
HISTORICAL INJUSTICES ON FOREST LANDS AND THE UNDOING OF SUCH INJUSTICES THROUGH THE FOREST RIGHTS ACT

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ABSTRACT

The forest legislations in pre-independence as well as in post-independence did not have sufficient measures to acknowledge and safeguard the forest rights of forest-dwelling communities. These communities, possessing deep knowledge of the forests, have historically lived in harmony with nature, utilizing its resources sustainably. Unfortunately, the laws did not recognize or honour their entitlements to land, livelihood, and cultural practices, leading to their marginalization and the erosion of their traditional lifestyles. These laws were frequently enforced through aggressive tactics, including the use of force by the state, resulting in human rights violations and disputes between people and the state. Furthermore, large-scale development projects, like mining and infrastructure, aggravated the injustices suffered by tribals and forest dwellers, as their lands are frequently used for such activities. The Indian Parliament, in an unprecedented move, acknowledged the prevalence of historical injustices experienced by numerous communities, marking an important milestone in the legislative history. As part of its objectives, the Forest Rights Act seeks to address and undo these injustices.

INTRODUCTION

The implementation of various forest legislations in India has resulted in notable injustices throughout history for forest-dwelling communities. These laws were initially implemented to safeguard and conserve the nation's forests; however, they frequently caused the forced evictions and marginalization of tribals and forest dwelling communities. These communities have traditionally lived in and relied upon these forests for their sustenance and livelihood. These injustices primarily stem from the fact that the legislation related to forests gave precedence to safeguarding forests as ecological entities, often at the expense of the rights and needs of local communities. Forest-dwelling communities were frequently labelled as encroachers or unlawful occupants of forest lands, resulting in their forced displacement and loss of access to their ancestral lands and resources. The laws also established a strict regime of forest governance, where state authorities gained control and ownership over forest lands, excluding local communities from decision-making processes. This top-down approach disregarded the deep-rooted knowledge and sustainable practices of indigenous communities in managing and conserving forests. The laws and those responsible for their enforcement demonstrated a clear lack of trust in the local communities, often perceiving them as encroachers or the main culprits behind the degradation of forests. In this context, the objective of the present study is to examine the historical injustices faced by forest dependent communities in India, focusing on the displacement and marginalization resulting from the forest policies. The research aims to analyse the potential of the Forest Rights Act in addressing these injustices and empowering these communities through legal recognition of their rights over forest lands.

BACKGROUND OF HISTORICAL INJUSTICES

Pre-Independence

The enactment of legislation related to forests and conservation in pre-independent India and post-independent India led to the most planned and tragic episodes of displacement that millions of people had to deal with. In the 1800s, the colonial government initiated a procedure known as "*survey and settlement*". This process involved recording the forest land owned by

individuals and asserting state authority over the remaining land and resources.¹

Forests are covered by the oldest and, in some aspects, most detailed “environmental” regulatory framework in India. This framework traces back to the British government’s attempt, made after 1857, to create a unitary and broad legislative framework for timber extraction in India. The study of the colonial period shows that in 1862 the Governor-General proposed the establishment of a department capable of ensuring the continued availability of the immense demands of the various railway sleepers. It was under the guidance of the German Botanist that the forest department was officially structured in 1864 and also the very first Forest Act was enacted.²

The core objective of the colonial regime was to generate huge revenue through the taxation of privately owned resources and state exploitation of resources from areas that were not privately owned. The first forest legislations were the Forest Act of 1865 and the Forest Act of 1878, which empowered the British to expand their control over forests in India. These legislations were designed to control forest production, management, and preservation of forests. A pioneering effort was undertaken to formulate regulations governing the collection of forest resources by forest dwellers. The local population residing in and around the forests was deliberately excluded from participating in forest management, and stringent measures were implemented to prohibit the utilization of forest produce, marking a significant departure from previous practices. For strengthening their command over forests a new Act called the “Indian Forest Act, 1878” was enacted which was more extensive than that of the previous ones. For the first time, this Act classified forests into ‘reserved forest’, ‘protected forest’, and ‘village forest’. In reserve forests, it is strictly prohibited to hunt, collect wood, graze livestock, or engage in other similar activities.³ There are two types of protected forests: demarcated and un-demarcated. They are not entirely protected. These are looked after by the government, but certain activities, such as hunting, grazing, or timber collection, are permitted to people who live on the fringes of forests and are either completely or partially reliant on the resources of the forest for their livelihood.⁴

¹ Mahesh Rangarajan, *People, Parks and Wildlife: Towards Coexistence* (Orient Longman Limited, 2000)

² Sharad Kulkarni, *Forest Legislation and Tribals: Comments on Forest Policy Resolution*, 22(50) EPW 2143-2148 (1987)

³ Section 3: The Indian Forest Act, 1927, No. 16, Act of Parliament, 1927

⁴ Section 28: The Indian Forest Act, 1927, No. 16, Act of Parliament, 1927

The Indian Forest Act of 1927 was passed after 49 years of earlier forest law. It was the last major attempt by the British to label people as encroachers to keep them out of their own forest areas. The penalties and regulations of this Act had the dual goals of strengthening government authority over forests while weakening communities' rights to use forests. The village communities lost their centuries-old harmonious connection with the forests. The main objectives of the Act were to codify all prior forest-related legislation and regulations and to grant the government the authority to designate different classes of forests for efficient colonial use. This Act, like its predecessor Act, provided the government with broad powers to categorize forests into three types:

(i.) Reserved Forest

The State Government has the power to declare reserve forests, which are the most restricted forests, on any government-owned forest area or wasteland.⁵ Upon the declaration of an area as a reserve forest, it is stipulated that no entitlements or rights shall be acquired in or over the land encompassed within the boundaries of such reserve forest. To address any claims of rights asserted by individuals pertaining to land within these limits, a Forest Settlement Officer is duly appointed. The officer's role is to conduct inquiries into these claimed rights, ascertain their existence, nature and extent, and subsequently make determinations regarding them. Locals are not allowed in reserved forests unless a forest officer officially permits them during the settlement process.

(ii.) Protected Forest

Any land other than reserved forests may be designated by the state government as protected forests, over which it has complete control and the authority to impose restrictions governing their usage.⁶ In simple words, the state government has the power to declare any forest-land as protected forest which is not included in reserve forest, provided that such land should be the property of the Government. In other words, the state government has the authority to designate any forestland that is not part of the reserve forest as a protected forest, provided that such land is owned by the government.

⁵ Section 3: The Indian Forest Act, 1927, No. 16, Act of Parliament, 1927.

⁶ Section 29: The Indian Forest Act, 1927, No. 16, Act of Parliament, 1927.

(iii.) Village Forest

Village forests refer to those where the rights of the government over specific land that has been designated as a reserved forest can be granted to a village community by the State Government.⁷

The government asserted that the purpose of the Act was to safeguard India's forest cover. Nevertheless, a thorough examination of the Act uncovers that its true intention was to generate revenue through tree-cutting and forest resources. The Act granted extensive discretion and authority to the forest bureaucracy, resulting in the mistreatment of forest dwellers. In the early 20th century, a new interest group emerged. This group expressed concern over the diminishing population of wild animals. The conservationists within this group strongly condemned sport hunting, advocating for the protection of endangered species. Consequently, certain species were declared protected, while others remained open to hunting. This period also marked the initiation of designating specific areas as protected zones for wildlife conservation. In 1935, Hailey National Park, now known as Corbett National Park, was established as India's first protected area.⁸ While the declaration of protected areas was justified from a conservation perspective, it resulted in the exclusion of local communities and restricted their access to resources. Consequently, thousands of forest dwellers (specifically van-Gujjars in relation to Corbett National Park) residing in these areas were further marginalized and dispossessed.

Post-Independence

The pre-independence legislation represented an exclusionary approach to natural resource management, and a similar mindset persisted post-independence also. The clearance of forests for different development projects was rationalized under the pretext of serving the country's best interests, whereas the utilization of land by local communities was viewed as an intrusion, and forest inhabitants were labelled as encroachers. The first National Forest Policy of 1952 set the tone for the government's position on the rights of forest-dependent communities for the following thirty years. It explicitly stated that "the proximity of a village to a forest did not undermine the broader entitlement of the entire country to benefit from a

⁷ Section 28: The Indian Forest Act, 1927, No. 16, Act of Parliament, 1927.

⁸ Institute for Global Environmental Strategies. (2011). *Forests, Rights and Conservation*.

national asset. This statement emphasized that the presence of nearby communities should not hinder the nation from enjoying the advantages associated with forest resources.” From the 1950s to the 1970s, commercial exploitation of timber was a major factor in the economic growth of India. This required a gradual replacement of natural woods with commercial plantings, and forested areas was converted to use for agriculture and construction.

After 25 years of independence, the Wild Life (Protection) Act, 1972, was passed to protect wildlife in the forests. This Act has its foundation on several notions that date back to colonial mind-sets. These presumptions include the belief that any involvement or use of natural resources by local communities harms wildlife, that only a centralised bureaucracy with professional training is capable of protecting forests, and that the traditional ecosystem management skills and knowledge of local communities are useless in modern wildlife conservation efforts. This Act grants the State government the authority to designate specific areas as national parks and sanctuaries while keeping people who live there out of these areas and from managing the surrounding forests.⁹ The Act was amended in 1991 to provide for the continuation of rights in sanctuaries, which provided a bit of relief to the people living there. Once again, this amendment did not offer any relief to those who were impacted by the establishment of national parks.¹⁰ The removal of communities from their ancestral lands for the sake of conservation has the potential to destabilise their social structures, traditional knowledge systems and cultural practices.

The Forest (Conservation) Act 1980, failed to grant rights to communities that depended on forests; instead, it contains provisions that provide for the eviction of communities from their own forest lands in the name of conservation. While preventing deforestation and ensuring sustainable forest management are its primary goals, there have been issues raised about how this legislation can violate the rights of forest dwellers and tribals. By requiring state governments to acquire approval from the central government before converting any forest land to other uses, the Forest (Conservation) Act was passed to slow down the fast clearances of forests for other purposes.

The Supreme Court, in a public interest litigation held that the term “forest” should be interpreted based on its definition in the dictionary.¹¹ Based on a “dictionary definition,” these

⁹ Section 18 and Section 35: The Wild Life (Protection) Act, 1972, No. 53, Act of Parliament, 1972 (India)

¹⁰ Section 24 (2) (c): The Wild Life (Protection) Act, 1972, No. 53, Act of Parliament, 1972 (India)

¹¹ T.N Godavarman Thirumulpad v. Union of India (1997) 2 SCC 267

rulings expanded the scope of the Forest (Conservation) Act's applicability to include all forests, regardless of ownership. As a result, the management of all areas designated as "forest lands" must now follow working plans and schemes created by the Forest Departments and authorized by the Ministry of Environment, Forests, and Climate Change (MoEF). However, this approach grants significant discretionary powers to forest officers and assumes that "forests" are isolated from socio-economic and cultural contexts. Due to this, people who had legal rights to the forest land that is nonetheless "recorded" as a forest were subjected to harassment and threats of eviction, and occasionally private lands were being taken illegally on the pretext that they are "forests" according to the dictionary meaning.¹²

Joint Forest Management was based on the National Forest Policy, 1988, and the concept of "*care and share*" is the basic working principle of this project. Years of joint forest management between the locals and the forest department resulted in advantages being shared, but when it came time for the locals to receive these benefits, they were once again left out. Once more, the trust of the communities that live in and around forests was betrayed, and as a result, they ceased managing the forest together with the forest department.

The British, through the India Forest Act of 1927, and post-independent India, through conservation laws, shared a common aspect in their approach to forests: both systems resulted in the displacement of forest-dependent communities. Because of the stringent regulatory framework established by these laws, forest dwelling communities are frequently labelled as encroachers or unlawful inhabitants of forest land. As a result, they have been forcibly evicted, deprived of land, and denied access to forest resources on which they have relied for centuries. The failure to recognise community rights and the lack of adequate channels for resolving land and resource-related conflicts have exacerbated their plight.

THE UNDOING OF HISTORICAL INJUSTICES

The 73rd Amendment Act and the PESA, 1996

The 73rd Amendment to the Constitution, enacted in 1992, was a bold piece of legislation. The Panchayati Raj Institutions (PRIs) were given more authority to make decisions as a result of this Amendment Act. One of the Act's key proposals was to decentralise the

¹² Sarin, M. (2005). Laws, Loes and Logjams: Critical Issues in Indian Forest Conservation. *Gatekeeper Series*. <https://www.iied.org/sites/default/files/pdfs/migrate/9543IIED.pdf>

management of Non-Timber Forest Produce, fuel wood plantations, and social forestry to the Panchayati Raj Institutions. The 73rd Amendment Act was extended to the Schedule V areas by the Panchayat (Extension to Scheduled Areas) Act, 1996. The Panchayats (Extension of Scheduled Areas) Act, 1996 represents a departure from the colonial laws that have traditionally governed the administration of both people and natural resources. The Panchayats (Extension of Scheduled Areas) Act, 1996, often referred to as a “*Constitution within a Constitution*,” aims to integrate two distinct structures into a cohesive framework. It combines the structured and regulated system of the State, which operates within established rules and laws, with the traditional and straightforward system of tribal communities, which are governed by their customs and traditions. This legislation decentralized the forest governance and grants various decision-making powers related to the forests to the Gram Sabha of the village. The Act places a strong emphasis on defending tribal rights related to land, means of livelihood, and cultural identity. In situations involving land acquisition and resettlement, it incorporates safeguards to protect against exploitation and assure adequate compensation. Overall, by granting indigenous people the ability to self-govern, take part in decision-making, and safeguard their sociocultural legacy, the Act has played a significant role in recognising and advancing their rights and well-being. But a significant drawback of the Panchayat (Extension to the Scheduled Areas) Act, 1996 is that it only applies to the areas listed in Schedule V. Therefore, a considerable population referred to as “forest dwellers” - that depends on forest lands and lives in and near forests was excluded from the ambit of this Act.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of the Forest Rights) Act, 2006

Parliament of India achieved a significant breakthrough with the enactment of the Forest Rights Act (FRA) in 2006. In an unprecedented move, the Indian Parliament recognized the occurrence of “historical injustices” faced by various communities, marking a significant milestone in legislative history. The Act offers hope for fulfilling the claims of tribal communities and other forest dwellers. It recognizes their rights to the lands they reside in and cultivate. Additionally, they are entitled to full ownership rights over non-timber forest produce (NTFP) or minor forest produce (MFP). The primary objective of this legislation is to acknowledge forest rights upon forest dwellers. These rights cover the entitlement to possess, inhabit, and reside on forest lands, along with the prerogative to access and utilize forest

resources. The law is very important and may be summed up as covering a variety of rights, including the following:

Title Rights: Under the Forest Rights Act, 2006, ownership rights can be claimed by tribals or forest dwellers for land that they have been cultivating as of December 13, 2005, with a maximum limit of 4 hectares. It is crucial to note that ownership rights are applicable only to the land that is actively being cultivated by the respective family as of that specified date, and no new or additional lands are eligible for ownership rights.

Community Rights: Community rights like nistar (user rights) or those used under zamindari or other intermediate regimes, such as the former princely states. Other community uses or entitlements, like rights to fish, grazing, or customary seasonal access to natural resources by pastoralist or nomadic tribes.

User Rights: To minor forest produce, pastoral and grazing rights, etc.

Relief and Development Rights: Rehabilitation in the event of illegal eviction or forced displacement. It grants rights to access development facilities. The central government is authorized to utilize forest land for establishing and managing various facilities. These facilities include schools, dispensaries, subsidized shops, telecommunication lines, electric lines, anganwadis, roads, and community centers etc.

Forest Management Rights: Rights to preserve any community-based forest reserves that an individual or community has long maintained for sustainable usage. These rights include the right to protect, regenerate, conserve, or administer these reserves.

The Forest Rights Act includes specific provisions pertaining to sanctuaries and national parks. Within these protected areas, certain regions can be designated as “critical wildlife habitats”. While this signifies some modifications or limitations on the livelihood activities of forest dwellers within these areas, it is important to note that the procedure for implementing such modifications or adjustments adheres to a transparent process that incorporates participation of the local people. It is imperative to underscore that even in designated protected areas necessitating the resettlement of local inhabitants, such resettlement cannot take place without obtaining the prior consent of those who are affected. This element ensures that the rights and preferences of the affected persons are respected and protected. The

implementation of this Act has also encountered various obstacles. Delays, bureaucratic obstacles, and limited awareness have impeded the rightful recognition and granting of land titles to these communities. Their rights have frequently been neglected in favour of economic growth, which has resulted in social instability, environmental degradation, and human rights violations. The Forest Rights Act significantly contributes to redressing historical injustices suffered by the communities who live in and around forests. In the following ways it works to undo such injustices:

1. **Recognition of Rights:** The Forest Rights Act recognizes the rights of forest dwelling scheduled tribes and other traditional forest dwellers over their ancestral lands, including both individual and community rights.
2. **Restoration of Ownership:** The Act gives forest dwellers the right to claim ownership of any land they have been using for cultivation or habitation as of a certain cut-off date.
3. **Community Governance:** Gram Sabha and other local self-governing entities are given the authority to manage and control forest resources.
4. **Livelihood and Resource Rights:** The Forest Rights Act (FRA) bestows upon forest dwelling communities the entitlement to minor forest produce, access to customary forest resources, and the opportunity to sustain their livelihoods through activities centred around the forest.

In essence, the Forest Rights Act strives to rectify past injustices by acknowledging and reinstating the rights of forest dwelling communities. It empowers them to participate in decision-making, promotes their sustainable livelihoods, and upholds the principles of forest conservation

CONCLUSION

India's forest legislation, particularly concerning forest dwellers and scheduled tribes, has been scrutinised. While these laws are intended to conserve and protect forests, they have frequently resulted in enormous injustices and hardships for forest dwellers. One of the major challenges is the historical neglect and marginalisation of forest dwelling communities. Forest laws have frequently failed to recognise and safeguard customary rights, traditional knowledge,

and cultural practises. As a result, their livelihoods and ways of life have been shattered, resulting in displacement, poverty, and identity crisis. In practical terms, achieving sustainable forest management is impractical if the local people are excluded from their forests. Finding a delicate equilibrium between the conservation of forests and the rights of forest-dwelling communities is of utmost importance. Acknowledging and honoring the customary rights, traditional wisdom, and meaningful involvement of these communities in forest governance can play a vital role in promoting sustainable conservation endeavors while addressing the historical injustices they have faced. There have been initiatives in recent years to undo these historical injustices through legislative reforms and recognition of forest rights. Although the Forest Rights Act was an important step in recognising and safeguarding the rights of communities that live in and around forests, there are still issues with how successfully it has been put into practice. Nevertheless, it is crucial to acknowledge the existence of favourable advancements. The Forest Rights Act has established a legal framework for acknowledging community rights, leading to instances where forest dwelling communities have effectively asserted their rights and gained autonomy in forest management. Moreover, the active involvement of civil society organizations, activists, and legal interventions have played a vital role in advocating for the rights of these communities and highlighting their concerns. Thus, the Forest Rights Act can be summarized as providing assistance to forest dwelling scheduled tribes and other traditional forest dwellers by recognizing their pre-existing forest rights and making various efforts to undo historical injustices faced by them.