

Tribes, Land and Forests: Emerging Legal Implications with reference to PESA and FRA*

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Introduction

The objective of this paper is to highlight a series of policy developments that influenced forest governance during pre- and postcolonial India. There is no denying that colonial forest administration was revenue-centric and exploitative, and thus recognized no rights and concessions for forest dwellers, especially tribals. To address the common domain, this paper also briefly traces the history of forest laws and policies in India (colonial and postcolonial) and their impacts on tribal people, with particular focus on the two recent landmark legislations, the Panchayat Extension to Scheduled Area Act (1996) and the Forest Rights Act (2006) promulgated to recognize rights over forests and forest lands.

Forest is an integral part for tribals. They were used to cultivating land collectively for their subsistence. Many engaged in shifting cultivation and did not cultivate a given area for a long period. There is historical evidence of non-tribal landed gentry continuously pushing tribals into the interior regions of forest and hills. Many tribal owners thus became unrecorded tenants and/or labourers in the less fertile highlands or bonded or semi-bonded labourers in the fertile lowlands or forest areas. The British were primarily interested in timber and other incomes from forests, and therefore framed laws to evict the local inhabitants. Land settlements were introduced and the state granted alienable title to land to individual males on the payment of cash. The relationship with land was now mediated by the state and the community ceased to exist in the eyes of the courts. Until 1887 the main aim of the rulers was conquest with a strong military thrust into the forest depths and hill tops. "Good governance" also led to the administration opening up tribal areas to contractors, civil and military officers, traders, alcohol vendors, timber contractors and merchants. In 1927 the government passed the Indian Forest Act, under which it could constitute any

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forest or waste land which was the property of Government into a reserved area, by issuing a notification. However, since the settlement of rights had not been carried out, large areas remained un-surveyed. Unaware of administrative complexities, most tribal cultivators remained without official land titles. Forest areas were defined as reserved, protected and unclassified. Under the first, no one was allowed to use any forest product without permission from the forest department. In Gujarat 7 per cent of the land area is forested. Of this 71.26 per cent falls within the reserved forest area. Adivasis as well as non-tribals who were traditional cultivators without formal titles began to be treated as encroachers.

The Wildlife Protection Act, 1972 provided for creation of protected Areas and wildlife habitats whereby Adivasis lost access to lands and livelihoods based on forests. Again, the settlements of rights were not carried out completely. Hence all Adivasis became 'encroachers' when they cultivated lands they had tilled for generations. The Forest Conservation Act acknowledged "the traditional right of the tribal people on forest land", but no effort was made to protect these rights. The forest department continued to treat Adivais as encroachers and destroyed their crops. Moreover the department began plantations on tribal land as a strategy to evict them.

Pre-independence Forest History in India

The state and local communities have competed fiercely over Indian forests. Colonial forest policy changed the relationship between forest dwelling communities and forests changing the way forests were perceived and owned. The colonial state established property rights over forests in the 1860s, prior to which usufruct was unrestricted. Today, forests continue to be state property and control over them rests with the Forest Department (FD). Ramachandra Guha (1983) has argued that before 1947, our forests served the strategic interests of British imperialism. After independence, they served the needs of the mercantile and industrial bourgeoisie. Colonial forest policies in India had begun to take concrete shape around the middle of the nineteenth century, when in keeping with the bourgeois outlook towards forests, the British turned towards maximising the revenue. Down to the middle of the nineteenth century, traditional dues and cesses, which accrued to the colonial rulers, were the main source of forest revenues to the British.

In 1850, a commission mandated by the colonial administration prepared a report that concluded that Indian forests were being destroyed because of mismanagement by the local people (Agarwal, 1985). Consequently a full-fledged forest department was created in 1864. From then onwards, the assertion of state monopoly and the exclusion of forest communities marked the organising principles of forest administration. Towards this end, the first Forest Act was passed in 1865. As commercial considerations and revenue generation became overriding, this was found inadequate and replaced by a much more repressive Act in 1878. In fact, all provisions of the 1865 Act were found to be defective, except Section 8, which according to Baden-Powell, chief architect of the 1878 Act, "gives the one satisfactory power in the Act, and must be maintained in the new law; arrest without warrant is absolutely essential" (Guha, 1983, p. 1941). The 1878 Act was a comprehensive document. Compared to the previous legislation the new Act was entirely different in form and content. While the 1865 Act had only 19 Sections, the 1878 Act had 83 Sections, divided into 14 Chapters and a Preamble. For the 1878 Act, establishment of absolute state property rights and so a firm settlement between the state and its subjects over their respective rights in the forests represented the chief concern. As Brandis put it, "Act VII of 1865 is incomplete in many respects – the most important omission being the absence of all provisions regarding the definition, regulation, commutation and extinction of customary rights...[by the state]..." (Guha, 1983, p.1944).

Thus, the establishment of state property and the separation of customary rights became primary objectives of the 1878 Act. Towards this end, the classification of forests into reserved forests, protected forests and village forests – and the procedure for forest settlement in these, were the twin features. The demarcation, an inherent feature of the definition of forests, is based purely on administrative grounds. However, commerce was the guiding principle. In reserved forests (Chapter II), lands were the absolute property of the government. In protected forests (Chapter IV), although lands were the property of the government, the use-rights of the villagers remained. In village forests (Chapter III), the government held only the rights of management. Village forests consisted of residual wastelands with negligible forest department control. The reserved/protected classification was guided by the goal of profit from timber. In village forests, profit was absent. To begin with only areas needed for national requirements and for export to England were designated as reserved. However, it was not possible to assess these needs immediately. With time, the area under

reserved forests increased. Protected forests were designated with the goal of converting them into reserved forests. Such conversion took place as the demand for forest resources increased. There were 14,000 square miles of state forests in 1878. This increased to 56,000 square miles of reserved forests and 20,000 square miles of protected forests in 1890 and to 81,400 and 8,300 square miles respectively in 1900 (Gadgil and Guha, 1992, p. 134). The several amendments to the 1878 Act and the ambiguous language used necessitated a single piece of legislation that would do away with ambivalence. This led to the promulgation of the 1927 Act. In fact, the differences between the Acts of 1927 Act and 1878 (read along with the various amendments) are minor.

The 1927 Act continues to be the basis of Indian forest legislation. The Indian Forest Act of 1927 is timber oriented. Its title says "An Act to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce". There is no mention of conservation. According to the Act, no person can claim a right to private property in forested land merely because he is domiciled there, or his forefathers lived there for centuries. Nor do such people have any rights over forest produce. The purpose behind the Forest Act is clearly to lay down the procedure by which the government can acquire property and generate revenue from it. Two fundamental issues can be identified. The first pertains to the method by which government acquires land, the nature of its control over it, and the way it may negotiate its proprietary rights with existing rights holders and claimants. The second pertains to the control of timber and other forest produce in transit, the duty leviable on them and the collection of drift and stranded timber.

Forest Policy after Independence

The government of India announced its Forest Policy in 1952. Prior to this, one of the prime concerns of the forest department had been to increase revenue generation from forests. The Forest Policy added the objective of increasing forest cover. It envisaged a tree cover of 33 percent of the total geographical area, regardless of the composition of the forests, and regardless of the opinions of, and impact upon forest-dependent communities. Consequently, eucalyptus was planted in various places throughout the country. (Vira, Bhaskar, 1995) On the other hand, forests were recognised as useful for the needs of the mercantile and industrial bourgeoisie - increased forest cover meant increased availability of forest products, especially timber. Government short-sightedness after independence was also evident in the failure to amend the Act of 1878. The 1894

policy had spoken of the rights of rural communities over forest produce. Gradually this came to mean 'rights and privileges', which were given legal status in the Indian Forest Act of 1927. The sovereign government of India could have undone the damage, instead of which its 1952 policy adopted the phrase "rights and concessions." Forests were not perceived as a whole, and the focus was on timber, which is but a component of a complex whole. The colonial government had turned land without individual titles into state property, and forest dwellers into 'encroachers'. After independence, the process intensified. As a result tree cover declined from 70 million ha in 1950 to 35 million ha in 1990.

In 1961, at the start of Third Five Year Plan, it had been recognized that there was a large and growing gap between the demand and supply of forest produce. The plan estimated that by 1975, the shortfall of fuel wood would be 100 million tones. Despite this, nearly 75 percent of the Third Plan outlay on afforestation was targeted towards production forestry. During the 1960s, a massive programme was initiated to clear existing forests, which were to be replaced by monoculture plantation of fast growing commercially useful species, predominantly eucalyptus and tropical pine. This process continued till the end of the Fifth Plan, with an emphasis on self-sufficiency in commercial products, especially pulp, newsprint, wood panel products and matches. Through this period, forests generated high revenues for the state. The Forest Department's surplus increased from Rs. 133.9 million annually, averaged over 1951-52 to Rs. 1547.2 million in 1980-81.

Afforestation was an important component of state-initiated forestry programs, and comprised 50.06% of total public sector outlay in forests between 1951 and 1980. The Fourth Five Year Plan stressed the need to achieve self-sufficiency in forest products, especially those required by forest-based industries and proposed greater efforts at creating large scale plantations of quick-growing species and species of economic and industrial importance. By the start of the Fifth Five Year Plan in 1974-75, of the total outlay on afforestation, 80.40 percent had been spent on production forestry, which accounted for 65.14 percent of the physical area covered. The need to accelerate these efforts was emphasized by the National Commission on Agriculture in 1976, which suggested the use of forest lands for production forestry to meet industrial needs. The report suggested the establishment of State Forest Development Corporations in order to attract institutional funding for industrial forestry. To lighten the burden on production forestry, the report recommended a programme of social forestry in

non-forest areas, private farms and community lands to meet the subsistence needs of rural populations. This programme had two components: farm forestry, targeted at private landholders; and community forestry, linked to various categories of public and community land, excluding forest land. The Forest Development Corporation was established in different provinces to promote production forestry. All these corporations depended upon industrial finance as well as re-investment of profits. The space opened up by felling was used for the monoculture of quick growing species. Natural forests were on their way to being replaced by man-made plantations. But the policy was doomed from the start, because conservation or exploitation of forests requires the scientific understanding of delicately balanced forest ecology. The results have indeed been catastrophic. Thus there has been continuous process of decreasing forest which forced government to enact the law in 1980 which had direct impact on forest dwelling communities i.e. Adivasis of India.

The Forest Conservation Act 1980 and its Impact on Forest Dwellers

The Forest Conservation Act of 1980 (FCA) was a crisis-driven response. It was introduced by Prime Minister Indira Gandhi in the 1970's, when remote sensing data showed a remarkable decline in forest cover (about one million hectares a year over the decade). The Act was promulgated to stop the use of forestlands for roads, dams and buildings. The central government now had sole authority for granting such permissions. The result was that state governments neglected small but important activities and requirements of villagers to build schools, electric poles or bridges. As a result, Uttarakhand, the very area which gave birth to the Chipko movement saw a Jangal Kato (forest felling) Andolan in the 1980s against the Act. The FCA was a two-page document that strengthened the 1927 Act empowers the Minister to make decisions about forest lands. It is a law on land use and its implementation depends upon the whims of the minister. Further, it only forbids "reserve forests" from being denotified by the states. The Act's mandate even extends to lands for which only notifications under Section 4 of the Indian Forest Act (IFA) have so far been issued (Section 4 (1) (c) of the IFA of 1927. This declares the state's intention to reserve an area as a forest, and requires appointment of the forest settlement officer (FSO) to settle claims of pre-existing occupants and users. This safety clause has often been dispensed with. An area is formally notified as a forest only after the formalities associated with Section 20 and 29 are completed). Areas recorded as 'forests' in any government record also comes under the Act's purview. As neither the IFA nor the FCA

defined a "forest", on 12-12-1996 the Supreme Court ruled (Godavarman case) that the Act's provisions would apply to any area conforming to the dictionary definition, irrespective of ownership. This also includes all lands entered in any government record as 'forest', whether or not that land has any tree cover and whether or not preliminary notifications were issued. It also applies to all community-managed forests on revenue lands – forests which have been maintained and nurtured precisely because villagers did not follow the forest department's 'scientific forestry' prescriptions, which would have involved clear felling and mono-cultural plantations for sustained yield of timber.

Given the disarray in government land records, and the diverse categories of land in different contexts for which the term 'forest' has used in them, a very wide range of common lands critical for local livelihoods could now be brought under the 'scientific' management of the forest department's 'working plans'. There is no requirement to verify the current status of these lands, whether any forest on them ever existed in the past or still exist, the rights people enjoy in them or the function these lands play in people's livelihoods. The Court does not seem to have noticed that many of these lands are riddled with disputes, including pending claims for land rights by their indigenous inhabitants.

Due to non-recognition of their rights, tribal people (as per FCA 1980) who were rooted in forests for ages, came to be looked upon as encroachers. The threat of eviction looms large in their psyche. This historical injustice and insecurity is the reason why tribal communities feel emotionally and physically alienated from government. Tribals, NGOs and radical activists have protested against the Act. They have argued that the FCA's aim was to deny customary rights over natural resources, and to exploit resources under state forestry, which resulted in the degradation of forests. There were series of protests all over the country against this Act by tribals and NGOs activists, and the government was compelled to address their demands. The National Forest Policy, 1988 stresses that forests are first charge to tribal communities. Their livelihood needs are paramount and superior to commercial needs. While recognizing the symbiotic relationship between tribal people and forests, the policy also safeguards the customary rights and interests of tribal people and dwellers on forest lands. This policy provided for the association of tribal people with the protection, regeneration and development of forests with a view to providing gainful employment to people living in and around forests, with special attention to:

- (i) Replacement of contractors by tribal cooperatives,

- (ii) Protection, regeneration and optimum collection of minor forest produce along with institutional arrangements for marketing.
- (iii) Development of forest villages on par with revenue villages, family-oriented schemes for improving the status of tribal beneficiaries, and;
- (iv) Undertaking integrated area-development programmes to support the tribal economy.

The requirements of forest-dependent communities now acquired a priority. In order to fulfill the commitments enshrined in the 1988 policy, the Central Ministry of Environment and Forest (MoEF) issued 6 circulars on 18-9-1990 for the settlement of disputed claims. As per these circulars, pre-1980 encroachments on forest lands were eligible for regularization provided the State Governments had evolved eligibility criteria in accordance with local needs and conditions and had decided to regularize such encroachments. These Circulars provided for:

1. Appointment of joint teams of Revenue, Forest and Tribal Welfare Deptt.;
2. Involvement of Gram Sabhas;
3. Banning agriculture practices on certain slopes; claims established through proper inquiry;
4. Demarcation of land to be restored to the claimant-no ceiling on size of holding;
5. Proposal for de-notification of forest lands along with the proposal for compensatory afforestation;
6. Elimination of intermediaries and replacement of contractors by tribal cooperatives, etc;
7. Protection of tribals and non-engagement of outside labour in forestry activities;
8. Conversion of forest villages in remote and inaccessible forest areas into revenue villages with a view to providing uninterrupted manpower for forestry operations;
9. An acceptance that it would not be appropriate to deny inhabitants of forest villages legitimate rights over lands allotted to them decades ago for settlement and have been continuously their occupation since then;
10. Restricting admissible evidences mainly to first Offence Report and thus in practical terms denying recognition.

However, the MoEF could not implement its decision wholly or partly due to enactment of the FCA 1980. The 1988 amendment to the FCA 1980 places all forestland under the jurisdiction of the forest department. Thus while on one hand

the Indian government has adopted a policy sympathetic to the needs of the forest dwellers, on the other it has enacted laws that restrict access of these people to the forest. Putting this situation in perspective the environmentalist Singh noted that "In the case of the government of India, the left hand does not know what the right hand is doing. As regards forest development, the right hand is undoing what the left hand is trying to do."

Evolution and Implications Pro-Tribal Forest Legislations in India

Since the primary intention of colonial laws was to take over lands and deny the rights of communities, the "settlement" process initiated during the late nineteenth and early twentieth centuries was hardly effective. Surveys were often incomplete or not done (82.9% of Madhya Pradesh's forest blocks have not been surveyed to date, while in Orissa more than 40% of State forests are "deemed" reserved forests where no settlement of rights took place). Where the claims process did occur, the rights of socially weaker communities—particularly tribals—were rarely recorded. The problem became worse particularly after Independence, when the lands declared "forests" by the Princely States, the *zamindars*, and the private owners were transferred to the Forest Department through blanket notifications. In short, what the Government records called "forests" often included large areas of land that were not and never were forest at all. Moreover, those areas that were in fact forest included the traditional homelands of communities. As such consolidation of Government forests did not settle existing claims on land; all people, mostly tribals, who lived in these forests, were subsequently declared "encroachers," as they did not have recognized rights and claims to their ancestral homelands.

Panchayats Extension to Schedule Areas Act, 1996

During the 1990s, the Eminent Domain of the Government was challenged by activists and human rights movements. Rights of the tribals over local resources were considered sacrosanct and nonnegotiable and a move was initiated to secure Constitutional recognition for these rights. The sustained campaign led first to the 73rd Amendment of the Constitution to give recognition to decentralized governance in rural areas and then the constitution of the Bhuria Committee to look at tribal rights over resources through extension of the provisions of this Amendment to the Schedule V areas. Based on the recommendations of the committee, Parliament passed a separate legislation in 1996 as an annexure to the 73rd Amendment specifying special provisions for *Panchayats*⁵ in Schedule V areas. Known as the Panchayats Extension to

Schedule Areas⁶ (PESA), 1996, it decentralized existing approaches to forest governance by bringing the *Gram Sabha* center stage and recognized the traditional rights of tribals over “community resources”—meaning land, water, and forests. PESA was important not just because it provided for a wide range of rights and privileges, but also because it provided a principle as well as a basis for future law making concerning the tribals. According to the Central Government law, the states promulgated their own laws supposedly giving rights to tribals over local resources. It is almost two decades since PESA came into effect, but the obstacles in enforcing its provisions have remained largely unaddressed. Its avowed objective of power to the people has yet to take shape. The states are struggling to devise definitive procedures to define rights over forests and minor forest produce. Meanwhile, some states like Maharashtra, Gujarat, and Orissa, in an effort to perpetuate State control over forest resources, tried to dilute the provisions of PESA although they had no legal jurisdiction to do so (Saxena 2004).

With regards to implementation of PESA our study revealed that not a single provision of PESA has been implemented after two decades of its introduction. There are some contradictions with regards to provisions of PESA and ground realities existed in Gujarat.

These can be summarised as:

1. Tribal's area of Gujarat are having less minerals except lime and stones there are no other minerals found in tribal area of Gujarat. Due to this important provision of PESA about regulation of minerals by Gram Sabha is of no use.
2. Gujarat being high industrial and urbanised state coupled with various socio-religious and Gandhian movements tribal age-old traditions, culture and their own social system have been disappeared or wiped out by external forces hence protecting culture and traditions is not a important aspect.
3. There is a anomaly in transferring tribal land to non-tribal. Earlier the power was rested with district collector but after government has modified this provision and power has been given to the president of district panchayat. Further, in earlier provision only tribal land could be transfer to tribal but under the new provision even tribal land can be transfer to non-tribal also. Due to this, many small and marginal tribal farmers have lot their land.

4. In Gujarat there is a prohibition act since long hence regulating prohibition through Gram Sabha has no meaning.
5. With regards to regulating money lenders in tribal area through Gram Sabha is important provision but our study found out that tribal elites are very much involved in money lending to their fellow tribals. Gram Sabha cannot do anything in this situation.
6. We have observed and noted while physically attending more than 60 Gram Sabha in tribal areas that hardly 20 to 25 percent people are attending Gram Sabhas. People do not have any interest in village development. It should be noted here that over a period of time tribal society has been gradually becoming more and more individualistic, which has adversely affected the communitarian spirit among people. PESA essentially based an assumption that tribal society still community oriented and homogeneous society, but in reality this is not true. Due to this many provisions of PESA are not effective. We also observed that during the heydays of implementation of PESA tribals people were not enthusiastic but they were very much concern and enthusiastic while FRA-2006 implementation. This behaviour of tribals indicate that people take part in Gram Sabhas where there is personal interest involved. We have to consider this change while analysing tribal society.

There are four points that need particular emphasis here. First there are critical omissions of some of the fundamental principles without which the spirit of PESA can never be realized. Secondly, the state legislations, perhaps by design, twist certain words from the Central PESA that has resulted in powers being taken away from the Gram Sabha – the collectivity of all village adults where the need for empowerment is most critical for making local self-governance a reality in the Country especially in relation to managing common pool resources. Thirdly, even where it affirmed some provisions of the law in principle, their applicability was made subject to framing of rules/ orders or “as may be prescribed.” As stated earlier, such enabling rules are not yet in place in most cases. Finally, few rules and prescriptions began to surface in early 2000 primarily through revocable official circulars but which again have been totally inoperative because of the ambiguity and lack of clarity of these provisions. Thus it is not surprising that even these are waiting to be taken to the ground. The operative provisions being not in place, a promising radical law has been reduced largely to a paper law.

People Movements against Repressive Forest Laws and enactment of FRA-2006

The policy relating to forest underwent a sea change in 1988. The role of the village communities in the preservation and management of the forests came to be recognized. This historical turnaround gave birth to the policy of Joint Forest Management (JFM). The JFM implies the handing over certain rights to village communities to appropriate natural resources for their own use, However, the lack of a clear definition of the rights holders and the kinds of rights and sanctions that can be applied has impeded the process of establishing social institutions. The policy failed to understand social and economic features at local level and user's responses to changes. One reason for the failure of the JFM is its top-down approach, and lack of people's participation in planning. On the other hand there has been an effort to regularize forest lands that tribals had long been cultivating. But every one of these efforts stayed within the existing structure. Some regularization orders even required proof that the claimant had earlier been booked for 'encroachment'. As per MoEF figure in response to Starred question no. 284 in Lok Sabha, 16.8.2004, the total area under pre-1980 eligible encroachment regularized so far is 3.66 lakh hectare against the 13.43 hectare of forest land is under encroachment in the country.

The consequences of this failure became apparent on 3 May 2002, when the Inspector General of Forests (IGF) wrote to the Chief Secretaries of all State Governments informing them that in response to the problem of encroachment raised in the *Godaverman Thirumulpad vs Union of India* case (Interlocutory Application No. 703, Writ Petition No. 202/95), the Supreme Court had (23 November 2001) restrained the Central Government from regularizing encroachments without its permission. The letter directed State authorities to prepare a time-bound programme for summary eviction of all encroachments not eligible for regularization as per the Ministry's 1990 guidelines by 30 September. In the month following this letter, forced evictions of adivasis occurred across the country at a scale unprecedented in recent history. 40,000 families were evicted in Assam and the countrywide total was estimated at 3 lakh families. Adivasis were evicted from about 1.52 lakhs hectares of forest area. These mass evictions triggered the first real steps forward. In Maharashtra, after a demonstration by more than one lakh tribals in Mumbai on October 10, 2002, the government announced new regulations that recognized tribal rights over forest lands. But this was not replicated elsewhere in the country. People's movements

and organizations now began organizing to resist evictions. Some organizations filed interventions before the Supreme Court, while others filed applications before the Central Empowered Committee. But most importantly, concerted resistance via protest demonstrations, Jail Bharo Andolans, and written counter replies to the forest department's eviction notices amplified people's views on this issue. "There are no adivasis without forests and no forest without adivasis, we are one. We will not give up our rights. Try and evict us!"

The gross violation of democratic rights of Adivasis and other forest communities by the forest department continues to be a matter of grave concern. It is in this context that the Campaign for Survival and Dignity (CSD) organized a Public Hearing in Delhi on 19-20 July 2003. The CSD, a federation of tribal and forest community organizations from 10 states, merged to resist evictions. Subsequently, the NDA government issued two circulars (stayed by the Supreme Court). The UPA government's Common Minimum Programme called for a halt to evictions. Forest issues had acquired national status. Responding to the Supreme Court stay, in July 2004, the MoEF filed an affidavit in which it admitted that forest communities had suffered a "historical injustice" and that the "rural poor, especially tribals, had been deprived of their livelihood rights". The Ministry did nothing to follow up on this admission, but in January, following pressure from the CSD, other indigenous groups demand and UPA government commitment to implement its common minimum programmes, the Prime Minister directed the ministry of tribal affairs to draft a law on forest rights. The choice of Ministry was another popular victory - the government accepted that forest authorities would not and could not draft a just law.

Forest Right Act 2006

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, popularly known as the Forest Rights Act (FRA), is a watershed in the hard-fought and prolonged struggle of adivasis and other forest dwellers of India. The new law attempts to right that historic injustice and gives forest communities a primary role in forest management. The statement of object and reason (SOR) of the FRA, attributed the delay in recognising forest rights to colonial rule which had ignored this reality for economic gain. The SOR admitted that after Independence, in its enthusiasm to protect natural resources, the state had persisted with colonial practices. The simplicity of tribal people and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims. The SOR suggested that insecurity of tenure and

fear of eviction had engendered a sense of alienation amongst tribal communities. The SOR explained the rationale of the FRA in terms of vesting forest rights and occupation of forest land with forest-dwelling communities who were integral to the survival and sustainability of the forest ecosystem, but whose rights could not be recorded. The FRA's salient features are as follows:

1. The Act recognises and vests rights and occupation in forest land in forest-dwelling Scheduled Tribes and other traditional forest-dwellers who have resided in such forests for generations but whose rights were not recorded.
2. The Act provides for recognition of forest rights of other traditional forest-dwellers provided they have for at least three generations prior to 13.12.2005 primarily resided in and have depended on the forest or forestlands for bona-fide livelihood needs. A generation would mean a period of 25 years.
3. The cut-off date for the recognition and vesting of forest rights under the Act will be 13.12.2005.
4. The Act provides for the ceiling of occupation of forestland for purposes of recognition of forest rights to the area under occupation and in no case exceeding an area of four hectares.
5. The Act provides for conferring rights in national parks and sanctuaries habitat.
6. The Act provides for the right to hold and live in forest land under individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of forest-dwelling Scheduled Tribes and other traditional forest-dwellers.
7. The Act recognises the right of ownership access to collect, use and dispose of minor forest produce which was traditionally collected within or outside village boundaries. The Act defines minor forest produce to include all non-timber forest produce of plant origin, including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs roots and tubers.
8. The Act recognises the right to in situ rehabilitation including alternative land in cases where Scheduled Tribes and other traditional forest-dwellers have been illegally evicted or displaced from forestland of any description without granting their legal entitlement to rehabilitation prior to 13.12.2005.

9. The Act provides for forest rights relating to government providing for diversion of forest land for schools, hospitals, anganwadis, drinking water, water pipelines, roads, electric and telecommunications lines.
10. The rights conferred under the Act are heritable but not alienable or transferable and to be registered jointly in the name of both spouses in the case of married persons and a single head in the case of households headed by a single person. In the absence of a direct heir the heritable right shall pass on to the next of kin.
11. The Act provides that no member of a forest-dwelling Scheduled Tribes or other traditional forest-dwellers shall be evicted or removed from forest land under his occupation until the recognition and verification procedure is completed.
12. Gram sabhas have been designated as competent authorities for initiating the process of determining the nature and extent of individual or community forest rights or both that may be given to forest dwellers.

Implementation Status of FRA in Gujarat

After the Act being enacted various steps being taken by the tribal development department in order to implement the Act. This includes, arranging Gram Sabha and forming of Forest Right Committee (FRC) at village level, printing in huge number of application forms for land claiming and managed to distributed at all villages, prepared a booklet on explaining the Act in simple language and distributed at village level. Thus, there was a serious attempt by government to address the key issues for implementing the Act. Further to it, department had conducted training camp on how to fill the forms and what are the evidences that require to attached with the forms. In May 2008 Department of Tribal Development had organized a workshop with NGOs and activists of Adivasi Maha Sabha at Ahmedabad, who are working in tribal areas for implementing the Act. Various problems related with implementing the Act were discussed in the workshop. As a result many problems were shorted out on the spot. After the workshop department started help line for claimants and still it is working effectively. Initial work by the FRC was very effective and they could manage to submit the claimant's forms on time with proper documents of proof to the Gram Sabha. After preparing claimant's application for land with proper evidences were submitted to Gram Sabhas and Garam sabha after proper verification had submitted to block level committee (BLC). It should be noted here that Adivasi Mahasabha activists have trained the FRC members about how to fill up the

forms as well as what type of documents need to be attached with application. Between June 2008 to January 2009 there have been more than 26 training programmes organized by the Adivasi Mahasabha covering all 45 tribal talukas of the state. In each training programme around 200 to 300 FRC members attended the training. Due to this FRCs managed to submit claims in advanced. In the Dediapada taluka of Narmada district, FRC of 25 villages had submitted satellite imaginary photos of the forest lands on which people are cultivating. This is unique and government officials were astonished with these evidences. In short FRCs had played a pivotal role in submitting claims.

As per the latest figure on implementation of FRA in Gujarat is concern total claims recommended by Gram Sabha to SDLC are 1,90,498 (1,82,869 individual and 7,224 community). No. of claims recommended by SDLC to DLC are 73,057 (69,201 individual and 3,865 community). No. of claims approved by the DLC for title are 77038 (73921 individual and 4597 community). Number of titles distributed 77,038 (73,921 individual and 4597 community). Extent of forest land for which the title deeds issued (in acres) 11,97,702 (1,07,098 individual and 10,81,583 community). Due to high rate of rejection, in August 2011 three NGOs of Gujarat namely Arch, Rajpipla Samaj Seva Mandal and Paryavaran Suraksha Samiti filed a PIL (PIL 100/2011) in Gujarat High Court. High Court has given verdict on 3rd May 2013 in favour of NGOs and ordered Government of Gujarat to implement this act as per NGOs recommendations. After the High Court order member of Gujarat Tribal Advisory Council had raised concern over high rate of rejected claims and the matter was discussed in the meeting held on 1st July 2011 and it was decided to review all rejected claims at various level. Following the decision of GTAC, government of Gujarat has created a special review cell on 1st August 2011 and circulated procedure to review all the rejected claims. As a result, number of claims disposed of has been reduced considerably.

With the advent of the British rule the tribals not only started losing their lands but forests also became state property. The creation of 'Reserved' and 'Protected' forests during the colonial period considerably affected the tribal rights in such forest areas which had provided an important source for their livelihood. This policy was further extended during post-independence period particularly due to the enactment of fresh legislation like the Forest Conservation Act, 1980 and legislation on wild life. The latter legislations displaced the tribals from national parks and sanctuaries and the tribals who have been cultivating the land in the

forest area for generations have been labeled as encroachers. Only in 1988 forest policy recognized the rights of tribals over forest land. But recognition never became a reality. Only FRA 2006 provided some hope for doing justice to tribals. The FRA 2006 is a good piece of law but still the motive of the state is not in favour of the tribals. The Adivasi of Gujarat demanded the abrogation of the principle of eminent *domain* and restricting the meaning of 'public purpose' after six decades of Independence. But colonial minded bureaucracy and lack of political will on the part of elected representatives not allowing tribals to get their due share. But still there is hope and law must and will remain part of the struggle for adivasi rights.

Emerging Legal Implications

Adivasi rights (in a legal sense) offer a site through which to explore how these contradictory social forces shape the making and working of the law. In the immediate post-independence period, the law served as an important instrument of the state in recognising adivasi rights. While Nehru's five principles provided a vision of respecting the "uniqueness" of adivasi communities and their customary claims to land, law has been a critical means to act upon this vision. Article 342 of the Constitution, by providing the president the power to notify communities as scheduled tribes, implicitly recognises the fact that scheduled tribe communities are the ones who have suffered some of the worst types of deprivation. Under Article 46 of the Directive Principles of State Policy, the state is obliged to ensure the educational and economic interests of the weaker sections, especially those of the scheduled castes and scheduled tribes. In addition, Article 14 speaks about the right to equality and Article 15 prohibits discrimination due to religion, caste, sex, etc. Article 13 prevents the state from making laws that deny people their fundamental rights. Scheduled tribes are also guaranteed various forms of reservation by Articles 320, 332 and 334 of the Constitution [Bijoy 1999: 1332; Mohanty 2001: 3857].

The most significant article in the Constitution vis-à-vis adivasi rights is Article 244. The logic of Article 244, in the spirit of Nehru's five principles, is that for the traditions and culture of scheduled tribe communities to be respected scheduled areas should function autonomously. The fifth schedule allows the president to declare areas as scheduled and the governor the power by public notification to not apply acts of Parliament or modify them in accordance with the needs of

scheduled tribe communities. Crucially the fifth schedule permits the governor (on the recommendation of the tribal advisory council) to prohibit the transfer of land by or amongst scheduled tribes as well as regulate the allotment of land to non-scheduled tribes and the working of moneylenders [Bijoy 2000].

In addition to these constitutional provisions, a number of other acts have been passed in order to uphold adivasi rights ranging from land tenancy acts and revenue codes [Bijoy 1999:1331] to most recently the 1996 Panchayat (Extension to Scheduled Areas) Act (PESA), that gives adivasi communities substantive powers with regard to natural resource management and self-governance. According to PESA, gram sabhas are empowered to preserve their cultural identity, community resources, modes of dispute resolution, and equally importantly the right to approve government plans, programmes and projects within their jurisdiction [Mukul 1997: 929]. Moreover, the gram sabhas or the panchayats at the appropriate level have to be consulted before the acquisition of land for development in scheduled areas. The STA, which aims at providing adivasi rights to forest land already occupied by them and access to forest produce for livelihood purposes, is the latest in a line of legal initiatives to address adivasi rights.

But while laws to uphold adivasi rights have been enacted, the state's concern for development (pushed by other social forces) has been responsible for denying adivasis these very rights.

Pro-adivasi judgments must be understood keeping in mind the wider hierarchy of rights that the courts seem to uphold. First, for the most part, adivasi rights are upheld when they are deemed to be not in conflict with the "greater common good" or "sustainable development". Second, when adivasi rights (in the form of land or forest rights or more broadly livelihood rights) are juxtaposed with development concerns, these rights are often limited or redefined. For example, in the context of large-scale development projects, the courts have tended to privilege development both at the expense of social rights and the environment. Third, there are a number of "environmental" cases where the protection of "pristine nature" results in limits placed on rights of use to natural resources such as forests and fisheries. The Doon Valley and Silent Valley cases are notable examples [Upadhyay 2000: 3790]. In such cases, the environment takes precedence over development too. This can be explained by the fact that the environment, imagined in terms of pristine wildlife sanctuaries, unpolluted urban

middle class localities, for example, are very much part of the middle class imagination that influences the judiciary either directly or indirectly.

While few would deny the importance of the greater common good or sustainable development, it is the manner in which these concerns become important (or do not become important) that is worrisome. Sustainable development is rarely invoked when large-scale infrastructure projects wreak havoc in the environment, but become important when adivasis collect non-timber forest produce. Similarly, while there is no denying that preservation of "natural" habitats and wildlife is a must, why is it again that this happens in the context of adivasi claims to land and not when industry or game poachers stake their claims? Sustainable development requires first of all a much more critical and comprehensive analysis of what it is that makes development unsustainable.

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