

## Discrepancies in Forest Rights Laws, Psychological & Ecological Impacts of Illegal Eviction of Forest Dwellers

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### ABSTRACT

Tribal groups reside far from major towns & close to forests. They are locals who have lived in forests from beginning of time. Forest land use for food, livelihood, & cultural & spiritual practices is essential to human survival. To protect tribal people's rights against non-tribal people, there is a never-ending conflict. The state's government has been implementing measures with a butterfly coating, but there is still inconsistency. This is true not just in Indian arenas but also worldwide. Eviction of forest inhabitants from their homes by businesses & occasionally government for the sake of greater or common good is a problem in many nations. In addition, it appears that rights of forest residents have been nullified & recast as rights to settlement & rehabilitation. Country's resources & forest areas are taken from forest inhabitants in name of development **due to tree cutting**.<sup>1</sup> Their farms, crops, ecology, forests, & priceless medicinal plants are lost, along with their way of life. Paper focuses on why people who live in forests are evicted from them for irrational reasons, an analysis of well-known case Vedanta, & discrepancies in forest rights laws that should protect people who live in forests and psychological & ecological impacts of illegal eviction of forest dwellers.

**Keywords-** *psychological & ecological impacts, Illegal tree cutting, Forced Eviction, Human Rights*

### INTRODUCTION

#### I. ADIVASI LANDS & FORESTS: NATIONAL & INTERNATIONAL RIGHTS

##### A. *International Native Peoples' Rights*

Internationally indigenous people's rights were highlighted by acknowledging fact that environment & its sustainability is benefitted by cultural & traditional practices of native communities. Earth Summit in 1992 pointed out that environment sustenance is an amalgamation of different interdependent factors working together such as economic, social, & environmental to attain sustainability. Every State is responsible for upholding local populace's rights to preserve themselves & environment.<sup>2</sup> identity of Adivasis is rooted in land they inhabit, according to preamble of UN declaration on Rights of Indigenous Peoples called UNDRIP, 2008.<sup>3</sup> For indigenous people, everything they need to survive—from food to housing to cultural & spiritual ties that cannot be severed from land—depends on forest areas. For them, land is connected to their material & spiritual needs. They view it as a distant dream if their wants are not met.<sup>4</sup> It is acknowledged in **Article 13 of International Labor Organization Convention 169** (UNDRIP) that State has a responsibility to tribal people to respect & safeguard values they uphold about land.<sup>5</sup> term "*indigenous people*" is defined in ILO

<sup>1</sup> Virginius Xaxa, (1999) "Tribes as Indigenous People of India", *Economic & Political Weekly*, <https://www.jstor.org/stable/4408738>. Accessed on March 14 2023.

<sup>2</sup> Mclean, K. G., (2009) "Report of Indigenous Peoples" *Global Summit on Climate Change*.

<sup>3</sup> [https://indigenousfoundations.arts.ubc.ca/un\\_declaration\\_on\\_the\\_rights\\_of\\_indigenous\\_peoples/](https://indigenousfoundations.arts.ubc.ca/un_declaration_on_the_rights_of_indigenous_peoples/). Last visited on December 3 2022.

<sup>4</sup> *Mayagna (Sumo) Awas Tingni Cmty. V. Nicaragua*, 2001 Inter-Am. Ct. HRR (Ser. C) No. 79.

<sup>5</sup> Yupsanis, A., (2012) "The International Labour Organization & Its Contribution To Protection Of Rights Of Indigenous Peoples", *Canadian Yearbook Of International Law/Annuaire Canadien De Droit International* Accessed on January 15 2023.

Convention 169 as “those who are descendants of a particular land, at time of conquest or colonization, or establishment of present state boundaries & who, regardless of legal status, retain some or all of their own social, economic, cultural, & political institutions.”

According to this concept, “Adivasis” are considered indigenous people by “*Supreme Court in Kaila V. State of Maharashtra*”.<sup>6</sup> Because they were pre-Dravidian descendants. Adivasis are considered indigenous people in India, & convention protects them. Who is considered to be an “indigenous person” is unclear. Why doesn’t Indian legislation have a suitable language to designate those descended from a specific land, even though international agreement maintained a general term? When phrases like “tribe”, “forest dwellers,” etc., are often used. Inter-American Court ruled in *Saramaka People V. Suriname*<sup>7</sup> that tribal people have a right to claim ownership of land they have long used & occupied & ability to uphold spiritual ties to it. rights of tribal community has certain safeguards & they are entitled to various social, cultural, & economic rights which are also protected by “UN Committees on Economic, Social, & Cultural Rights” making them entitled to right to free, prior, & consent which is informed or intelligent.

### **B. Constitutional Methodology**

After the property rights under 44<sup>th</sup> amendment was removed the constitution has given government right to take over property ownership of Adivasis if cause is greater than ownership of private lands. “**Article 300A of Indian Constitution**” deprives a person of the ownership of property as a fundamental right but give them constitutional rights, wherein government can follow due procedure to deprive someone of their property rights. Land acquisition process, especially in forest areas, gives state power to acquire *terra nullius*<sup>8</sup> land from Adivasis under doctrine of public trust & eminent domain. Adivasis’ land rights are included in fundamental right to life as defined by **Article 21**.<sup>9</sup> development of tribal welfare in terms of economic empowerment & education is covered in Art. 46. According to **Schedules V & VI of Indian Constitution, Art. 244 & 244A** provide for administration, control, & management of scheduled areas & scheduled tribes. **Articles 330 & 331** grant representation to SC & STs in legislature & state assemblies to ensure social fairness. According to **Article 164(1) of Constitution**, states must select a Minister for Tribal Welfare to oversee tribal welfare. **Forest Rights Act, 2006** (*hereinafter* FRA) safeguards forest residents’ rights, including property rights & community usage of forest land. Gram Sabha is given sole discretion over acquiring land under **Panchayats Extension to Scheduled Areas (PESA) Act, 1996** (*hereinafter*, PESA Act).

### **C. Legislative Strategy**

The “**Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation, & Resettlement Act of 2013**”

Originally laws which were used to protect rights of Scheduled Tribes have been abolished. current legislative stature demands an intelligent consent from Tribal community itself. However, Forest **Rights Act of 2006** incorporates some of Act’s regulations. To do this, Gram Sabha’s prior authorization must be acquired. To ensure that rights of Adivasis are safeguarded. Then, social impact evaluations must be done by an impartial entity.<sup>10</sup> assessment’s goal is to determine whether there is a chance of delineation following land operations.

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<sup>6</sup> Ibid.

<sup>7</sup> Inter-Am. (2007) Ct. H.R. (Ser. C) No. 172.

<sup>8</sup> term implies that land owned by adivasis or tribal people belongs to no one, thus, government has right to take away land.

<sup>9</sup> Menon, A., (2007) *Engaging With Law On Adivasi Rights, Economic And Political Weekly*, <https://www.jstor.org/stable/4419702> Accessed on January 15 2023.

<sup>10</sup> Patrik Oskarsson, P., (2018) *Adivasi Land Rights & Dispossession, 14 In Landlock*, <https://www.jstor.org/stable/J.CtV75d8rq.8> (Last Visited Dec 3, 2022)

Baviskar, A., (2022) “Fate Of Forest: Conservation & Tribal Rights”, *Economic & Political Weekly* 2493 (1994), <https://www.jstor.org/stable/4401788> (last visited Dec 3, 2022).

Coal Bearing Act, which conflicts with **LARR Act**, does not include social impact assessments or consent systems, allowing mining sector to purchase land from Adivasis more readily. PESA Act; **Panchayat (Extension to Scheduled Areas) Act** makes Tribal consent mandatory for purchasing land for industrial purposes only in form of negotiations with tribe itself.<sup>11</sup>

There is some misunderstanding over phrase “consultation.” Executive directives from Ministry of Rural Development specify that consent letters from Gram Sabha must be obtained before land acquisition & that consultation must be undertaken before resettling. It is legal for gram panchayats to issue consent letters. *Gram-Panchayat* receives right to regulate non-forest uses of forest land due to existence of rights within forest. Act grants forest dwellers right to FPIC that are grouped under three categories; Individual rights, community rights, and habitat rights. right to acquire traditional knowledge, & right to rehabilitation. Policies were put into place. To provide welfare measures for tribal people, National Forest Policy of 1988 is developed. It introduces new methods, such as development of forest areas & importance of intellectual property rights.

## II. THE EVICTION OF FOREST INHABITANTS

Forest dwellers have been granted a number of individual, communitarian, and habitat rights by the execution the Forest Rights Acts 2006. They are permitted to individually or collectively collect, use, and store forest produce for individual or community purposes. term “forest produce” is also defined within legislation and minor forest is produce is subject to be used by dwellers. Community rights will be including activities such as fishing. affected indigenous people’s<sup>12</sup> rights to rehabilitation & resettlement are recognized by land acquisition law currently before legislature. bill, which defends traditional rights of tribal people, has not yet been passed, but if it were, it would appear to contradict Forest Rights Act’s provisions.<sup>13</sup> Some local Adivasi (tribal) residents of Aarey Colony protested at “Picnic Point” to “Save Aarey Forest” & denounce state government for cutting down trees inside Aarey without permission.<sup>14</sup> According to forest officials, a Madhya Pradesh forest department officer fined a member of an indigenous forest tribe 1.20 crore rupees for allegedly felling two trees in Raisen district forest. fine was calculated based on trees’ measurable & intangible benefits.<sup>15</sup> “Afroz Ahmad, an expert member, & Justice Arun Kumar Tyagi, a judicial member, noted that tribunal had established a joint committee in its order dated September 1 & instructed it to deliver a factual action-taken report within two months.” In a case involving illegal tree cutting in a forest area close to Nainital city, National Green Tribunal has asked key Uttarakhand government officials, including Chief Secretary, for a response within a month.<sup>16</sup> To let private developers clear forests without first obtaining approval of forest residents,<sup>17</sup> Indian government has created new regulations.<sup>18</sup> “Ministry for Environment, Forest, & Climate

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<sup>11</sup> Kumar, P., (2022) "The Issue of Adivasi Rights: Amendments in Cnt & Spt Acts of Jharkhand", *Proceedings Of Indian History Congress* <https://www.jstor.org/stable/26552735> (last visited Dec 3, 2022); Ursula Münster & Suma Vishnudas, In *Jungle of Law: Adivasi Rights & Implementation of Forest Rights Act in Kerala*, 47 *Economic & Political Weekly* (2012), <https://www.jstor.org/stable/23214975> (last visited Dec 3, 2022).

<sup>12</sup> Singh, A., (2015) “Forest Rights & Tribal Affairs in Contemporary India”. *Nirma University Law Journal*.

<sup>13</sup> *Samatha V. State of A.P.*, (1997) 8 SCC 191.

<sup>14</sup> Singh, V., (2022) "Mumbai: Tribals, activists condemn govt for illegal tree felling at Aarey", *Times Of India*, July 31, 2022, <https://timesofindia.indiatimes.com/city/mumbai/mumbai-tribals-activists-condemn-govt-for-illegal-tree-felling-at-aarey/articleshow/93256514.cms> (last visited Dec 3, 2022).

<sup>15</sup> Hindustan Times, “₹1.20 crore fine imposed on tribal man for cutting 2 trees in MP’s Raisen”, *Hindustan Times* (2021), <https://www.hindustantimes.com/india-news/120-crore-fine-imposed-on-tribal-man-for-cutting-2-trees-in-mp-s-raisen-101619642338028.html> (last visited Dec 3, 2022).

<sup>16</sup> PTI, "Illegal Cutting Of Trees Near Nainital: NGT Issues Notice To Chief Secretary", <https://www.outlookindia.com/> (2022), "https://www.outlookindia.com/national/illegal-cutting-of-trees-near-nainital-ngt-issues-notice-to-chief-secretary-others-news-241593 (last visited Dec 3, 2022)."

<sup>17</sup> Tapasya, (2022) *Minister Says "New Forest Laws Don't Dilute Tribal Rights. They Do—And Govt Planned Dilution since 2019"* "Article 14, <https://article-14.com/post/minister-says-new-forest-laws-don-t-dilute-tribal-rights-they-do-and-govt-planned-dilution-since-2019-6327ce7b38a42>" (last visited Dec 3, 2022).

Change notified State Governments of Forest Conservation Rules 2022” on June 28 to transfer Union’s responsibility for ensuring that tribal members’ rights to their traditional forestlands are recognized & that their permission is obtained before their forests are cut down.<sup>19</sup>

The most important resource for tribal people is “land.” Their social, economic, & political status is derived from land. A huge number of indigenous communities all over the world are directly dependent on the forest for their livelihood.<sup>20</sup> There is no suitable legislation to prevent states from buying land for public interest purposes.<sup>21</sup> Corporate entities purchase land to serve public interest by paying off these elected officials. Human & environmental rights are violated as a result<sup>22</sup>. Act will be read in addition to other laws, not in derogation of them, as stated in section 13 of FRA. Because Indian Forest Act has not been amended, there is a contradiction when FRA<sup>23</sup> is implemented (*hereinafter* referred to as IFA). harvesting of non-timber forest products or fuelwood is a right under FRA but is illegal under IFA. court ruled in “*Threesiamma Jacob v. Department of Mining*”<sup>24</sup> that State owns subsurface minerals. “Right to life: *right to enjoyment of pollution-free water & air for enjoyment of life*,”<sup>25</sup> is threatened by mining itself.

### III. VEDANTA & ACKNOWLEDGMENT OF RIGHTS OF FOREST INHABITANTS

#### A. Introduction

Orissa is home to *Dongria Kondh, Kutia Kandha*, & a few other tribes. people of tribes mentioned above are ones who created *Niyamgiri Hills*, & *Niyam King* is their king. Orissa Mining Corporation & Vedanta group of enterprises intended to launch a bauxite project in mines. initial violence erupted when locals opposed their request to use forest areas for bauxite ore land mining. According to Supreme Court, businesses must implement a “*repair package*” to approve mining project. Stage-I forest clearance was granted to firms. Legally speaking, Gram Sabha can approve or deny planned Bauxite project. Following Forest Rights Act, court deferred to Gram Sabha’s judgment.

#### B. Evaluation of Vedanta case

It was discovered that Orissa Mining Corporation Ltd. did not follow rules for acquiring land. They did not contact locals, so it is unclear how *Niyamgiri Hills*’ ecosystem will be impacted. In order to know whether bauxite mine project violates rights of *Dongria Kondh*, corporates must first obtain their permission. court did not thoroughly study whether there should be restrictions on how Adivasis can express their consent. This violates **Environment Protection Act’s** & Forest Rights Act’s provisions. “*right of ownership of resources*” in forest land is fundamental problem. issue of ownership holds different meanings and value for both state and

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<sup>18</sup> Wire, (2022) "Under New Rules, Centre Can Approve Diversion of Forests Without Consent of Forest Dwellers", *Wire*, "<https://thewire.in/rights/new-forest-conservation-rules-consent-dwellers-diversion>" (last visited Dec 3, 2022).

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Sethi, N., (2014) "Govt may do away with tribal consent for cutting forests", *Business Standard India*, [https://www.business-standard.com/article/economy-policy/govt-may-do-away-with-tribal-consent-for-cutting-forests-114090900008\\_1.html](https://www.business-standard.com/article/economy-policy/govt-may-do-away-with-tribal-consent-for-cutting-forests-114090900008_1.html) (last visited Dec 3, 2022).

<sup>20</sup> “United Nations Permanent Forum on Indigenous Issues, Backgrounder: Indigenous Peoples- Lands, Territories & Natural Resources” (2007).

<sup>21</sup> Fernandes, W., (1998) “Land Acquisition (Amendment) Bill, 1998: Rights of Project-Affected People Ignored”, *Economic & Political Weekly*.

<sup>22</sup> Anurag, A., & Meena, N., (2019) “Juxtaposition between development & tribal rights: a story of determined struggle of Niyamgiri tribes”, *SCC OnLine Blog OpEd*.

<sup>23</sup> Kodiveri, A., (2018) “Wildlife first, people later? Forest rights & conservation – towards an experimentalist governance approach”, 9 *JILS*, 23.

<sup>24</sup> AIR 2013 SC 3251.

<sup>25</sup> “*Subhash Kumar v. State of Bihar*”, (1991) 1 SCC 598.

tribal people. tribals are emotionally connected to land and their livelihood is dependent on it. court admits that State was owned by a “trustee” of people, carrying out its duties following law.<sup>26</sup>

The FRA was passed to solve problem of not guaranteeing a certain & inalienable right to tribal groups whose access of forest is directly linked to their survival.<sup>27</sup> Under **Section 5** of Act, Gram Sabha has both a responsibility & authority over forest management. In PESA, Gram Sabha’s function concerning FRA is described. There is direct link between FRA and authority of gram sabha and panchayat in terms of defining type and scope of dwelling activities **Section 6 of FRA**. Further **Section 13 of PESA Act** entitles gram sabha of protecting & conserving identity & resources of STs & other forest residents. Gram Sabha may approve *Niyamgiri* Hills Bauxite Mining Project. In most cases there is a connection of religious beliefs with the land and once the land is taken by the government it puts a restriction on the religious practices of Adivasi communities as well. While religious right have got a safeguard within the constitution, there are ways in which the state can help the tribals to worship their deities. In this respect, court views Gram Sabha as an official legal authority on par with “Ministry of Environment & Forests (MOEF)”.

We must respect justifications offered by court in cases where it recognized significance of upholding tribal peoples’ traditional & customary rights & gave weight to their cultural & spiritual ties to land & communal resources of land. In “*Narmada Bachao Andolan V. Union of India*”,<sup>28</sup> court argued that while construction of Narmada River dam results in eviction of tribal people, it is nonetheless done for benefit of society as a whole. court acknowledged that removing tribal people from their culture, customs, & traditions was inevitable, but river harvest was necessary for greater good. Although author would prefer to disagree with court’s decision, particularly section where it says that “*the displacement of tribal people can happen for sake of society*,” I passionately disagree with notion, contending that tribal & non-tribal people don’t enjoy an equal playing field. In that situation, it is highly discriminatory to livelihood of tribal people & is done for benefit of most non-tribal people. FRA was passed with express purpose of giving adivasi people a means of subsistence & preventing unauthorized land acquisition. When enforcing tribal people’s rights, there is a disconnect between written & applied law. food, housing, & clothing indigenous people depend on from forest land are all connected to it on a mental, bodily, & spiritual level. Depriving someone of a basic need is a really cruel act. State owes native people same rights that every other person in Indian Territory deserves. court gave Gram Sabha final decision-making authority. *Vedanta* is not a typical case that favors corporations; instead, court recognized & protected rights of tribal people to go beyond understanding their claims & took into account value of biodiversity & their ties to forest areas.

The Orissa State Government, according to critics, has agreements with numerous multinational corporations to grant lands without approval of local population. Although FRA has been passed, it has not yet been fully implemented. These indigenous members receive second-class treatment. tribal members are unaware of laws in place to defend their rights. They believed that these laws limited their rights. We may see how many possibilities they may have encountered while witnessing this circumstance. Therefore, it is imperative to launch an awareness campaign among local populace to help them comprehend their basic rights & right to own & live in forest areas. To avoid businesses in long term that pay state officials & gram panchayat officials into signing contracts.

#### IV. CONCLUSION

The entire nation is witness to conflict between Dongria Kondh tribes. time has come to defend forest inhabitants’ sociocultural & environmental rights from building & development projects that are hostile to people. There is no mention of “*indigenous people*” in Indian law. legislation. Locals are called Adivasis, forest dwellers, & tribal people in various ways. To prevent ambiguity, all concepts are suggested to keep under

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<sup>26</sup> “*Amritlal Nathubhai Shah v. Union Govt. of India*”, (1976) 4 SCC 108.

<sup>27</sup> Bindal, A., (2015) “Resurrecting other of ‘modern’ law: Investigating *Niyamgiri* Judgment & legal Epistemology”, *NUJS Journal of Indian L. & Soc.* (Vol.5: Monsoon), 2015.

<sup>28</sup> (2000) 10 SCC 664.

description of “*indigenous people*.” Any state’s goal is to promote welfare. State works to improve people’s lives, nation’s welfare, & environment’s preservation. Conflicts must not be used as a justification, & state should safeguard rights of socially disadvantaged groups. To put forest dwellers & other non-tribal people on an even playing field & grant them recognition of their rights, I would like to suggest that some amendments be made. A fine of Rs. 1,000 is imposed under **Section 7 of FRA** for failure to comply with Act. Because non-compliant are frequently states, state agencies, or strong non-state actors,<sup>29</sup> liability of amount must be increased.

To prevent people from misusing forest’s resources, it is necessary to introduce a system to identify area’s original occupants. This will help prevent people from misrepresenting themselves as locals. provision that Gram Sabha has authority to make decisions conflicts with PESA Act & FRA. This needs to be changed in PESA or FRA to maintain gram sabha’s significant decision-making authority. A land acquisition bill should be passed to avoid conflict with FRA because FRA’s goal is to protect rights of entire tribal community, whereas Land Acquisition Bill’s goal is economic development. It is crucial to categorize forest dwellers according to their ancestry rather than their “*place*” or “*way of life*.” Indigenous people need to be protected not because they belong to underclass but rather to prevent modern world from encroaching on their way of life.

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<sup>29</sup> Mandal, R., & Sathvik Chandrasekhar, (2017) “Examining Violation of Adivasi Land Rights By Mining Industry

– A Case For Crossing Fence From Anthropocentric To Ecocentric Paradigms”, NLIU LR 66.