



# TRIBAL RIGHTS LOOPED IN GOVERNANCE OF PROTECTED AREAS IN INDIA

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**Abstract**--Traditionally the tribal communities in India have been in coexistence with all the components of forested ecosystems. It is reflected through the customary rights over forest produce and the traditional knowledge including the conservation strategies adopted by various local communities. But scant attention was given by the colonial legal structure and the "right conscious" democratic social parameters during the early independent period to recognize the rights of the forest dwelling communities. Instead, the legislative, as well as institutional mechanisms, tried to subjugate the tribal communities particularly through the activities of forestry and wildlife conservation. The Indian Forest Act, 1927 or the Forest Conservation Act 1980 has not addressed the issues related to the inhabitants of forested landscapes. Similarly, the Wildlife Protection Act of 1972 is also not conscious enough to think about the tribal peoples in protected areas. In order to address this, the Indian Parliament has enacted the Forest Rights Act, 2006 to acknowledge their rights over the forested land along with a view to encourage the participation of the Tribes and other forest dwellers in the conservation and management of the forests. The Act also grants the right of ownership, access to collect, use and dispose of minor forest produces, which includes all non- timber forest products of plant origin. But in between the covetous acts of Ministry of Environment and Forests and Ministry of Tribal Affairs, over the forest rights implementation in protected areas, resulted in negation of proper implementation of such rights in tiger reserves. This lack of integrated approach has resulted in exclusionary approach of conservation in tribal habitats. At this juncture, this paper is seeking convergence on modern notion of participatory conservation through community conserved areas where, the rights of the local communities were recognized under the existing legal structure and coexistence with protecting the livelihood avenues of local communities.

**Key Words:** Tribal Rights, Protected Area, Participatory Conservation, Forest Governance

## INTRODUCTION

The development of the human societies has an indispensable relation with the services of ecosystems. Such an ecological linkage was established ever since the emergence of humankind, with a dynamics of the varied level of dependency and exploitation at different landscapes. The factual observation reveals the advantages of exploitation of the environment and natural resources and its distribution were skewed within the society. This asymmetry has resulted adding up the vulnerabilities to several disadvantaged groups. Politically and economically powerful sections formulated the policies for the subjects of the state and ended up in the negation of rights and required entitlements to the underprivileged for a long time, and which is continuing for several such marginalised sections of the society. Among such underprivileged groups, forest-dwelling communities particularly the tribal community's role became significant since they reside in the forested ecosystem, where the prime notion of environmental sustainability focuses. The whole idea of conservation also emerged in connection with the forests and its components. Forested ecosystems have remained a significant source of exploitation of resources. The services of the forest ecosystems like freshwater availability and pollution free air, biodiversity richness etc. have also been provided benefits to the people and societies live away from forested landscapes. Though the mainstream societal sphere is widely benefited through the ecosystem services and resources from forests, the conditions of life particularly the rights of tribal communities and the ecological linkages between such groups and their forest environment has never addressed with much consciousness. That created a lacuna in legal framework in addressing the issue in an integrated manner.

## LEGAL FRAMEWORK OF FOREST GOVERNANCE IN INDIA

In India, there is no dedicated legal framework for inclusive conservation strategies or for recognizing the rights of the forest dwelling communities except through certain legal and institutional instrumentalities that are in its inception. Mainly the forests and the forestry activities in India are being governed by the Indian Forest Act, 1927 and by the Forest Conservation Act of 1980. The Wildlife Protection Act of 1972 also has its application in the forests which houses the wildlife habitats. Traditionally the tribal communities in India have been in coexistence with all the components of forested ecosystems. It is reflected through the customary rights over



forest produce and the traditional knowledge including the conservation strategies adopted by various local communities. But scant attention was given by the colonial legal structure and the “right conscious” democratic social parameters during the early independent period to recognize the rights of the forest dwelling communities. Instead, the legislative, as well as institutional mechanisms, tried to subjugate the tribal communities particularly through the activities of forestry and wildlife conservation. The Indian Forest Act, 1927 or the Forest Conservation Act 1980 has not addressed the issues related to the inhabitants of forested landscapes. Similarly, the Wildlife Protection Act of 1972 is also not conscious enough to think about the tribal peoples in protected areas. While recognizing the fact that these conservation strategies have some positive implications on the species conservation, but as a whole, it excluded the concerns of several forest dwellers particularly the tribes and their customary rights. Deprivation of such rights and livelihood activities of the tribal communities have resulted in the increase of illegal activities of poaching, logging etc. in the forests because of their assistance to the mafia who deliberately exploited the adverse conditions of livelihood as a mean to get into such activities.

The classification of forests into different categories that created different legal status and governance structure has further divided the already subjugated tribes and their issues in another fold of complexities. In recent times, the anthropocentric notion of development has further enhanced the vulnerabilities of the tribal people. Though there are initiatives taken by the governments, the demands of the tribes and those who advocate for their rights have repeatedly raised voices for the protection and enforcement of the rights of tribes and other forest dwellers. It is also pertinent to address this problem in a much more inclusive manner where the conservation strategies are linked together with the governance of people and wildlife, particularly in protected areas. These forest rights have different dimensions, and different challenges were faced in the different category of forests across the various legal and geographical statuses of forests. Among them, the dynamics of protected areas marks a difference where, the conservation strategies of wildlife are already in force. According to International Union for Conservation of Nature and Natural Resources (IUCN), a Protected Area is a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means to achieve the long-term conservation of nature with associated ecosystem services and cultural values. In India the Wildlife Protection Act, 1972 and the amendments form part of it are the basic legal framework that establishes the Protected Areas. It provides the legal framework for the protection and management of wildlife habitats, prohibition of hunting, regulation, and control of the trade in parts or products derived from wildlife and the aspects of management of zoos. It also establishes different categories of Protected Areas like National Parks, Wildlife Sanctuaries, Tiger Reserves, Conservation Reserves and Community Reserves

In India there are 764 Protected Areas covering the land area of 162024.69 Square Kilometers, which is about the 5% of the total geographical area of the country<sup>1</sup>. Among these areas, National Parks and Tiger Reserves are more strictly protected by law. It prohibits almost all human activities except which are in the interest of wildlife conservation. Grazing and other such activities and interventions were banned in National Parks and Tiger Reserves. Such activities were also regulated to some extent in Wildlife Sanctuaries. The Wildlife Protection Act does not allow for any commercial exploitation of forest produce in both National Parks and Wildlife Sanctuaries, and local communities can collect forest produce only for their bona fide needs<sup>2</sup>. The Wildlife Protection Act has served to protect vital ecological habitat as well as threatened species of plants and animals, particularly from development projects. But its provisions have also displaced many communities that lived on or managed land that was incorporated into a protected area. Villagers were evicted from national parks (which by law do not allow for settlements within them) and from some sanctuaries<sup>3</sup>.

This conventional mode of conservation strategies with the concept of “fencing the forests” has found ineffective in the aspects of conservation as well as in putting restraints on forest dwellers and tribal communities in matters related to the access to forest resources and the entitlement of resources along with the title over the forested land. In order to address this, the Indian Parliament has enacted the Forest Rights Act, 2006 to acknowledge their rights over the forested land along with a view to encourage the participation of the Tribes and other forest dwellers in the conservation and management of the forests. The Act also grants the right of ownership, access to collect, use and dispose of minor forest produces, which includes all non- timber forest products of plant origin.



In recent times the Ministry of Environment and Forests and the Supreme Court of India have played a major role in further complicating this relationship between Protected Areas (PAs) and local people (Rights and Resources Initiative, 2012). In *Centre for Environmental Law v Union of India* [WP(C) 337 of 1995], the Supreme Court issued an order directing the State governments and union territories that the proclamation under section 21 of the Wildlife Protection Act in respect of the Sanctuaries/natural parks within two months and complete the process of in termination of rights and acquisition of land or rights as contemplated by the Act within a period of one year. In their hurry to finish the process, states either ignored a huge number of existing rights or accepted all uses, resulted in the process of settlement of rights, both because of its nature and the haste with which it was carried out, also ignored customary rights and conservation practices<sup>4</sup>.

In February, 2000, the Supreme Court passed an order in *T.N. GodavarmanTirumulpad v. Union of India and Ors*, dated 14.02.2000 and 21.02.2000 in I.A. No. 548 in WP(Civil) No. 202/1995 restraining removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses etc. from any national park or Game Sanctuary. The Court had as its intention, the stoppage of some activities that were obviously destructive and intended for commercial profit. But the MoEF interpreted this to ask for stoppage of all activities, including resource uses for survival and livelihood by local communities<sup>5</sup>, and in furtherance of this, in 2003the Ministry of Environment and Forests, MoEF issued a guidelines stating that, rights and concessions cannot be enjoyed in the Protected Areas, through a letter vide F.No. 2-1/2003-FC dated 20 October 2003 of Ministry of Environment and Forests. Even after this, the Central Empowered Committee (CEC) of the Supreme Court, in a letter dated July 2, 2004 to forest officials of all states and union territories, directed the strict compliance of the Supreme Court's order so that none of the prohibited activities are allowed to be undertaken in protected areas, which resulted in the stoppage of extraction of NTFP from PAs. For hundreds of thousands of people who have no other source of monetary income, this came as a big blow and the Government did not provide any alternative to this sudden loss of livelihoods, threatening already impoverished and marginalized communities with further displacement and dispossession<sup>6</sup>.

#### TRIBAL RIGHTS LOOPED IN THE GOVERNANCE OF PROTECTED AREAS

The history of India reveals the existence of exclusive areas for preservation from the ancient period which were mainly royal hunting reserves, and it continued that tradition in many of the princely states during the colonial rule. The environmental history of India also reflects the role of tribal communities who were engaged in protecting and conserving the plants and wildlife in their habitat. But their rights over the forest land or their coexistence in the forest ecosystem were not recognized by the legal system till recently. They were being forced to move out of the protected areas in furtherance of the exclusive conservation strategies in protected areas which is backed by the judicial sanctity. Though there is a constitutional directive on state under Article 48-A of the Constitution of India, to take endeavours to protect and improve the environment and to safeguard the forests and wildlife of the country, the entire state machinery has treated it exclusively, negating the corresponding responsible duty of the citizens vested under Article 51-A (g) while framing the conservation strategies and programmes. This negation of the people's role and inclusiveness has reflected in the bureaucratic guidelines and governance of the protected areas in India, resulting the alienated feelings on tribes and their duties to protect and take care of their habitat.

The local communities often have unclear or unregistered right to natural resources and lands and they emphasise on the lack of facilities and tried to put forward their argument that the access to basic amenities, transport, health and education facilities, land development, etc. do not reach adequately to villages located inside Protected Areas (PAs). Hence, local communities inside PAs have varying access to natural resources for survival and livelihoods, but often also live in a state of deprivation, poverty and in conflict with PA managers, who usually perceive them as being responsible for the loss of wildlife<sup>7</sup>. The recognised tribal rights also known as the forest rights are considered as the rights of the individual or community rights of the forest dwelling scheduled tribes and other traditional forest dwellers. These rights are the basic rights of the forest dwellers over the forest resources and their habitat. In India, the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, commonly known as the Forest Rights Act, provides the statutory recognition to such rights. Section 3 of the Forest Rights Act provides an inclusive definition of forest rights.



This includes the right to hold and live in the forest land or common occupation or habitation for livelihood, right of ownership to collect, use and dispose of minor forest produce, right of access to biodiversity and community right to intellectual property and traditional knowledge. The statute also incorporates a wider scope to the term forest rights so as to incorporate all other rights of the forest dwellers excluding the traditional right of hunting or trapping or extracting a part of the body of wild animals.

Section 2(b) of Forest Rights Act, 2006, the Act which comes under the domain of Ministry of Tribal Affairs, introduced the concept of “critical wildlife habitats” which are in fact the Protected Areas like National Parks, and Sanctuaries which are established on the basis of scientific and objective criteria, are required to be kept as inviolate using scientific and objective criteria for wildlife conservation as determined and notified by the Ministry of Environment and Forest. But by taking the undue advantage of the delay in the commencement and enforcement of the Forest Rights Act which entered into force on 31 December 2007, the Ministry of Environment and Forests on 25th October 2007, issued the guidelines to notify the critical wildlife habitat which mandates the declaration of critical tiger habitats that can then be made inviolate. In furtherance of this, these tiger habitats are excluded from the purview of the Act and the residents of 273 villages, which were included in the areas notified as critical wildlife habitats, cannot benefit from the provisions of the Forest Rights Act<sup>8</sup> This has resulted in questioning the whole objective of the Forest Rights Act, and the Ministry of Environment and Forests forced to revise their guidelines and on 07th February 2011, issued the revised guidelines for identification/notification of Critical Wildlife Habitats as per the provisions of Forest Rights Act. It prescribes the procedure to be adopted to identify the Critical Wildlife Habitats along with the consultation of forest dwellers in a time bound manner to ensure the resettlement or rehabilitation of the forest dwellers.

The binary system of conservation and community involvement is again popped up as an adversary in participatory management of the Protected Areas through the National Tiger Conservation Authority’s direction dated 28.03.2017 regarding the non applicability of FRA in Critical Tiger Habitats<sup>9</sup>. As per this directive, no rights cannot be conferred under FRA in Critical Tiger Habitats which is notified under Section 38 (V) (4) (i) under Wildlife Protection Act, 1972. This has paused the forest rights activities in protected area, and later withdrawn this notification from the Ministry’s website. It shows the apathy of the administrative mechanism in integrating the conservation and basic rights of the people residing in forests.

## CONCLUSION

Though the forest rights are the part of the statute book, the proper implementation, and recognition of such rights are in its early stage. The Forest Rights Act provides the strongest support for Community Conserved Areas, and for forest-dwelling communities, specified Scheduled Tribes and pastoral communities. However, given the complex nature of land occupation and ownership, as well as the migration and movement of communities, the success of this Act depends largely on it is implemented in each state, and that state’s ability to deal with local complexities.<sup>10</sup>

Decentralized governance already envisaged by the constitutional provisions and the role of gram sabhas need to be empowered in addressing the challenges of community conserved areas. In general, a broad framework enabling conservation and ensuring social justice is important, within which there should be room for site-specific variations. The law must also allow for measures to create innovative financing mechanisms.<sup>11</sup> This can be met by the Carbon Trading, Clean Development Mechanisms and related activities with the support of scientific forest management strategies. Through strengthening the policy and institutional mechanism to boost up such activities already in motion with the Climate change mitigation regime. Afforestation activities and roadmap for sustainable urban habitat systems can be put in place along with it. The ongoing Eco-tourism activities in various protected areas need to be assessed and in light of that the PA management strategies for the country need to be revised taking into confidence of the tribal population.

The involvement of tribes and traditional knowledge of such people should also to be utilised in finding a solution to this problem. The Access Based Sharing regime under the Nagoya Protocol seems to be a pragmatic approach to be dealt with in ensuring effective protective measures to the environment, knowledge system as well as the well being of the tribes resides in forests. This can actually nurture a clear system of coexistence in Protected Areas. The steps to be taken to mitigate the human-Animal conflicts, for that scientific studies on



each PA and appropriate suggestive mechanisms to be taken into account from the scientific community. The law must recognize the importance of site-specific management, and allow for the existence of a variety of institutions and practices. Systems of management and community institutions already in place and operating successfully should be strengthened and supported, rather than supplanted by new statutory arrangements.<sup>12</sup> The customary rights need to be declared by the state in protected areas, and gram sabha's role in this regard need to be protected in letter and spirit. In that way, building up of a composite governance structure will only be able to address the socio-cultural diversity prevails in different areas and only through such activities of confidence and capacity building, the objectives of participatory conservation can be attained.

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