

Tribal Rights in India

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Manifest Pedagogy

Tribes as a group has been a lot in news for the past two years. There was a mains question in 2017 as well. It has got high significance with the issue of North East as well. The best ways to prepare this group is to study through three facets :

1. Polity related aspects
2. Social aspects
3. Geography aspects

In news

SC orders the eviction of tribes

Placing it in the syllabus

Indian Society : Social Empowerment

Indian Polity : Vulnerable Sections

Human Geography

Static dimensions

1. Tribal Rights in India : Various provisions for the community
2. Forests rights act 2006

Current dimensions

1. SC order and its implications

Content

Forests Rights Act 2006

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is a result of the protracted struggle by the marginal and tribal communities of our country to assert their rights over the forestland over which they were traditionally dependent. This Act is crucial to the rights of millions of tribals and other forest dwellers in different parts of our country as it provides for the restitution of deprived forest rights across India, including both individual rights to cultivated land in forestland and community rights over common property resources.

The law concerns the rights of forest-dwelling communities to land and other resources, denied to them over decades as a result of the continuance of colonial forest laws in India.

Provisions of the Act

Definitions under the act

- **“Community forest resource”** means customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access;
- **“Critical wildlife habitat”** means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forests after open process of consultation by an

Expert Committee.

- **“Forest dwelling Scheduled Tribes”** means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities.
- **“Forest land”** means land of any description falling within any forest area and includes unclassified forests, under marcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks.
- **“Minor forest produce”** includes all non-timber forest produce of plant origin including bamboo, brushwood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;

Types of rights under the act are:

1. **Right to hold and live in the forest land under the individual or common occupation** for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;
2. **Community rights** such as *nistar*, by whatever name called, including those used in erstwhile Princely states, Zamindari or such intermediary regimes;
3. **The right of ownership, access to collect, use, and dispose of minor forest produce**(includes all non-timber forest produce of plant origin) which has been traditionally collected within or outside village boundaries;
4. Other community rights of uses of entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
5. Rights including **community tenures of habitat and**

habitation for primitive tribal groups and pre-agriculture communities;

6. **Rights in or over disputed lands** under any nomenclature in any State where claims are disputed;
7. **Rights for conversion of Pattas or leases or grants issued by any local council** or any State Govt. on forest lands to titles;
8. **Rights of settlement and conversion of all forest villages, old habitation**, unsurveyed villages and other villages in forest, whether recorded, notified or not into revenue villages;
9. **Right to protect, regenerate or conserve or manage any community forest resource** which they have been traditionally protecting and conserving for sustainable use;
10. **Rights which are recognised under any State law or laws of any Autonomous Dist. Council or Autonomous Regional Council** or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;
11. Right of **access to biodiversity** and **community right to intellectual property and traditional knowledge related to biodiversity** and cultural diversity;
12. Any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses-1 to 11, but excluding the traditional right of hunting or trapping extracting a part of the body of any species of wild animal.

Eligibility criteria

- Eligibility to get rights under the Act is confined to those who “primarily reside in forests” and who depend on forests and forest land for a livelihood.
- Further, either the claimant must be a member of the Scheduled Tribes scheduled in that area or must have

been residing in the forest for 75 years.

Process of recognition of rights

- The Act provides that the gram sabha, or village assembly, will initially pass a resolution recommending whose rights to which resources should be recognised (i.e. which lands belong to whom, how much land was under the cultivation of each person as on 13 Dec 2005, etc.).
- This resolution is then screened and approved at the level of the sub-division (or taluka) and subsequently at the district level.
- The screening committees consist of three government officials (Forest, Revenue and Tribal Welfare departments) and three elected members of the local body at that level. These committees also hear appeals.

Protection against Eviction, Diversion of Forest Lands and Forced Relocation

- Section 4(5) of the Act is very specific and provides that no member of a forest dwelling Scheduled Tribe or other traditional forest dwellers shall be evicted or removed from the forest land under his occupation till the recognition and verification procedure is complete.
- This clause is of an absolute nature and excludes all possibilities of eviction of forest dwelling Scheduled Tribes or other traditional forest dwellers without settlement of their forest rights as this Section opens with the words "Save as otherwise provided".
- The rationale behind this protective clause against eviction is to ensure that in no case a forest dweller should be evicted without recognition of his rights as the same entitles him to a due compensation in case of eventuality of displacement in cases, where even after recognition of rights, a forest area is to be declared as inviolate for wildlife conservation or diverted for

any other purpose.

- In case, any evictions of forest dwelling Scheduled Tribes and other traditional forest dwellers have taken place without settlement of their rights due to such major diversions of forest land under the Forest (Conservation) Act, 1980, the District Level Committees may be advised to bring such cases of evictions, if any, to the notice of the State Level Monitoring Committee for appropriate action against violation of the provisions contained in the Act.
- The Act envisages the recognition and vesting of forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers over all forest lands, including National Parks and Sanctuaries.
- No exercise for modification of the rights of the forest dwellers or their resettlement from the National Parks and Sanctuaries can be undertaken, unless their rights have been recognized and vested under the Act.
- No eviction and resettlement is permissible from the National Parks and Sanctuaries till all the formalities relating to recognition and verification of their claims are completed.
- The State/UT Governments may, therefore, ensure that the rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers, residing in National Parks and Sanctuaries are recognized first before any exercise for modification of their rights or their resettlement, if necessary, is undertaken and no member of the forest dwelling Scheduled Tribe or other traditional forest dweller is evicted from such areas without the settlement of their rights and completion of all other actions required under the Act.
- The State Level Monitoring Committee should monitor compliance of the provisions of the Act, which recognizes the right to **in situ rehabilitation including alternative land** in cases where the forest dwelling Scheduled Tribes and other traditional forest dwellers

have been illegally evicted or displaced from forest land without receiving their legal entitlement to rehabilitation, and also of the provisions of Section 4(8) of the Act, which recognizes their right to land when they are displaced from their dwelling and cultivation without land compensation due to State development interventions.

Resettlement for wildlife conservation

The Act lays out a procedure by which people can be resettled from areas if it is found to be necessary for wildlife conservation.

- The first step is to show that relocation is scientifically necessary and no other alternative is available; this has to be done through a process of public consultation.
- The second step is that the local community must consent to the resettlement. Finally, the resettlement must provide not only compensation but a secure livelihood.

Duties of holders of forest rights.(Gram Sabha and village level institutions)

- Protect the wildlife, forest, and biodiversity.
- Ensure that adjoining catchments area, water sources and other ecologically sensitive areas are adequately protected.
- Ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage.
- Ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.

Offences and Penalties

- Where any authority or Committee or officer or member of such authority or Committee contravenes any provision of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:
- Provided that nothing contained in this sub-section shall render any member of the authority or Committee or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Nodal agency

The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorized by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act

Possible solutions

Resettlement: If the forest dwellers or tribals are evicted from their places alternative land and cash compensation should be given. (In some well-documented cases, such as in the Western Ghats, alternative land and cash compensation convinced tribals to move out of core areas. One example is that of the **Nagarahole National Park**, where the outcome has been good for both people and wildlife, as evidenced by the recovery of tiger density over three decades. State governments need to pursue such programmes in a humane and vigorous fashion)