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# **An Analysis of the Rights of Forest Dwellers and Their Impact on Forest Protection**

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## **ABSTRACT**

This paper attempts to focus on analysing who are regarded as Forest Dwellers under the International and National legal framework, thereby examining the existing legal mechanisms for the promotion and protection available with regard to the protection and rights of indigenous people. Forest Dwellers sustained their lives by adopting a traditional, sustainable and eco-friendly manner, with the environment as their lifestyle is largely based on sustainable use of forest products. The concern has been that the activities of exploration and exploitation of rich natural resources deposits in the region by both the private corporate companies and state-owned Public Sector Undertakings (PSUs) have resulted in harm to the environment, affecting the rights of the tribal people, as their whole foundation of life is closely linked to the environment. The state's policies purportedly have an impact on the rights of indigenous people. For instance, it has been claimed that some states have signed numerous Memorandums of Understanding (MoUs) at the expense of environmental degradation, potentially violating rights such as the right to prior informed consent, the right to participation, and inadequate Environmental Impact Assessments (EIA).

The impact of de-reserving the reserved forests or using such land for non-forest purposes is not limited to forest depletion or the removal of wildlife habitat, but also includes forest dwellers, their rights, and livelihood. Researchers found that India falls far short of international norms for defending the rights of indigenous peoples on all three counts.

Keywords: Forest Dwellers, forest protection

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## Introduction:

Before starting with the concept of Forest Dweller, we need to understand the definition of 'indigenous people'. As Forest Dwellers in the Indian legal regime, they have been living in an area for time immemorial. The main international law instrument that attempts to define indigenous peoples and their rights is the International Labour Organisation's (ILO)<sup>1</sup> Convention on Indigenous and Tribal Peoples. It treats as 'indigenous' the following groups:

- People whose social, cultural and economic conditions distinguish them from other sections of the national community;
- People whose status is regulated wholly or partially by their own customs and traditions;
- People who descend from populations that inhabited a country at the time of conquest or colonisation; and

Forest Dwellers sustained their lives by adopting a traditional, sustainable and eco-friendly manner, with the environment as their lifestyle is largely based on the sustainable use of forest products. The approaches of the state have allegedly impacted the rights of the tribal people of N.E. For instance, some states have been reported allegedly accepted upfront money for the mega project in the NE region by signing rampant Memorandum of Understandings (MoUs) at the cost of environmental degradation, thereby jeopardising the rights such as the right to prior informed consent, right to participation and poor Environmental Impact Assessment (EIA).

The indigenous people and forest dwellers in our society face serious environmental rights as well as human rights problems, understood to be stemming from the deep sense of political, socio-economic and cultural aspects of self-determination aspirations totally rooted in the ethos of the people in all countries.

## RESEARCH METHODOLOGY

Research is based on a doctrinal and systematic study of examination. Secondary sources such as books have been referred to in great depth; the World Wide Web and Articles therein have also

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<sup>1</sup> *Who are the indigenous and tribal peoples?* (2024, November 15). International Labour Organization. <https://www.ilo.org/resource/who-are-indigenous-and-tribal-peoples>



been made use of. Judicial Decisions have been one of the major sources of information to complete this paper.

### **Concept Of Indigenous Peoples Under The Indian Legal Framework:**

The concept of the indigenous peoples under the Indian legal framework shall be mainly described from the perspective of the Indian context, including those mentioned under the Constitution of India and by the Judiciary, particularly by the Supreme Court of India.

#### *The Constitution of India, 1950*

The constitutional makers, while framing the Constitution of India, were faced with the challenge of acknowledging the fact of the existence of tribal people in the country. First, a state-wise list of tribes was drawn, and it was up to the parliament to officially determine the list of STs from time to time. Second, the provision for the administration and control of Schedule Areas and Schedule Tribes was made and was incorporated in the fifth and sixth schedules of the Constitution of India. The Fifth Schedule notifies and denotifies who is a 'tribal' by a sheer majoritarian act of the Parliament, and the Sixth Schedule professedly to protect the tribal. An irony is that a member of a tribe is only in the state in which he/she is enlisted and not in other states. This denies the identity of a person and their community as tribal. Moreover, one has to produce a certificate from the government to prove that he/she is a tribal, which is contrary to reality. Article 342<sup>2</sup> in the *Constitution of India* does not refer to the term "indigenous" anywhere, but rather offers the term "Schedule Tribes", denoting those tribes designated as such through a "process of identification based on the procedures/provisions made in the Constitution of India."

### **Rights Of Forest Dwellers:**

Tribal populations, referred to as "adivasis" or forest-dependent individuals, include 104 million individuals, accounting for 8.61% of India's overall population.<sup>3</sup> Their primary surroundings are forests or places close to forests. Tribes and the forest have a mutually beneficial relationship, which has historically been seen as essential to the forest ecological system's survival and sustenance. During the colonial era and after independence, the Indian government did not

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<sup>2</sup> Constitution of India. (2024, May 9). *Article 342: Scheduled Tribes - Constitution of India*. <https://www.constitutionofindia.net/articles/article-342-scheduled-tribes-2/>

<sup>3</sup> Office of Registrar General & Census Commissioner India, Census of India, 2011, Ministry of Home Affairs, Government of India, New Delhi.



formally recognise their customary rights over the forest resources, which were thought to be based on this symbiotic connection. Since then, they have been living in constant fear of being evicted due to the Indian Forest Legislature's failure to adequately handle the tribal people's rights.<sup>4</sup> They have been designated as “encroachers” and expelled from the forest under the guise of industrialisation and scientific forest management. This "historical injustice" has resulted in the disconnect of tribal groups from their ancestral lands, thereby undermining their social and economic standing.<sup>5</sup>

The rights of Scheduled Tribes (ST) residing in forests, as recognised by the Indian Constitution, together with other traditional forest-dwelling populations, are acknowledged by the Act. The Act empowers these communities by delineating explicit property rights at both the individual and communal levels to facilitate their socio-economic development.

The Act acknowledges community tenure, rights to ownership and collection of non-timber forest products, rights to sustainable co-existence in protected areas (including tiger reserves), and any other rights recognised by customary or regional law.

Forest rights may be asserted by forest-dwellers individually, collectively, or through both means. The rights that may be asserted are as follows:

- (a) The right to possess and reside on forest land under individual or communal tenure, contingent upon
  - The land must be designated for habitation or cultivation to meet livelihood requirements
  - The territory must be under occupation before 13 December 2005
  - The claimed territory is confined to the region currently under actual occupation
  - The land must not exceed four hectares
- (b) Community rights, including nistar (user rights) and those prevalent in former princely states or zamindari systems, or similar intermediary regimes

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<sup>4</sup> P.K. Mishra, Forest policies and Tribal Livelihood an Organisational Perspective in Bidhan Kanti Das & Rajat Kanti Das (Ed), Rethinking Tribe in Indian Context, realities, Issues & Challenges (Rawat Publications, Jaipur, India).

<sup>5</sup> V. Anitha, R. Balakrishnan, & J. Krishnakumar, Community Participation in Natural Resource Conservation : Forest Rights Act Among The Kadars in Kerala, India, Journal of Environmental Research and Development 9(3), January-March 2015, 669-680.



- (c) Entitlement to possess, gather, utilise, and dispose of small forest produce traditionally acquired inside or beyond the community. Minor forest production encompasses all non-timber forest products of plant origin, including bamboo, brushwood, stumps, cane, honey, wax, tussar, cocoons, lac, tendu or kendu leaves, medicinal plants, herbs, roots, tubers, and similar items
- (d) Additional communal rights of utilisation or entitlement, such as rights to fish and other aquatic resources, grazing, or customary seasonal access to natural resources by nomadic or pastoralist communities
- (e) Entitlements to transform the subsequent categories of settlements into revenue villages: forest villages, historical habitations, unsurveyed villages, and additional villages located inside forested areas
- (f) Access rights to biodiversity and community rights to intellectual property concerning traditional knowledge associated with biodiversity and cultural diversity
- (g) Any further conventional privileges not previously specified. This, however, precludes the conventional right to hunt, trap, or extract any part of the body from any kind of wild animal

Nonetheless, the utilisation of forest land is permissible only if the area in question is less than one hectare, no more than seventy-five trees are harvested per hectare, and the approval for such developmental initiatives is endorsed by the Gram Sabha.

Although eligible forest-dwellers receive legal titles, deeds, and entitlements, there is ongoing discussion regarding whether these rights equate to ownership rights, as they are not transferable. While the rights may be inherited, they cannot be assigned to another individual, nor can they be purchased or sold.

The Act stipulates that essential wildlife habitats shall not be utilised for any reason other than wildlife conservation. A multitude of environmentalists have ardently endorsed this provision since it constitutes a robust legislative action to safeguard wildlife and forest regions against industrial encroachment.

The implementation of the FRA, particularly the acknowledgement of rights through claims, will transpire via a multi-tiered process involving multiple entities. These authorities encompass the gram sabha and committees at the sub-district, district, and state levels. The basic function of the



gram sabha is to aggregate and physically authenticate the assertions of each member within the community. The sub-district and district committees are tasked with verifying and maintaining records of claims, whereas the state-level committee oversees the implementation at the state level. The implementation of the FRA represents a distinctive advancement in the decentralisation of governance. The Act significantly depends on the Gram Sabha to advance the claims procedure. While the district committee possesses the ultimate authority to adjudicate the validity of a claim, it is the Gram Sabha that initiates the process to assess the nature and extent of individual or communal forest rights.

The FRA was enacted by the Parliament of India in December 2006 and became effective on 1 January 2008. It is a significant piece of legislation regarding forests and forest rights in India. This is the inaugural key legislation that acknowledges the injustices inflicted upon forest-dependent people during the state's seizure of forest resources for commercial exploitation or conservation purposes. Certain activists contend that the rules are inadequate and overlook fundamental rights, including the right to prior, informed consent for development projects on lands utilised by forest-dwellers. Nonetheless, this legislation surpasses all other measures by offering a spectrum of essential rights.

### **Rights Of Forest Dwellers And The Role Of Forest Conservation:**

For many forest-dwelling individuals, the FRA represents a significant chance to enhance economic and social security, and perhaps to promote their political empowerment. Numerous families have resided for decades in apprehension of eviction or restricted access to forest resources, as these have never been acknowledged as lawful by the law.

Initially, forest dwellers must be informed about the legislation, which poses significant difficulties for groups residing deep within the forests that lack NGO assistance or any form of official outreach.

Secondly, communities must be adequately structured to articulate their demands as clearly as possible, utilising available evidence, which can be particularly challenging for the most vulnerable among them. Acquiring evidence may prove challenging. Third, gram sabhas must be sufficiently effective and equitable to document all reasonable claims prior to submitting them to the sub-committees. Dominant castes and classes within communities may attempt to seize



advantages. Ultimately, the sub-committees, comprising forest and revenue officials as well as panchayat members, who may be disconnected from the actual conditions of each village or lack empathy towards the most disadvantaged individuals, are anticipated to impartially evaluate the claims presented to them. Neither the Act nor the Rules delineate a temporal constraint for the committees to conclude their orders. Based on previous experience with analogous procedures, claims may stay unresolved for years or be dismissed on tenuous grounds.

The FRA's conservation impact can be assessed in three domains: areas specifically designated for wildlife protection (notably national parks and sanctuaries); government forests (reserved and protected) outside these designated areas; and community/private or unclassified forests. Each of these may be influenced positively or negatively by the FRA, contingent upon many conditions.

Some wildlife conservationists express the most severe criticism of the FRA, citing its consequences for protected areas. It is indisputable that these areas have been the paramount measure in curbing the swift decline of India's biodiversity. In their absence, numerous species, like the Indian rhinoceros and Asiatic lion, would have become extinct long ago.

The majority of forest inhabitants who will acquire rights under the FRA reside in woods beyond protected zones. Traditionally, in numerous reserved and protected forests, customary and traditional rights to land and resource utilisation have been insufficiently documented and conferred. In regions like Orissa and Chhattisgarh, as well as certain areas in the northeast, many hundreds thousands of hectares of land historically utilised for agriculture, including shifting cultivation or jhum, have not been officially documented. Conversely, they have been designated as forest lands under government oversight in a discretionary manner. Conversely, significant regions of genuine encroachment exist within forested areas, perpetrated by both impoverished individuals and influential business entities. The encroachment issue is particularly severe in areas like Assam.

The FRA authorizes gram sabhas and other village-level institutions to safeguard wildlife, forests, and biodiversity, ensuring the preservation of habitats for forest-dwelling Scheduled Tribes and other traditional forest dwellers from damaging practices. A prior iteration had a stipulation mandating community approval prior to the diversion of forest land for any non-forest purposes.



Gram sabhas have been granted not only "empowerment" but also the obligation of guaranteeing conservation. This essential component was included in the 2005 edition of the FRA. The Rules now mandate gram sabhas to form a committee to execute conservation duties; nevertheless, the available recourse if the committee or the gram sabha fails to ensure conservation remains ambiguous.

**Conclusion:**

Some states seek to immediately recognise rights; nevertheless, in regions such as Chhattisgarh, rapid implementation frequently benefits the Forest Department, distorting rights and conferring disproportionate authority to bureaucrats. It is essential for political leaders, bureaucrats, and environmentalists to understand and support the fundamental principles of the FRA to resolve this issue. Otherwise, historical injustices will persist, forest governance will lack democratic principles, and the potential for community-driven conservation and sustainable lifestyles would remain unfulfilled.

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