

# Evolution of forest rights act in India: a critical appraisal of the tribal forest rights in India

Miss. Phulamani Soren & 2. Dr. Iswar Chandra Naik

1. Ph.D research scholar, department of sociology, Kalinga institute of social sciences (Deemed to be university), Bhubaneswar, Odisha
2. Associate professor (Dean), department of sociology, Kalinga institute of social sciences (deemed to be university), Bhubaneswar, Odisha

## Abstract:

Millions of people live in a near forest domains but have no officially permitted right to their homes, lands and livelihoods. India is land of nearly 104.3 million tribes which constitutes 8.6 of its total population. Tribe has very close relation with the forest and their life and sustenance is harmonized with available forest resources. Forest ecosystems in India are critical for biodiversity, watershed protection, livelihoods of indigenous and rural communities. This article analyses the origin and development of forest rights act in India. Again in this content evolution of the pre-independence and post-independence forest rights act in India. Again in this paper is the scheduled tribe and other tribal forest dwellers (Recognisaion of forest rights) act 2006, are a major opportunity to strengthen economic, political empowerment and social security of tribes and other forest dwellers. The present paper is an attempt to examine the status of forest rights act 2006 in India with reference to tribal problems. the finding and suggest that Indian policies are will designed worst implemented forest rights act, 2006, is very good efforts to serve the marginalized tribal communities.

Keywords: forest, tribal, dweller, livelihood, development, marginalized.

## Introduction

Forest is an integral part of the tribal was of life. The social, cultural, and economic system of the tribal communities is closely connected with the nature in which forest is a vital component. Tribes, also known as aboriginal communities, indigenous people, adivasi, janajati, scheduled tribes, are residing in forest since time immortal. India is the seventh largest country in the world with an areas of 328.72 million hectares (mha). The forest and tree cover of the country as per the biennial assessment report, 2011 prepared by the forest survey of India is 78.29 million hectares, which is 23.81 percent of the total geographical areas of the country. Forestry is the second largest land use in India after agriculture roughly, 275 million rural people in India, 27 percent of the total population depend on forests for their subsistence and livelihoods, earned from trade in fuel wood, fodder, bamboo and a range of non-timber forest products. Seventy percent in India's rural population depends on fuel wood to meet its domestic energy needs.

Forest rights in India have always alienated forest dependents from their homeland rather than giving them legal rights to own and regulate their resources. People are branded as encroaches in their own land through pre and post independent forest in India. Injustice to forest dwellers started from the day to government made rules and regulations to have its total control over forests and natural resources.

India forest law enacted in the 19<sup>th</sup> and 20<sup>th</sup>centuries treated forest dwellers and other traditional forest use and especially their farming practices such as shifting cultivation as threat to forest ecology. The forest rights act guarantees their livelihood, food security and forest rights recognise their rights to ancestral lands, tenure security and access to forests and forest products. These rights are responsibilities, namely sustainable use of forest, conservation of biodiversity and sustenance of ecological balance.

Conservation of forests formed an integral part of the Vedic tradition of India as early as 300 BC. The maurya kingdom recognized the importance of forests, and the first emperor of the dynasty, Chandragupta, appointed an officer to look after the forests (fao, 2012). The forest policy is a complex balance between economic, social and political objectives in an environment where the forests and the institutions continuously change (kant, 2003). The forest policy and forest rights act in India changed over a period of time. The arrival of British and their perception about forest resources created enormous change in the forest cover, forest resources and the rights of tribal people in India. The forest management and conservation practices in India are dissimilar in different period. Similarly it is divided into two period's namely (i) pre independent and (ii) post- independent period for analysing the changes generally in forest sector and particularly in forest management. The forest policy discussions include a variety of topics like timber supply, sale and pricing, forest taxation, international trade, forest management standards, carbon sequestration, deforestation, forest ownership, property rights and policy reforms (Kant, 2003).

The policies resulted in the new forest governance system that was alien, induced and most particularly that excluded forest dependent communities in the scientific forestry, public interest, national development, conservation and industrial growth (Patnaik, 2007).

If we look at abundant and varied flora and fauna of India are housed in 13 biosphere reserves, 89 national parks and more than 400 wildlife sanctuaries located throughout the nation. approximately 20% of the overall forests cover of India is located in the state of Madhya Pradesh state like Maharashtra, Odisha, Andhra Pradesh, Uttar Pradesh and arunachal pradesh also considerate volume of forests.

## Historical background of forest rights act

national forest policy of 1988 made a drastic departure from the earlier stand of strict conservation for the first time, the needs of rural and tribal people were taken into contemplation and their rights were recognized. National forest policy, 1988 aimed to ensure environmental stability and ecological balance between all life forms depending upon the carrying capacity of forest. The minister of environment and forest had made a frame work to execute the necessary provisions for improving the life these peoples. Unfortunately, these guideline remained only on paper and were not translated in to implementation.

In 1955, a pil was filed against the responsibility of forest by influential commercial bodies and lobbies bring the godavarman case before the Supreme Court of India. The ministry of environment and forests incorrectly interpret it to mean eviction notice of the tribal. It unfortunately led to a large scale eviction drive and untold suffering of the native tribes. It finally leads to the development of framework for the forest rights act.

**Objective of the study**

The study has tried:

- To examine the status of forest right act, 2006 to tribal problem in India.
- To analysis of the various forest rights act and policy relating to forest and people in India.

**Methodology of the study**

The present study is descriptive and analytical in nature based on secondary data. The secondary data has been collected from the ministry of law and justice legislative department, ministry of environment and forests ministry of human resources department annual administrative reports of rural development. Then collected from the different books, article journal, working paper, internet and edited books.

**Forest rights under forest rights act, 2006**

- Right to hold and livelihood for self-cultivation.
- Community rights such as nistar (rights) used in erstwhile princely states (zamindari) or such intermediary regimes.
- Rights to own, collect, use, and dispose of minor forest produce that has been traditionally collected within or outside the village. Minor forest produce includes all non-timber forest products of plant origin (including bamboo, brushwood, medicinal plants, herbs, roots, and tubers, among other) as well as products of animal origin such as honey and wax.
- Other community rights to use fish and other products of water bodies and grazing or traditional seasonal resources by nomadic or pastor list communities.
- Community tenure of habitat for particularly vulnerable tribals groups and agricultural communities.
- Rights in or over disputed lands under any categorization in any state where claims are disputed.
- Rights to convert leases or grand issued by any local authority or any state government on forest lands.
- Rights to settlement and conversion of all the forest villages. That is old habitation, unserved villages and other villages in forests into revenue villages.
- Rights to protect, regenerate, conserve or manage and community forest resources.
- Rights recognized under state laws or laws of any autonomous district council, or accepted as rights of tribals under and traditional or customary law of the concerned tribes of any state.
- Right to claim intellectual property rights over traditional knowledge related to biodiversity and cultural diversity.
- Any other traditional rights enjoyed by the forest dwelling scheduled tribes or other traditional forest d right of hunting or trapping or extracting a parts of the body from any species of wild animal (including outside of protected areas).
- rights to rehabilitation on the individual's or community's currently occupied land or alternative land in cases where they have been illegally evicted or displaced from forest land without receiving their legal entitlement to rehabilitation 13 December 2005.
- right to use forest land not exceeding 1 hectare to build schools, dispensaries, fair price shops, communication lines, minor irrigation canals or other water bodies, vocational training centres, roads, community centres and drinking water supply pipe lines subject to approval by the village assembly.

**Evolution of forest policies in India**

The history of formulation of forest policy in India have always alienated forest dependents from their legal rights to own and regulate their resources. People are branded encroachers in their own land through pre-independence and post-independence policies related to forest rights in India. Injustice to forest dweller started from the government made rules and regulation to have its total control over forests and natural resources.

**Pre- independent in the forest rights act**

During colonial rule in India, the forest policy gave much importance to exploitation of forest resources without concerning conservation. The ownership was assumed by the colonial powers and this period records a march towards centralization and the forests came under the control of the state. Huge quantity of natural resources were exploited in the name of development, however the reality behind this was commercial exploitation by the state. The colonial British administration realized the international deem and for timber and potential monetary benefits from the forests, strict rules were enforced by compulsion to bring all these forests under the state control. The over exploitation of forest resources during British administration marked a new phase in the use of forest produce in India. Most of the policies during the colonial period have a custodial attitude and they gave much importance to the forests than the dependent people (Balaji, 2002).

Between 1800 and 1947 India witnessed rigorous policy interventions in forest management and there was much debate within the colonial bureaucracy on the subject of forest versus people. Since 1855, the establishment of railway network required large quantities of wood for sleepers and low cost engine fuel, and the expansion of railways and deforestation positively related (Kumar, 2010).

**Forest policy: 1855**

In 1855, Lord Dalhousie framed the forest charter which leads regulation of wasteland by changing its status into government property in India. This was treated as a key intellectual transition of legal rights of wasteland which leads to forest conservation in the later period. The forest charter of 1855 put the Indian forestry on a solid scientific basis which introduced new environmental interventions which were paternalistic, radical and previously untried. These forest initiatives, born in India, spread to other British colonies and the United States of America.

Lord Dalhousie's new forest policies greatly expanded British authority over the land and people of India. British India's forest administrators feared the potential long-term environmental, economic and climatic effects of deforestation caused by indiscriminate logging which convinced Dalhousie to support modern scientific forestry methods and conservation.

**The Indian forest act: 1865**

This was the first forest act in to force during the British period. This act provided powered the government to declare any land covered with trees or jungle as government forest by notification (Nath 1991 as cited in Sarap 2004). The forest in this act was defined as "land covered with trees, brushwood and jungle". restriction were introduced on the collection of forest produce by the people living in and near forest timber, like teak was declared as state property and trade on such timber was restricted. However the existing rights of individual or communities were not touched in the act, (Sarap 2004). The forest act was defined as "land covered with trees, brushwood and jungle".

**The Indian forest act, 1878**

The forest act 1865 was amended with a new forest act in 1878. This act also enabled the administration to demarcate reserved and protected forest. The Indian forest act 1878 divided forest into three categories:–

- (i) Reserved forests:
- (ii) Protected forests:
- (iii) Village forests:

This method of division of forest strengthened government control over forests and forest resources. Which were also made to curtail the use of forest by local communities. Restriction were imposed on activities like the collection of timber and grazing of cattle in these demarcated forest. This act empowered the state with strong powered and curtailed the rights of individuals over the forest (Sarap 2004). It was attempted to regulate the collection of forest produce by forest dwellers and some activities declared as offence and imprisonment and fines were imposed in this act to establish the state control over forests. Thus when the colonial state asserted control over woodlands, which had earlier been in the hands of local communities and provided to work these forest for commercial timber production, it intervened in the day to day life of the Indian villages to an unprecedented degree (Prasad, 2011).

**The national forest policy, 1894**

The national forest policy 1894 again laid emphasis on the regulation of community rights and restriction on the privileges. Previously enjoyed by the villages in the immediate near forest and brought about a formal relationship to be maintained by the tribals with the forest department as a crucial issues in forest management. The 1894 forest policy resolution made provisions for conservation of forest land for non-forest uses like agriculture. It protected hill slopes and imposed a ban on shifting cultivation. The sole objective of the policy was administration of the state forests for public benefit but it imposed restrictions on the inhabitants of the forest and neighbourhood of the forests. It also classified some forest as minor forest for fulfilling the needs of the communities (Prasad, 2011). In this policy, the forests were divided into four classes. The first class generally situated in hill slopes and essential to protect the cultivated plains from landslides and they played a conservation role for the benefit of cultivated plains and assured revenue to the state. The second class of forests consisted of valuable timber trees like devadharu (cedrus deodara), sal (shorea robusta) and teak (tectona grandis), and due to commercial interest natural regeneration of devadharu and sal are promoted and artificial regeneration of teak was developed. The third class of forests as per the classification under this policy meant for minor forests, which yields low quality timber, fuel wood and fodder and for meeting the demands of local people. Finally, the fourth class covered the pastures and grazing lands, the local people were allowed to use them with restrictions (balooni and singh 2007).

**The government of India act 1935**

Consolidated the power of the state on forest so as to meet the requirement of the British industry, military and commerce. By this, forest resources of India during the pre-British era were siphoned off for commercial use by non-tribal and even on non-Indians. The process of alienating forest dwellers from the forest was legitimated by the Indian forest act and the administrative processes adopted in subsequent period. the forest act, the forest working plan the survey and settlement operations in forest regions all attempted to limit rights of forest dwellers over the forest resources long been used by them. During the British rule and in the early part of independence, availability of forests was quite plenty, therefore, there was no shortage in meeting the subsistence needs of the forest dwellers from the village forests. This historical injustice were very well created in the pre- independence era ignoring the community and their customary rights. The process also carries intense conflict and repeated agitation and rising (Arnold and Guha, 1997; grove et al, 1998, Sivaramkrishnan, 1999 and Pathak, 2002).

**Indian forest act, 1927**

The Indian forest act of 1927 is timber oriented. This act to consolidate the law relating to forests the transit of forest produce and the duty liveable on timber and other forest produce. According to the act, no person can claim a right to private property in forest land merely because he is domiciled there, or his fore father lived there for centuries. Such as people have any rights over forest produce. a careful reading of section 3 of the Indian forest act of 1927 demonstrates that this act starts with the assumption that the common land which the forest and the people cohabit is the property of the government and that the latter is ipso facto entitled to the forest produce. One major change is stated to be its reference to individuals and not individuals or communities while referring to rights on forests. The Indian forest act, 1927, was a very comprehensive act including all earlier amendments and major provisions of the acts enacted before 1927. Among the major provisions of the act, the most prominent ones were as follows:

In this act 1927, important terms about forest are defined as follows: forest-produce means

- (a) The following whether found in or brought fi-om a forest or not, that is to say: timber, charcoal, cautchouc, catechu, wood-oil, resin, natural varnish, lac, mahua-flowers, mahua-seeds, kuthand myrabolams, and
- (b) The following when found in or brought from a forest that is to say:
  - 1) trees and leaves, flowers and fruits, and all other parts or produce not here in before mentioned of trees; 64
  - 2) Plants not being trees (including grasses, creepers, reeds and moss), and all parts or produce of such plants;
  - 3) Wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax and all other parts or produce of animals;
  - 4) Peat, surface soil, rock and minerals (including limestone, laterite, mineral oils and all products of mines or quarries);
  - 5) "River" includes any stream, canal, creek or other channels, natural or artificial;
  - 6) "Timber" includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not; and
  - 7) "Tree" includes palms, bamboos, stumps, brushwood and canes.

The act also stated that the state government may constitute any forest-land or waste-land which is the property of the government or which the government has proprietary rights, or to the whole or any 65 part of the forest-product of which the government is entitled, a reserved forest in the manner hereinafter provided.

**Forest rights act in post-independence India**

The post-independence India starts with the independence of India and continuing till date. Since 1974 the independent India formulated policies for forest conservation and management. These policies were formulated with national interest and changes were brought about in the forest cover of the country.

**Indian forest policy, 1952**

In the post-independence period, the first national forest policy 1952 attempted to redefine the forest policy and traditional rights of forest dwelling tribes. This policy converted certain the basic thrust of the earlier policy, it emphasized a balance across economic, ecological and social benefits from the forests. The forest was classified as (i) protected forest (ii) national forest, (iii) village forest,

and (iv) tree lands. While the functions of protection forest and village forests were the same in the earlier policy, the national forest premise, the state government devised their own interpretation to the state policy by providing tribals rights and privileges over cultivation, grazing, collection of fuel wood, forest produce, timber for house construction and undertaking shifting cultivation.

When national forest policy first came into existence in 1952, the use of forest by adjoining village communities was relatively restricted at the cost of national interests (rishi, 2007). Forests are classified as protected forests, national forests, village forests and tree lands according to this policy with distinct uses. The protected forests are preserved for maintaining physical and climatic conditions and the commercial forests are to meet the demand from defence and communication industry. The forest dependent community can extract the produce of village forests for domestic use. The provision of centralised management was continued even in this policy.

#### **National commission on agriculture, 1976**

The national commission on agriculture (NCA), 1976 revised the forest policy which recommended a drastic reduction in the people's rights over the forest, forest produce and advocated the commercialisation of forest at all cost ignoring the sustenance of forest people derived from the forests. The commission recommended the regularisation of forest be managed efficiently for commercial purposes and for minimisation of forest productivity, though the commission become silent about the traditional rights of tribal.

In 1976, the forest from the concurrent list through the 42<sup>nd</sup> Indian constitutional amendment empowering centre to make laws.

#### **The forest conservation act, 1980**

The recommendations of the national commission on agriculture, 1976 provisions were made in a bill to reduce people's rights over forest lands and produce. The act prohibited to stop the use of forest lands for non-forest purposes like roads, dams and building, which affected forest cover. This was achieving the forest land any purpose without prior permission of the central government and made special provisions against the rights of the forest people.

#### **National forest policy 1988**

The national forest policy 1988 talked more on environmental stability through the preservation of forests by replacing contractors by tribal co-operative, gave concession to ethnic minorities and provided suitable alternative for shifting cultivation. the basic objectives of forest policy, 1988 have been started must be to ensure environmental stability and maintenance ecological balance including atmospheric equilibrium which 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 concept of joint forest management involve in this act. Community based forest management can be an effective tool for improving rural livelihood and ensuring sustainable management of forest resources (hoare, 2010). Joint forest management in India.

The government of India formally adopted community based forest management on July 1, 1990 which laid down broad guidelines for an institutional arrangement involving the local people to jointly protect and manage the forest resources in return for benefits from it (singh, 2008). The village committees in association with the fd will manage specific forest blocks. Forest protection is the responsibility of the people. It brought positive effect in forest protection and management directed to the participation of 17 states in JFM by 1992 with 2 million hectares of forest land under protection.

In 1992, the panchayati raj was mandates the 73<sup>rd</sup> constitutional amendment decentralisation of governance to rural areas. Through the provisions of panchayati raj extension to scheduled areas (PESA), 1996 was important the decision making rights over non timber forest products to local institutions.

In the biological diversity act , 2002 ministry of environment and forest, India passed a circular in which tribals were denoted as 'encroachers' and were directed to evict the forest. This incapacitation of forest dwelling tribals was aggravated by the establishment of the protected areas network, which meant further sacrosanct areas with no or negligible rights over forests and forest land by the tribals; it enabled the state to evict local forest dwellers without settling their bona fide rights to residence (Patnaik, 2007).

#### **The forest act, 2006**

The forest act, 2006 is landmark law in the evolution of the government attitude towards the tribal community. after acrimonious public debate for more than a year since tabling in the parliament on 13 December 2005, the scheduled tribes (recognition of forest rights) bill, 2005 which rechristened as "the scheduled tribes and other traditional forest dwellers (recognition of forest rights) act, 2006" was passed in the lower house of Indian parliament, on 13, December 2006. President of India assented to the bill on 29 December 2006 and the act to 'undo the historical injustices' suffered by tribal communities throughout colonial and post-colonial period. The purpose of the act is to recognise the rights of forest dwelling communities and to encourage their participation in the conservation and management of forests and wildlife. The 'encroachers' were considered as an important agents of conservation and managements of the forests and wild life. The bill has identified the forest dependent schedule tribes and non-tribal forest dependent tribal population and made a distinction between two to on the ground of sustenance and commercial purpose (Bhullar, 2008).

No doubt law has provided a dignified status to tribal but it will not be able to resolve tribal people's human rights and livelihood issues.

#### **Conclusion**

The history of state forestry, from the pre-independence to our present government forest law considered the tribals as destructor of the forests and wildlife. These laws always regulated tribals rights over the forest product and forest lands. The British has triggered the commercialisation of forest product in a disguised 'national interest' and confiscated most of the rights over the forest. Communities more likely to find economic and social benefits from the existing diversity of resources that forest offer. There is a higher probability of a natural fit between diver's needs of communities and divers offering of forest. They have been living there and using the resources for generations. It is on the premise of prior use that all resources have been settled in any civilized society. It is gross injustice not to recognise the rights of forest dwellers. The tribals who were enjoyed the forests from time immemorial had no clue but to surrender against the mighty powers. This forced them to alienate the forest and come out from their ancestral home. They were depended on the mercy of the colonial rulers for their sustenance and livelihood. The forest policies of state have done more and more injustice towards tribal communities by diverting their land and their resources for market oriented production in the name of development. Recently passed the forest act of 2006 could not alienate the suffering of the tribal community and it has intensified their struggle. All these actions are done without any respect for the forest dwellers under the forest act. The implementation of the act has been slow and with many gaps almost throughout the country. only time will tell whether the act will be implemented in the right spirit, will actually conserve the forest that are remaining and undo the historical injustice that tribal and other forest dwelling communities have faced.

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