenue to the State, supply raw material to industries and act as a source of fuel and fodder. But forests management always gives rise to conflicting view-points, for example, claims of development such as construction of dam or commissioning of an industry in a forests area would raise questions regarding the violation of the forests laws. The natural inhabitants are inflicted with label of encroachers. Outside intruders have affected the tribal communities and



forest dwellers. In a society based on the rule of law, conflict of values is to be reconciled and priorities have to be set up. The problems relating to forests are becoming an issue of major concern. Deforestation is affecting in many ways the ecological balance and life of the people who depend on forests. The government policies on forest reserves have affected tribal peoples profoundly. Wherever the State has chosen to exploit forests, it has seriously undermined the tribes' way of life. The Government's efforts to reserve forests have precipitated armed resistance on the part of the tribal peoples. Intensive exploitation of forests has often meant allowing outsiders to cut large areas of trees while the original tribal inhabitants were restricted from cutting and ultimately replacing mixed forests capable of sustaining tribal life with single-product plantations. Where forests are reserved, non-tribes have proved far more sophisticated than their forest counterparts at bribing the local officials to secure use of forestlands. The intensive cultivating and commercial interests, that

replaced the tribal way of life, have destroyed the forests. Our failure in the implementation of the policy too has been dismal. In some studies it has been brought out very clearly. The policy of forest department has varied from time to time from absolute protection to a callous attitude towards the tribal settlements².

India has to reconcile the apparent conflict between conservation development and the tribal rights. The tribals continue to face acute insecurity on habitat and livelihood that tend to exclude them by default. Development, is no doubt demand of the modern age, but, development should reconcile the eco-balance least it may have adverse impact on the life and the existence of ecosystem.

The tribes or the forest communities are the people whose existence depend on a close and ecologically sustainable relationships with the forest they inhabit. They are the prime guardians of the forest as they have a symbiotic relationship with the forests. India has the largest population of the tribes in the world, comprising about 8% of its population mostly present in the central part of the country (1991 census). At times, there have been efforts to control and regulate the activities of the forest communities and the forest dwellers. It is, however, difficult to reconstruct the picture of these people before the British intervention. Such reconstruction has to be done from the writings of the colonial administrators themselves³. There was a little or




no interference with the customary use of forest and forest produce⁴. The early days of British rule were characterised by a total indifference to the needs of forest conservancy. The demands made by occupation for military purposes, teak export trade and the desire for more and more revenue by removing the forest and adding the land to the class of land paying revenue marks the change in the policy towards the forests. The history of Indian forestry is marked by building of railway network. The early years of railway expansion saw an unprecedented assault on the more accessible forests and caused considerable deforestation. The fast uncontrolled denudation of forest awoke the colonial administration to the fact that the forests are not inexhaustible. The need was felt to start an appropriate department and for its effective functioning the enactment of laws to curtail the previously exercised unlimited rights of the users. The beginning of the restricted rights affected not only the traditional practices of village and specially the tribal communities.

Scenario in British Raj

The first attempt by the colonial rulers, at asserting the monopoly right over the forest, was through the Indian Forest Act of 1865. Remaining in action for a period little over a decade, the Act was replaced in 1878 by a more comprehensive piece of legislation. The provisions of this law ensured that the State could demarcate "valuable" tracts of forest needed for the railway purposes and retain enough flexibility over the remaining extent of the forest land. The monopoly right of the State inculcated a new concept which sought to establish that the customary use of forest by the villagers was based not on "right" but on "privilege" and that the "privilege" was exercised only at the mercy of the local rulers. Thus the rights of absolute ownership was held to be vested in the British rulers.

The denial of "right" and the consequent loss of control over the natural resources evoked a sharp reaction from the forest communities. The legislations made a strict difference between "uncontrolled use" and "proprietary rights". Such alienation of the forest based community from the forest appears to be analogues to what Marx talked about that of primary producer after being separated from the means of production.


Before the British intervention, the forest dwellers and more particularly, the advasis, "were freemen, owning the means of production"⁵. The British Rule introduced notion of private property contrary to the

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experience of these communities. Another legislation, the Forest Act, 1927 dealt with four types of forests, namely reserved forests, village forests, protected forests and private forests⁶. The Act barred the accrual of any right other than the right vested at the time of notification under Section 4. The Act placed the tribal people and other forest dwellers completely outside its ambit rendering these people devoid of any claim respecting the forests. After Independence, the national forest policy of 1952 maintained the pre-colonial notion and affirmed that the 1894 policy "constitutes the basis for the forest policy of India". In the policy statement there is an explicit assertion of state monopoly right at the expense of the forest communities This exclusion is legitimised in the name of "the national interest" so as to ensure that the country as a whole is not deprived of a "national asset" by the mere accident of a village being situated close to a forest. The Forest Conservation Act, 1980 was enacted causing further a blow towards even the small benefits the dwellers were able to draw from the depleted forests became unattainable⁷.

Forest Policy

Although the 1952 Forest Policy aimed at forest coverage of one-third of the total land area of the country, but, due to various constraints this could not be attained. Rather extensive diversion of forest land had taken place for non-forest use. The natural occupants have been forcibly evicted from their natural places and surroundings. The genetic diversity has also been considerably affected by the destruction of flora and fauna. The Government has increasingly realised the great importance of forests in contributing to the ecological stability of the country. This necessitated re-examination of the Forest Policy and giving emphasis to the conservation and ecological aspects. India's National Forest Policy declared in 1988 paid due attention to the problems of tribal people⁸ and intended to associate them in Forest Conservation and Development. But the policy statements cannot help the tribes and forest dwellers to remain associated with their natural way of living unless formulated into the binding rules of conduct and their enforcement. The policy, however, did constitute a pathfinder in a right direction. The basic objectives that should govern the National Forest Policy 1988 - are the following:

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1. Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.
2. Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.
3. Checking soil erosion and denudation in the catchment areas of rivers, lakes, reservoirs in the "interest of soil and water conservation, for mitigating floods

and droughts and for the retardation of siltation of reservoirs.

4. Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts.
5. Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands.
6. Meeting the requirements of fuel-wood, fodder, minor forest produce and small timber of the rural and tribal populations.
7. Increasing the productivity of forests to meet essential national needs.
8. Encouraging efficient utilisation of forest produce and maximising substitution of wood.
9. Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimise pressure on existing forests.

The principal aim of Forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium that are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim. The vesting, in individuals, particularly from the weaker sections (such as landless labour, small and marginal farmers, scheduled castes, tribals, women) of certain ownership rights over trees, could be considered, subject to appropriate regulations; beneficiaries would be entitled to usufruct and would in turn be responsible for their security and maintenance. The holders of customary rights and concessions in forest areas should be motivated to identify themselves with the protection and development of forests from which they derive benefits. The rights and concessions from forests should primarily be for the bona fide use of the communities living within and around forest areas, specially the tribals. The life of tribals and other poor



living within and near forests revolves around forests. The rights and concessions enjoyed by them should be fully protected. Their domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce. These and substitute materials should be made available through conveniently located depots at reasonable prices.

Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations should be to 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. While safeguarding the customary rights and interests of such people and forestry programmes, the policy pays a special attention to the following:

- One of the major causes for degradation of forest is illegal cutting and its unauthorised removal by contractors and their labour. In order to put, an end to this practice, contractors should be replaced by institutions such as tribal cooperatives, labour cooperatives, government corporations, etc. as early as possible;
- Protection, regeneration and optimum collection of minor forest produce along with institutional arrangements for the marketing of such produce;
- Development of forest villages on par with revenue villages; and
- Family oriented schemes for improving the status of the tribal beneficiaries: and

undertaking integrated development programmes to meet the needs of the tribal, economy in and around the forest areas, including the provision of alternative sources of domestic energy on a subsidised basis, to reduce pressure on the existing forest areas.

In this regard it will not be irrelevant to bring the international environmental law vision in this regard. The Rio de Janeiro Summit, 1992 also focused attention on the socio-economic conditions and significance of the involvement of indigenous people in the process of conservation of forests and non-legally binding authoritative statement of principles for a global consensus on management, conservation and sustainable development of all types of forests were adopted. One of the principles (Principle 5) states as:

- (a) National forest policies should recognise and duly support the identity, culture and the rights of indigenous people, their communities and other communities and forest dwellers. Appropriate conditions should be promoted for these groups to enable them to have an



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economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organisation, as well as adequate levels of livelihood and well-being, through, *inter alia*, those land tenure arrangements which serve as incentives for the sustainable management of forests.

- (b) The full participation of women in all aspects of the management, conservation and sustainable development of forests should be actively promoted.

Near the end of the last century another remarkable development respecting the tribes took place when Ministry of Tribal affairs was constituted in October 1999 by bifurcating the social justice and empowerment with the objectives of more focused attention on integrated socio-economic development of the most under privileged section of the Indian society, the scheduled tribe in a coordinated and planned manner.

Judicial Contributions

The Judiciary has also taken due care in recognition of the rights of the tribes while disposing of cases respecting the forests. *Fatesang Gimba Vasava v. State of Gujarat*² is a typical case that explains the impact that the reservation of forests has had upon the tribal habitat. The tribal people were supplied bamboo at concessional rates to enable them to eke out a living by making articles for sale in the open market. The State forest officials, however, blocked the transport of articles on the ground of possible exploitation of forest in a reckless manner. The Court laid emphasis on the rights of tribals to depend on the forest, which was the only source of their livelihood. Their removal did not warrant action by forest officials. The court observed that once bamboo chips were transformed by human labour into a commercially new and distinct commodity the article ceased to be a produce of nature¹⁰. Reiterating *Fatesang*, the Supreme Court held in *Suresh Lohiya v. State of Maharashtra*¹¹ that confiscation, by forest officials, of bamboo mats made from tribal labour was not valid. The Court also emphasised that articles made out of bamboo, unlike bamboo, were not forest produce. The definition of "forest produce" contemplates only such produce of trees having natural growth or products like flowers and fruits. Wherever



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the legislature wanted to include articles produced with the aid of human labour, the definition made a specific mention as in the case of "all products of mines or quarries."

The forest department raised the plea that exclusion of bamboo products from the definition of forest produce, would frustrate the object of the law and give unscrupulous dealers an opportunity to denude the country of the forest wealth.

The Court observed that though bamboo as a whole was forest produce, if a product, commercially new and distinct, known to the business community as totally different is brought into existence by human labour, such an article and product would cease to be a forest produce. Bamboo mat is taken as a product distinct from bamboo in the commercial world and, therefore, it was not a forest produce in the eye of the Law¹². The Court rejected the plea and rightly said that it could not legislate. What it can do in a matter at hand is only to iron out the creases and not to weave a new texture. One may not counter the plea, if accepted, would have done more harm than good, as it had the inherent danger of taking away the rights of tribal people to their habitat and livelihood¹³.

The *Narmada* Project has become controversial. The developmentists claim it is going to a boon to the national development, the field irrigation and the power projects; on the other hand the environmentalists, however, do not agree. One thing is clear and it is the most disturbing aspect of the matter that policy of the resettlement of tribal and other ousters do not get priority, causing a great hardships to the people of the area. The permanently displaced people have to fight for their survival and settlement. These people have to suffer twice without any fault, one for their displacement, and two, for the struggle for resettlement.

In *Banwasi Seva Ashram v. State of U.P.*¹⁴, the question before the Supreme Court related to the claim of the *adivasis* living within *Dudhi Robertsganj* Tehsils in the District of Mirzapur in Uttar Pradesh to land and related rights. The State Government declared a part of these jungle lands in the two Tehsils as reserved forest as provided under Section 20, Forest Act, 1927, and in regard to the other areas notification under Section 4 of the Act was made and proceeding for final declaration of those areas also as reserved forests were undertaken. It is common knowledge that the *adivasis* and other backward people, living within the



jungle, used the forest area as their habitat. They had raised several villages within these two Tehsils and for generations had been using the jungles around for collecting the requirements for their livelihood, fruits, vegetables, fodder, flower, timber, animals by way of sports and fuel wood. When a part of the jungle became reserved forest and in regard to other proceedings under the Act were taken, the forest officers started interfering with their operations in those areas. Criminal cases for encroachments as also other forest offences were registered and systematic attempt was made to obstruct them from free movement. Even steps for throwing them out under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 were undertaken.


In its order, the Supreme Court directed the Record Officer and Forest Settlement Officer to relax the procedural rigour of Section 4 and Section 6 of the Forest Act and adopt a suitable procedure that would adequately safeguard the right of the *Adivasis* and *Banvasi's* living in Mirzapur District of U.P. before the declaration of reserve forest. The Supreme Court also directed the U.P. Legal Aid and Advice Board to look into the matter and consider all legal aspects. It also issued direction to NTPC that was

acquiring 1375 acres of land for their projects. The matter again came up before the Supreme Court in 1991 and it noted the slow progress in the matter and issued further directions in the matter with a view to implementation the order soon¹⁵.

Again in 1992, the Supreme Court passed yet another order for proper rehabilitation of *Banvasis* and Tribals by the NTPC. The Court said that NTPC must ensure that the rights of the ousters were determined in their respective holding and they were properly rehabilitated and adequately compensated. We find that despite our national policy and lip service to it, it is the Supreme Court which came to the rescue of the people in distress¹⁶.

One of the major steps for ecological restoration would be to convince the higher echelons of the Forest Development that forestation should be done not merely with commercial varieties but on an ecologically sustainable basis i.e. there should be a fair proportion of indigenous species, which care to the needs of the local community¹⁷.

The cases of *Pradeep Krishen v. Union of India*¹⁸ and *Animal and Environment Legal Defence Fund v. Union of India*¹⁹ also relate to

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tribal rights and privileges in the forest area. In *Pradeep Krishan*, the Supreme Court suggested:

"If one of the reasons for the shrinkage is the entry of villagers and tribals living in and around the sanctuaries and the national parks, there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in these areas."²⁰

Besides felling trees, certain other acts are also prohibited in reserved forests²¹. In, *Animal and Environment Legal Defence Fund v. Union of India*²², the Supreme Court had to resolve a dispute between two neighbouring States on the rights of tribals. The Court observed:

"...(W)hile every attempt must be made to preserve the fragile ecology of the forest area and protect the Tiger Reserve, the right of the tribals formally living in the area to keep body and soul together must receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood."²³

Emphasising stricter vigilance on the exercise of fishing rights and allied matters, the Court insisted on photo identity for access of permit holders, creation of check posts to bar transgression into other parts, daily record of fish catch, prohibition of tribal fishermen from lighting fires on the banks of reservoir and sanction of more monitoring facilities. The Court referred to *Pradeep Krishnan case* on the depletion of forests and noted that India had forests far less than the stipulated one third of its land.

Tribal people or other forest dwellers, obviously, do not have unrestrained right of access to all forest produce. If they are given rights over standing trees, the rights will definitely be subject to conditions imposed by the Regulations whether they are framed by an old princely State or a new State. *Salehbai Mulla Mohmadali v. State of Gujarat*²⁴, illustrates this point. The Supreme Court in this case held that the contractors could have no greater rights than those of the *Jagirdars*. The same situation exists in case of forest dwellers and tribal people who may not have more or greater rights than those they had before the formal legal system became applicable.

The Constitution of India recognises the pre-existing rights of the tribal people. It classified areas of tribal concentration into three categories, namely, tribal areas, scheduled areas, and areas not falling within these two²⁵. In *Samatha v. State of A.P.*²⁶ the Supreme Court, by a majority, held that the expression "person" means a natural person, as well as an artificial person including the Constitutional Government. Justification for such an interpretation was found in the constitutional scheme in which the State is considered a juristic person with the responsibilities of bringing an egalitarian order in which the weaker sections, including the tribals, are granted the right to live with dignity²⁷.

Justice Ramaswamy observed:

"The tribals have fundamental right to social and economic empowerment. As a part of right to development to enjoy full freedom, democracy offered to them through the States regulated power of good Government that the lands in scheduled areas are preserved for social economic empowerment of the tribals."²⁸

The Court further observed that, a liberal and wider interpretation would maximise allotment of government land in scheduled area to the tribals and make socio-economic justice, as assured in the Constitution, a reality.

The Forest Rights Law

To cure injustice caused by the Indian Forest Act which took away all forest rights from the forest dwellers and tribal people, the Scheduled Tribe and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006²⁹ has been passed. The Act introduced on 13-12-2005, took two years in the process and notified only on 1-1-2008. Strange enough, the Act was opposed by the environmentalist as well as the Ministry of Environment and Forests as the human activities in the forest area would pose a great risk to the forests. Rules for the implementation of the Act of 2006 were finally notified on 1-1-2008, thus, operationalising the Act which has been mired in controversy for two years.

The Forest Rights Act gives tribals and other forest-dwellers the right to cultivate forest land already under occupation, the right to own, collect, use and dispose of minor forest produce, and rights inside forests

that are traditional and customary like grazing. The Act was notified after over a year of political interventions, bureaucratic twists and hectic lobbying by activists representing tribal and wildlife interest groups. While the legislation is aimed at righting off an historic injustice done to tribals and forest-dwelling communities by the Indian Forest Act of 1927. The draft bill was opposed strenuously by the Ministry of Environment and Forests (MoEF) and by environmentalists. They argued that by allowing human activity in forest areas, would put the endangered forests and wildlife at a greater risk. Apart from the scheduled tribes, "other traditional forest dwellers" are also covered in the Act. They are defined as those who have for at least three generations (75 years) resided in and have depended on the forests for bona fide livelihood needs. Forest rights include occupation for self-cultivation, collection/processing, etc. of minor forest produce, conversion of land pattas into titles, intellectual property and traditional knowledge rights, in-situ rehabilitation including alternative land use, etc. The traditional right of hunting, etc. has been

excluded.

The characteristics features of the new legislation are that it works through the democratic institution of panchayat/Gramsabha³⁰ with the provision of appeal³¹. The rigour of the bureaucratic authority has been done away as existed earlier. The *Gram Sabhas* shall:

- identify the local community forest resources to be managed under the provisions of the Act;
- receive, consolidate and verify claims on individual and community rights, and pass appropriate resolutions on the claims;
- ensure protection and conservation of forest and biodiversity resources; and
- to check any activity which could affect the natural and cultural heritage of the forest-dwelling community.

The Forest Rights Act has forced some changes on this front, because it explicitly identifies community-based conservation as a legitimate right. Not only that, the Act has also specific provisions for empowering those who hold forest rights, and for checking activities detrimental to the forest and biodiversity³². These provisions have opened up new opportunities for many community forest management groups to assert their right of conservation under the law. These




communities have started claiming their rights of protection and conservation of forest resources and biodiversity and there is a hope among these groups that, through the Act, the holistic models of protection and conservation developed by them would find legal recognition. The Act further recognises and vests the following types of rights in such individual/communities that may be summed up as the basic rights³³ of which the people were deprived for a period staggering 150 years:

- (a) Right to ownership/title;
- (b) Right to use the forest produce;
- (c) Right to *in situ* rehabilitation in cases where such persons have been illegally evicted from forest land prior to the 13-12-2005; and
- (d) Right to protect, regenerate or conserve or manage the forest resource.

The categories of rights mentioned above highlight the importance of the preservation of the status of the tribal people and extent of the care the Government has ultimately expressed in this piece of legislation. Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management should be to 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 with special attention to the alternative sources of domestic energy on a subsidised basis to reduce pressure on the existing forest areas. Traditionally tribal people have satisfied practically all their needs from the forests. The Act has acceded this right of tribal people. The holders of customary rights and concessions in forest should be motivated to identify themselves with the protection and development for forests from which they derive benefit. The tribal people's customary rights and concessions and user of forests and its produce have, therefore, been recognised and protected.

The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is a welcome step towards aspirations of the considerable population of our country. After the policy of 1988, two decades later the Government has come

up with a people's legislation to help out the victims of colonial traders. Their sufferings could never be addressed properly also in Independent India as they were under the shadow of the same laws. The most remarkable feature, inter alia, is that their claims over the forest rights shall be

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determined by their own elected members of the *Gramsabha*, not by the forest officers with whom such people would face inconvenience and hardships. The delay in the implementation of the law might have given a chance to the official for the forceful eviction from the forest to lessen the occupied area; the executing agency, therefore, must take proper care and caution in identifying and determining the claim of the forest dwellers. The need of the time is that the Forest Rights Act, 2006 be implemented in its proper spirit.


The State Experiences

Some past experiences may not be irrelevant to cite here as illustrations to place the contribution of these people towards the forests.

The Irula people of Southern India have traditionally been a forest based tribe skilled at living off the land. The hunter - gatherers are the largest tribe in Chingleput District in Tamil Nadu, numbering nearly 30,000³⁴. The ITWWS is a voluntary organisation formed in 1986 to help Irula women make productive use of their forest related skills directed towards encouraging tree planting and reforestation. The seedling distribution, model afforestation plotting and extension programmes are aimed at creating awareness on the advantages of tree planting and establishing good relations with the neighbouring villages. Their role may be summarised as:

- (1) A nursery of 50,000 seedlings of 120 local species is being raised for distribution to the nearby villages to: (a) encourage tree planting through agro-forestry and farm forestry and (b) create awareness of the use of trees and the importance of tree cover.
- (2) A seed bank of over 100 native species collected by the Irulas from the nearby forests is urgently needed and vital in the face of the disappearing genetic resources due to indiscriminate destruction of forests.

The Koraput, Kalahandi and Bolangir (KBK) Districts of Orissa³⁵ also adjoining tribal regions are a stark illustration of the problem that tribal groups who live comfortably in their natural environment faced confrontation with the so called "development" process. It happened so because of the continuous displacement of the tribals from their earth and

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home and also from their forest resources owing to large scale development works including big dams, large scale mining activities and big mineral based industries. The countries trying to exploit the mineral resources in these KBK Districts are Russia, France, Germany, Sweden, Norway, Netherland, Japan, USA, England and Canada. More than fifty small and big companies have also got lease in bauxite and gems mines in the same region. The Ministry of Environment and Forests had given environmental clearance to many of the industries in this sensitive tribal belt of India, ignoring the fact that these areas of Orissa have been declared as scheduled areas. For safeguarding the tribal interests, separate law exists in the form of land acquisition

and developmental activities.

The people who have depended on the forest for centuries are deprived of their source of livelihood. Tribals have lost the water resources of river and hill streams are getting dry, depriving them of their drinking water and water for irrigation. The irony is that the landless lose their livelihood but are not entitled to compensation. But the land does not belong to them rather it is the property of few individual or the State. Compensation was given only for patta land and in this process tribals have become the worst sufferers. The victims were never consulted with regard to the developmental activities carried out in this area. The State Government decided that in case of minor forest produce and also in other relevant areas, the *Gramsabhas* in the schedule areas would be given greater power. Expressing concern over unauthorised occupation of tribal land the Chief Minister of the State of Orissa declared that a drive would be undertaken to identify all tribal land under the illegal occupation of unauthorised persons and it would be restored to them. But time will prove how effective the State machinery will be to fight against the industrial giants who have occupied thousands of acres of tribal land.

The Girijan cooperative corporation (GCC) Ltd. established in 1956 by the Andhra Pradesh Government is involved in the socio-economic development of the tribal people in the State. More importantly it helps in tapping Nature's bounty without the slash-and-burn techniques. The GCC has its headquarters in Visakhapatnam, which procures minor forest produce and agricultural produce from the tribal people, and markets them to the best advantage of the tribals. It also supplies essential commodities to the tribal people under the public distribution system at reasonable prices³⁶.

Bastar (Madhya Pradesh) with its rich forests presents a bounty for its inhabitants. There are at least 31 products that the tribals gather



from the jungle and sell at weekly *hats*. Tamarind, mahua, mango kernels, silk, cocoons, lac, chironji, wax and gum continue to be the main stay of the tribal economy³⁷. The Government had already started market intervention in the collection of *tendu* leaves, *harra* and sal seeds. But it had ignored trade in other produce. After the *Van-Dhan Andolan*, the Government gave village communities absolute control over minor forest produce and replaced traders with help groups. The Government fixes the price of the produce and advances money to the self-help groups that act as commission agents. The new arrangement has slashed the excessive profit margins of the traders. Regularisation of the agricultural produce market also increased the Government's revenues by rupees two crores as compared to the previous year. Bastar's tribals at last seem to be on the road to self-reliance.

The West Bengal Arabari Project is an illustration of the effects of the present forest policy that has been realised and our traditional attitude to tribal forest people really is reflected. The Government of West Bengal launched a programme in the forest at Arabari area in the district of Midnapore where the inhabitants of that forest were involved to protect the forest and to get means of livelihood from the forest products. Side by side with this programme, the forest people were educated to understand the need of conservation of forest. In this way about 2000 Committees were formed for development and conservation of the forest. For such a successful implementation of much desired and long felt forest policy in perspective for growing need for environmental protection, the World Wide Fund awarded fifty thousand dollar (Paul

Gati Prize) to the Forest Department of the Government of West Bengal (first time to any Government) in the year 1995. The Director of WWF said that the Arabari model became an example to the whole world³⁸.

Tribal people have inherent right to their habitat and are dependent on the forest and the forest produce for their life and livelihood. This right cannot be snatched away from them rather it needs to be protected and conserved. The presence of the forest dwellers in and around forest area gives a complete picture of any forest. Entitlement of the right to title over a piece of land to a person who had nothing before to his name is something never heard off. The recognition of the right over the forest produce shall act as incentive to take proper care and caution for conservation and growth of these products. Such actions shall help maintain the ecological balances in the fragile environment. The recognised rights of the forest dwelling Scheduled Tribes and other forest dwellers poses responsibility and ensures authority for sustainable



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use, conservation of biodiversity and maintenance of ecological balance. The rights under the Forest Rights Act further ensure livelihood and food security of these people. The recognition of "other traditional forest dwellers" as integral to the very survival and sustainability of the forest is a step further to the inseparable concept of tribal people and the forest.

What Comes Out

The State interference has driven the forest dweller tribes to a life of a ping pong ball which is chased from one habitat to the other. This has resulted in transformation of the forest dwellers to the rural and urban dwellers, a great set back to the ancient Indian ecosystem of the forest. The British Raj had been unkind to them and they were made tools of their exploitation. The Government of India, from time to time, brought in forest policies but their positive fruits could not reach to the forest tribes. In this depressing scenario, the judiciary has brought in some hopes in their lives. But the implementation of the orders of the courts remained, in many cases, unresponsive with the executive. Parliament has risen to their cause but again the implementation ultimately remained in uncared approach of the implementors. Some State Governments have moved forward but they are merely some drops in the vast ocean. The time has come to allow the forest dwellers' tribe to participate in the decisions making, a participatory democracy, at all levels wherein their interests are adversely affected. Let this dream of the Father of Nation, Mahatama Gandhi be fulfilled.

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*. Reader, Law School BHU. Varanasi and Member Environmental Law Commission, IUCN, Switzerland.

1. 1991 Census.

2. Paras Diwan and Peeyushi Diwan, *Environment Administration Law and Judicial Attitude*, Vol. 1, p. 338 (1997).

3. See Ranajit Guha, Writing on Peasant Insurgency: A Recent Experience, *Frontier*, 23-10-1982-6-11-1982.

4. Ramchandra Guha, Forestry in British and Post British India A Historical Analysis. *Economic and Political Weekly*, 29-10-1983.

5. G. Desilva, N. Mehta and M.A. Rahman, *Bhoomi Sena: A Stuggle for People's Power; Development Dialouge* No. 2 (1979): 11.

6. See Ss. 3, 28, 29 and 35, Indian Forest Act, 1927.

7. S. 2(iii).

8. S. 65 of the Wild Life (Protection) Act, 1972 recognises and protects the hunting rights conferred on the ST of the Nicobar Islands in the Union Territory of Andman Nicobar Islands.
9. AIR 1987 Guj 9.
10. *Fatesang Gimba Vasava v. State of Gujarat*, AIR 1987 Guj 9 at 16-18. The Court held that the purchase of bamboo did not constitute an act of removing forest produce prohibited under S. 26(I)(g) of the Forest Act, 1927.
11. (1996) 10 SCC 397.
12. *Suresh Lohiya v. State of Maharashtra* at 400, 401
13. P. Leelakrishnan, *Environmental Law in India*, pp. 15-16-1999.
14. (1986) 4 SCC 753 : A.I.R. 1987 SC 374.
15. *Banwari Seva Ashram v. State of U.P.*, (1992) 1 SCC 117.
16. An exception is found in *Arabari Project of West Bengal*. *Infra.*.
17. *Social Action* Vol. 40 July-Sept. 1990 pp. 294-295.
18. (1996) 8 SCC 599 : A.I.R. 1996 SC 2040.
19. (1997) 3 SCC 549 : A.I.R. 1997 SC 1071.
20. *Pradeep Krishen v. Union of India*, (1996) 8 SCC 599 : A.I.R. 1997 SC 2040, 2047.
21. Indian Forest Act, 1927, Sec. 26.
22. (1997) 3 SCC 549 : A.I.R. 1997 SC 1071.
23. *Animal and Environment Legal Defence Fund v. Union of India*, (1997) 3 SCC 549 : AIR 1997 SC 1071 at 1073
24. (1992) 1 SCC 742 : A.I.R. 1993 SC 335, 340
25. See the Constitution of India, Schedules V and VI.
26. (1997) 8 SCC 191 : A.I.R. 1997 SC 3297, 3337.
27. *Samatha v. State of A.P.*, (1997) 8 SCC 191, at 3324-3337.
28. *Samatha v. State of A.P.*, (1997) 8 SCC 191, at 3330.
29. Hereinafter referred to as the Forest Rights Act, 2006.
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31. S. 6(2).
32. S. 5.
33. S. 3.
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