

## Historical Injustice against indigenous people and forest dwellers of India

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### Abstract

*The preamble of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as the Forest Rights Act or FRA) states that the Act was passed to undo the “historical injustice” committed against the forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in the forests for centuries, but whose rights could not be recorded. The question that requires to be answered is whether FRA has succeeded in undoing historic injustice to the scheduled tribes and other traditional forest dwellers. This article will talk about the various Constitutional provisions safeguarding the rights of the tribes, the role of indigenous people in the Indian sub continent, the traditional knowledge of the tribal community and why the FRA had to be framed.*

**Keywords:** indigenous people, historical injustice, rights, traditional knowledge, constitutional safeguards

### Introduction

The 2013 data of Forest Survey of India<sup>1</sup> states that out of the total of 3, 287, 240 sq. km geographical area of India, forests comprise almost 8, 21, 810 sq. km of India’s geographical area, of which 7, 39, 629 sq. km is government owned forest land. India, as being the second largest populated country in the world, is perhaps the abode of maximum number of forest dwellers that amounts to almost 100 million, out of which just more than half belong to tribal communities.

If we talk about the livelihood status of the tribal communities and forest dwellers, the forest dwellers either work as self employed or are daily wage worker. Self employment is generally through collection of minor forest produce and then selling the same in the market. At many times, such minor forest produce is also used for self sustenance.

One of the most understudied branches of both indigenous and environmental law is the legal and environmental concerns pertaining to the tribals of this country. While the laws that govern the forests have mostly ignored the tribes and indigenous forest dwellers and their relationship with the surrounding

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<sup>1</sup> Forest Survey of India (FSI) is an organisation under the Ministry of Environment & Forests, Government of India Its principal mandate is to conduct survey and assessment of forest resources in the country.

environment, the tribals themselves have lived in oblivion. They, however, have been deeply influenced by the government actions and changing laws have affected them which in turn have rippled to other communities as well.

In order to properly channelize the development of the country, the responsibility for the upliftment of the weaker section of the society including the tribals was laid down with the state governments. According to this mandate, the state governments were duty bound to protect the interests of the tribals in the state. While this was a logical step in protection of the tribal interests keeping in mind that a local government can make better decisions to protect the interests of these tribals, in truth the local governments have failed to protect the same. The changes in laws from time to time have lacked credibility and have failed to address the real issues. Various laws, policies, government notifications that were made and issued with regards to the areas on which the tribes have been living for centuries completely disregarded the existence of the tribes. The orders given by local government administrations against the interest of the tribes made a big impact on how the tribes were dealt with. All these changing laws have only tried to drive the tribals' away from their old age way of living, and, hence have never been agreed upon by the tribal leaders causing unrest in these regions. The unacceptance of these changed laws and unwillingness of the tribals to change or accept have led the governments of these states to conduct extensive prior consultations and studies to understand the needs and benefits to these tribals before enacting any laws. The tribals have been taken in to consultation beforehand, rather than made to accept changed laws once made. This has not come easy to the tribes and a lot of efforts have been put by the social activists together with the tribal leaders where the interests and the concerns of the tribes are dealt with and acknowledged. It will not be wrong to say that the state governments have also extended support in many ways to cater to the plight of the tribes. However, those people are very few in the government and often such actions prove to be useless or inefficient.

This however has not always been for the benefit of the tribes and the forest dwellers. It is common knowledge of the complexities pertaining to the socio-conflicts with respect to the tribes and the environment and when it comes to the control over reservation lands, water resources and other economic benefits, then the main tussle between the forest dwellers and government official starts. They often forget that these tribes are also a stake holder when it comes to ownership of these forest lands.

Often the forest department and tribals are at loggerheads with regards to demarcation of the rights of these indigenous tribes. And while these are not small issues, the conflicts range to a number of problem areas.

Tribals and the officials of forest department are involved in incongruity for many years with respect to the rightful ownership of the forest resources. The reasons behind such hostility are:

1. Indigenous people as "encroachers"

The Ministry of Environment and Forests believes that a lot of land demarcated for the forest department, or that is under the jurisdiction of the forest department, is encroached upon by the forest dwellers. Although, while these encroachments have been regularised from time to time by the Indian government in different states, these have never been properly implemented and a lot of resistance has been shown by the forest department in parting with the land that is rightfully theirs.<sup>2</sup> This land accounts for nearly 10 to 30 percent of the total forest land. While there has been no stay on the regularisation of these formed, all attempts made to get these tribals evicted from the forest land failed and resulted in violent clashes from time to time amongst the two groups. Even though law take sides with the forest department, the tribals having no source of a steady income refused to vacate the forest land, leading to severe oppression of these tribals by both law and other agencies. The problem instead of gaining a peaceful

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<sup>2</sup> Kulkarni, Sharad (1979). Encroachment on Forest lands: The Experience in Maharashtra. Economic and Political Weekly, 14(45), pp. 1846-49.

solution has multiplied with more and more tribals getting displaced not only because of forest officials, but also because of construction of dams and defence projects. Moreover industries, both from public and private sector continue to enter the forest areas both for land and cultivation of raw materials. Due to lack of poor implementation of any rehabilitation plans, the tribals have to suffer getting displaced from both forest and mainstream alike.

## 2. Growing economy

Defence projects and construction of dams displaced a lot of tribal people leading to them migrating to unknown places. Further, habitation and cultivation in forest areas are allowing industrial complexes in both public and private sectors. The major sufferers in such cases are the tribals as these developments are happening in tribal areas. Also lack of proper rehabilitation programs for these tribes and the poor implementation of such programs have lead to more and more injustice committed against them. Earlier prior to the year 2006, once a forest land was notified for development projects like for mining, etc., the tribes were immediately asked to vacate the land without giving them any opportunity to plead their case or show any proof of their generation long settlement. If the tribes refused to vacate the land, a lot of atrocities were committed against them from the side of the state government and no help was extended to them from any side. Perhaps that is the reason why the problem of Maoists and Naxalites<sup>3</sup> exists today.

## 3. Forest produce for self consumption

Tribal communities especially those dependants on the forest due to their proximity to the forest are entirely dependent on collection of number of commodities from the region for self consumption. These include fuel wood, fodder for cattle and timber for construction. Besides this the tribals are also dependant for food items fruits and berries, small game and fish where ever available. The knowhow of the medicinal plants also provides a source of income for these tribals. In the recent past due to deforestation the availability of these items has severely been hampered. The plantation of teak wood and other revenue yielding species have also reduced the natural resources in these forest areas on which the tribals are dependant.

## 4. Non timber forest produce

According to the forest department the tribals' dependant on the forest region contributes hardly anything of benefit to the economy. However for the tribal, non timber forest produce or minor forest produce is one of major avenues of income and source of livelihood. It is estimated that employment for nearly 28-30 million people is generated each year and has a potential for nearly 40 million only working to gather the minor forest produce.<sup>4</sup> However severe restriction on collection of certain items like for example tendu leafs from these non forest items has reduced sources of income for these tribes. Rapid deforestation has also reduced the production of several items of these forests. Moreover, if one law allows collection of minor forest produce, exactly at the same time another law bars them from collecting the same minor forest produce. This makes it very difficult and almost impossible to the indigenous people to make the forest official understands which law to follow.

## 5. Rehabilitation schemes for the tribes

There have been hardly any projects for the benefit of the tribals and even basic infrastructure like roads, electricity and small dams for water conservation are hard to come by for these tribals. While bigger projects get central government clearance, smaller projects like those for the benefit of tribals are often delayed due

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<sup>3</sup> Community of people fighting for the rights of poor farmers and landless labourers, through violence and arms, mostly in Indian states of Bihar, Madhya Pradesh, Orissa, and Andhra Pradesh.

<sup>4</sup> Guleria, Amar, & Gupta, Tirath (1982). *Nonwood Forest Products in India: Economic Potentials*. New Delhi: Oxford and IBH Publishing Company.

to want of sanctions that became mandatory after the passing of forest conservation act in 1980. After the amendment of the act in 1988 it became particularly difficult for any of these projects to get sanctions and this has led to severe hampering in implementing any of these small scale projects.

#### 6. Forest villages

Indian Forest Act that came in to effect in 1927 declared that all land not claimed by private individuals of agencies shall be deemed as forest land classifying them into reserve, protected village forests. To rehabilitate these village forests the government offered them land for cultivation and jobs related to these areas. Although a number of these villages were established, however, the land given for cultivation was purely on temporary basis with forest administration looking after the development of these villages. Also, the tribes when rehabilitated in a new piece of land, it did not mean that they will continue to do whatever they did to make their livelihood before they were displaced. This means that if they were collecting minor forest produce of one form in the forest where they were living before, it was at many times difficult to continue doing so at the new place where they were shifted because of non availability of similar kind of minor forest produce or perhaps the soil or the flora was not of a similar nature. The lack of support or proper guidance or training to the tribes to get used to the new means of livelihood rendered the concept of forest villages as inefficient.

#### 7. Protected areas

The protected forest encompasses approximately 5 percent of the total land mass in India. These have been classified into national parks, wild life sanctuaries and protected parks. The Wild Life Protection Act of 1972 (hereinafter referred to as WLPA) made provisions for the governance of these protected forests since the year 1972. The WLPA was established to deter the misuse of the forest areas by residents of these forest villages and put in place several restrictions on the residents of these villages. While the land was given on temporary basis initially, efforts made by the government to reclaim these lands were met with taut struggle that often resulted in violent conflicts. Under firm pressure both from the World Bank and other environmental agencies, the government had further tightened restrictions banning a number of animals from being hunted which have been included in the WLPA. A number of other activities were been banned resulting in poor or slow development of these areas. The land given to the tribals in 1927 stated clearly that the land was on a temporary basis, and after India gained independence in 1947 these villagers realised that the lack of basic infrastructure was predominant in these protected areas. These villagers were not entitled for any loans since they did not have any title deed of the land.<sup>5</sup>

The Forest Rights Act 2006 (FRA) was set up as a step to fulfil governments' promise of administration of these villages. The act clearly mentions that the administration will take all steps to reconcile with the villages and work on the objectives of economic growth and environmental conservation, working closely with the tribals solely dependent on these forests.<sup>6</sup> The act was solely put in place with the objective of democratising forest management and its governance. The government finally recognised the rights of these communities and declared that the tribes are important part of the forest and they have equal rights over the forests as do the government. This Act made provisions for the members of these communities to be included in the governance with the formation of forest bureaucracy.

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<sup>5</sup> M. Gangte, Priyadarshni. (2010). Applicability of Tribal Forest Act and Traditional Forest Rights to the Kukis in Manipur, Retrieved September 10, 2013, from <http://kukiforum.com/2010/04/applicability-of-tribal-forest-act-and-traditional-forest-rights-to-the-kukis-in-manipur-2/>.

<sup>6</sup> M. Gangte, Priyadarshni. (2010). Applicability of Tribal Forest Act and Traditional Forest Rights to the Kukis in Manipur, Retrieved September 10, 2013, from <http://kukiforum.com/2010/04/applicability-of-tribal-forest-act-and-traditional-forest-rights-to-the-kukis-in-manipur-2/>.

While the FRA was brought in place for the benefit of these tribals, however, even as lately as until August 2013, it is still debatable if the Forest Rights Act is properly implemented until now or not.<sup>7</sup> After two years of implementation of the act it was said in the parliament by the Ministry of Tribal Affairs that it was unable to maintain demographic details of the tribals residing in the forest areas. Why was it so, asked many social activists? Did this mean that the government had no idea that how many such people were there or who was dependant on forests for their livelihood or their impact on the forests as a whole? It thus becomes pertinent to address such issues by citing actual examples of the problem areas, to identify where these problem areas are starting from and the various overlapping and contradictory provisions of different acts governing the similar areas of administration especially with relation to the tribal areas.

### Salient Features of FRA

The Act governs-

1. Scheduled Tribes<sup>8</sup>
2. Indigenous People or traditional residents of forests
3. Non-Tribal Forest Dwellers

### Scheduled Tribes

Ministry of Tribal Affairs, Government of India, states that, "Article 366 (25) of the Constitution of India refers to Scheduled Tribes as those communities, who are Scheduled in accordance with Article 342 of the Constitution. This Article says that only those communities who have been declared as such by the President through an initial public notification or through a subsequent amending Act of Parliament will be considered to be Scheduled Tribes. The list of Scheduled Tribes is State/UT specific and a community declared as a Scheduled Tribe in a State need not be so in another State/UT. The essential characteristics for a community to be identified as Scheduled Tribes are-

1. Indications of primitive traits;
2. Distinctive culture;
3. Shyness of contact with the community at large;
4. Geographical isolation; and
5. Backwardness<sup>9</sup>

### Understanding the term indigenous

The term indigenous is not defined by any official definition since it denotes local habitants whose habits and lineage differ from area to area, it has not been defined. However, the term has broadly been based upon a system that is based on the following:

1. Self- identification as indigenous peoples at the individual level and accepted by the community as their member.
2. Historical continuity with pre-colonial and/or pre-settler societies
3. Strong link to territories and surrounding natural resources
4. Distinct social, economic or political systems

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<sup>7</sup> Rajshekhar, M. (2014). Is the Forest Rights Act being implemented well?, Retrieved September 15, 2014, from [http://articles.economictimes.indiatimes.com/2014-08-13/news/52768180\\_1\\_forest-rights-act-other-traditional-forest-dwellers-the-fra](http://articles.economictimes.indiatimes.com/2014-08-13/news/52768180_1_forest-rights-act-other-traditional-forest-dwellers-the-fra)

<sup>9</sup> Ministry of Tribal Affairs, Government of India. Scheduled Tribes: Introduction, Retrieved October 16, 2014, from <http://tribal.nic.in/Content/IntroductionScheduledTribes.aspx>.

5. Distinct language, culture and beliefs
6. Form non-dominant groups of society
7. Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

### **Non- tribal forest dwellers**

Non- tribal forest dwellers are those who are residing *in* forests for 75 years or more or for three generations prior to 2005, where one generation is considered to be 25 years. They thus will be eligible to claim land on which they have been residing if they can prove their residence through supporting official documents. The non- tribal forest dwellers normally are dependent on forests for forests for fuel, fodder and agriculture.

### **Tribal Habitat in India**

India is known to be the largest indigenous population in the world. According to Census 2001, the indigenous population comprise of nearly 8 percent or 84.15 million people. The Forest Survey of India published 'State of Forest Report 2009', that recorded an increase of 0.18 million hectares of forest cover that was mainly recorded in hilly and tribal areas of the country. This piece of information indicates that tribal and forest dwelling communities live in close harmony with their habitat. They have been following practices that not only have resulted in sustainable use of forest but also regeneration of the forest area.

According to Forest Survey of India Report of 2002, close to 147 million villagers live in and around forests and another 275 million villagers depend heavily on forests for their livelihoods. Additionally, 170,000 villages with a total population of 147 million have forestland within their village boundaries.

Forest provides the second largest land use in India after agriculture, covering about 641,130 sq km, or 22 percent of the total land area. Such a figure tells us the quantum of forest dependency in India. Almost 200 million people are dependent on forest for livelihood.<sup>10</sup>

In India the major pockets of tribal community are found mainly from Gujarat to West Bengal and in the north-eastern states as against Gujarat and West Bengal where they are not in majority tribals of north eastern states dominate the regional population. Due to their small numbers and lack of mainstream livelihood these tribals have been deprived and exploited. Few policies that have been made suffer largely from influence of India's colonial past.

Most tribal populations have always relied upon forests and even today live in close proximity to trees. It is for this reason that indigenous was often referred to as *jangali*, a derogatory term. These indigenous living in and around forests consider these forests as their own property just like any pastoralist would consider grasslands as his own that he uses for grazing of herds. Even today, North East India, jungle tracks demarcate various areas governed by different tribes. Members of other tribes are not allowed to collect fuel wood of grazed cattle beyond these boundaries and ownership of these forests is generally acknowledged by respective tribes. The tribals have largely been dependent on these forest areas for fish, fodder and fuel and have considered preservations of these resources as their own. It is due to this ownership that these areas have been well preserved and ecologically maintained.

After independence, the Indian government tried to bring these tribals into the mainstream lifestyle and formulated policies for elimination of exploitation of these tribals. Various reservation policies were made. However, even after forty years of independence, they have been deprived and have lost their sense of ownership over these forest areas.

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<sup>10</sup> Archana Vaidya. (2011). A history of forest regulations, Retrieved July 18, 2013, from <http://infochangeindia.org/environment/backgrounder/a-history-of-forest-regulations.html>.

## Culture and Knowledge

Indigenous people have their own distinctive culture, languages and knowledge systems. Since they have inherited the knowledge systems that are closely related to sustainable management of forests it comes naturally to tribals when it comes to sustaining natural resources. It is in their culture and they give fundamental importance in valuation of their ancestral land. They hold their own concepts of development and prioritize them according to their need. Much is common amongst these indigenous societies such as lack of political representation and participation, poverty, economic exploitation, lack of basic services, and social discrimination. Despite their different cultures and common problems, these tribes strive for recognition, right to land and natural resources.<sup>11</sup> Environment has been defined as the surroundings in which any living being exists. It is widely known that today's habitats were all covered in forests, rivers, mountains or deserts. For any living being to, he or she had to be dependent on the resources provided by these surroundings. In most societies, especially those living centuries ago, referred to their surroundings as Mother Nature who was the provider of all natural resources. It believed it was important for these natural resources to be protected as it was the provider of their livelihoods. This led to many cultural practices that envisaged the protection of these natural resources.

As time progressed and with the development of new technological innovations, the impact on nature that at one point was hardly anything to consider, became more and more resulting in major environmental degradation.

In old age tradition, the value of mountains, rivers, forests and animals was recognised. A number of forests were related to religious deities and were considered to be their abode. A number of trees like the peepal tree even today is considered auspicious and is always trimmed but never cut down. People in Maharashtra still consider banyan tree to be auspicious and a thread is tied around the trunk of the tree as a religious symbol. Another plant namely the tulsi plant is still prayed to in the mornings each day by a number of households across India daily.

In some regions of the country patches of forests known as sacred groves have been dedicated to local deities especially in the tribal areas. These patches have been earmarked by tribals and are home to many flora and fauna alike. The exploitation of these areas has largely been curbed due to local sentiments attached to these groves.

While there are patches of forests that are dedicated to local deities, a large variety of trees are protected and valued for their produce. Mango tree is one such variety which is largely grown around farms for its fruit and are seldom cut down for fuel even when wood is scarce. Similar tree called mahua<sup>12</sup> is valued for its flowers, oils and is used to make a potent alcoholic drink. Many other plants, shrubs and herbs used in Indian medicines have since then vanished or rapidly vanishing.

Plants such as Tulsi (basil leaves) have often been linked with Indian goddess Lakshmi (goddess of wealth). Similarly peepal tree<sup>13</sup> is associated with Buddhism as Lord Buddha had attained enlightenment under the bodhi tree<sup>14</sup>. In other folklores peepal tree has also been associated with Lord Vishnu and Lord Krishna.

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<sup>11</sup> Secretariat of the Permanent Forum on Indigenous Issues (n.d.). Factsheet. Retrieved September 29, 2014, from [http://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf).

<sup>12</sup> An Indian tree which has fleshy edible flowers and yields oil rich seeds.

<sup>13</sup> *Ficus religiosa* or sacred fig is a species of fig native of Nepal, India, Bangladesh, Myanmar, Pakistan, Sri Lanka, and few parts of China.

<sup>14</sup> A fig tree native to India and SE Asia, regarded as sacred by Buddhists.

Tradition has also held these species high in the ecological chain considering them an important aspect of nature and a support system for nature. They were also considered a basis for the local support system bringing harmony to life based around them. These traditions however with time have lost their effectiveness with emergence of modern science taking the frontier. The exploitation of natural resources has been the major culprit when comes to science in the name of progress.<sup>15</sup>

History further mentions that during the Muslim invasion a large number of people took refuge in forests and thus began a phase of migration in to the forests where as a large amount of forests were cleared away to make way for the settlements. The invaders on the other hand were keen hunters and therefore to have sport had to have forests. They ensured that trees in the area were preserved and forest ecology stayed intact. The Mughals had aesthetic sense and took interest in planting trees and gardens in various part of their kingdom. Till date gardens planted by the Mughals are visible on the Indian soil providing home to local plants and animals.<sup>16</sup>

### **Constitutional Support**

The Constitution of India, in Article 342 under the fifth schedule gives the president the power to specify tribes, tribal communities or groups that can be deemed as Scheduled tribes in various states or union territories. However, he is bound by the Constitution of India and changes can only be made by an Act of parliament. The first list came out in 1950 and was modified twice in 1956 and 1976. The president on the advice of the governor can generally declare certain areas as Scheduled areas whereby the parliament amend the law accordingly. It is assumed that these areas will mostly be inhabited by Scheduled tribes. As it did not happen as it intended, therefore the list therefore has been amended from time to time.

Since it is difficult to keep amending these lists time and again, there are many areas that are not in these Scheduled areas but hold a significant Scheduled tribe population as against areas that hold less than 15 percent of tribal population and still a part of this list

The sixth schedule of the Constitution of India has made provisions for the administration of the Scheduled areas as autonomous entities and thus acts according to the customary laws of the region. However, it is important to note that only 10 percent of the schedules tribal population of the country lives in those Scheduled areas.

### **Tribals as *Encroachers***

Due to modernisation and arrival of large scale projects in areas sectors such as industries, mining and irrigation, the problem of tribals getting affected by such development projects are manifold. While the government developed these projects, they totally ignored the difficulties the tribal in the area would face. These tribals have been dislocated and have not been compensated for the problems they were forced to face. Not only they lacked skills to lead an alternative lifestyle, the government took little efforts to relocate or retrain these tribals. Due to this inactiveness on the part of the government, has made the role of voluntary agencies imperative in these areas.<sup>17</sup>

The tribals in the region who have been leading a peaceful life till now were faced with a new situation where modern industries led to exploitation of forests and took away the livelihood from these tribals. These

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<sup>15</sup> Bharucha, Erach (2004). Textbook of Environmental Studies for Undergraduate Courses. University Press.

<sup>16</sup> The Energy and Resources Institute. History of forests in India, Retrieved January 5, 2014, from <http://edugreen.teri.res.in/explore/forestry/forest.htm>.

<sup>17</sup> Sachchidananda. (1997). *Integration of Endogenous Cultural Dimension into Development*. Retrieved July 26, 2013, from [http://ignca.nic.in/cd\\_05019.htm](http://ignca.nic.in/cd_05019.htm).

industries that were a huge source of revenue for the state government and relied on forest resources brought about changes in the government policies. The government to regulate harvesting of timber and other products designated these forest areas as reserved forests. The tribal communities that were living in these areas were either evicted or were no longer able to collect the forest produce they solely dependent upon. This led to conflicts between these tribes and the state governments. There have been a large number of revolts by the indigenous people in these regions due to this. What added fuel to fire were these tribals not been able to collect even a little amount of fuel as against the government contractors falling hundreds of trees. This enraged the tribals who till now had considered these forests to be their own property. In the recent years many projects which have been commissioned have not only changed the character of forests but also have made the life of the original forest dwellers much more difficult. No longer do these forests provide any raw materials for the local tribesmen or any food items that were so important for the survival of these local tribes. Cash crops like teak, eucalyptus and various coniferous trees have replaced the original fruit bearing trees that so long thrived in these areas.<sup>18</sup>

The Centre for Science and Environment (CSE), a well-known New Delhi-based environmental organisation, is quite active in holding campaigns whereby they focus on the problems related to environmental degradation because of growing mining industry that ultimately results in a huge number of dislocations of tribal. These tribal are then not provided with any rehabilitation policies which ultimately lead to them moving to unknown areas with no help with relocating or rehabilitation from the local or state governments.<sup>19</sup>

The National Mineral Policy 2008 made great recommendations and suggestions for a humongous amount of foreign investment whereby such investments had introduced latest technology in India India's mining sector. CSE has greatly opposed such a recommendation.

Although the National Mineral Policy 2008 stated in its policy that provisions for rehabilitation of displaced people will be made and will be clearly outlines, however, it failed to explain or state how such provisions will be made and what kind of provisions will be ultimately addressed.

The Government of India in the year 2000 allowed partial control of foreign direct investment in mining through few amended policies because of rapid growth of urbanisation and economy. This was the first nail in the coffin where restlessness throughout the country started to show. The situation became out of control when in 2006, the government of India amended the mining policy in 2006, whereby it allowed hundred percent foreign direct investments in the mining sector in India. This allowed the already eagerly awaiting foreign investors to enter Indian market as they saw India as potentially mineral rich and wanted to exploit the rich mineral heritage and culture in the country. The whole idea of allowing foreign direct investment in the mining sector bore no fruits as it was observed and seen that even with the money coming in from westerners, the production of minerals only contributed to 2.5 percent to the country's GDP. This was a much smaller figure than as anticipated and such revenue could not add to the growing revenue of the government.

The problems that arose due to such foreign direct investments in the mining areas led to huge displacement of the tribal without considering their rights over the forest lands and thereby leading to mass displacement with no rehabilitation policies whatsoever.

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<sup>18</sup> Fürer-Haimendorf, Christoph von. (1982). Tribes of India The Struggle for Survival. Retrieved April 15, 2013, from <http://publishing.cdlib.org/ucpressebooks/view?docId=ft8r29p2r8&chunk.id=d0e1668&toc.depth=1&toc.id=d0e1668&brand=ucpress>.

<sup>19</sup> Centre for Science and Environment, New Delhi (n.d.). Rich Lands, Poor People – Is Sustainable Mining Possible?, Retrieved March 12, 2013, from.

### **How tribals can make claims to the title on the land**

In order for the forest dwellers to claim the title of the land, they should fulfil the following requisites the date of the passing of the FRA in the year 2006-

1. They should be adivasis (tribal)
2. Permanent residents of the forests
3. Must be cultivating forest lands
4. The forest land must be their main source of livelihood
5. They must be in possession of forest land on and before 13.12.2005
6. They must be in possession of forest land on 1.1.2008 (when the FRA came into effect)

With the passing of such an act, Tribal become the owners of any land given by the Government or any public body on lease or grant, even if they do not hold possession of that land. The claimed land can be put in the name of husband and wife. However, such a claimed land can pass only to heirs, and it cannot be sold. Apart from conferring on them these rights, adivasis were made responsible to protect and conserve nature in the form of a duty.

The other rights in the form of community rights conferred upon them were:

1. Grazing rights
2. Right to obtain woods for houses and agriculture
3. Firewood
4. Right to collect minor forest produce like honey, medicinal plants, tendu leaves
5. To hunt small animals like rabbits, etc. (which are not in prohibited list)
6. Fishing
7. Cemetery, etc.

It may be interesting to mention that such “rights” prior to passing of FRA was seen as encroachment on the part of the adivasis and they were immediately asked to leave and vacate those parts of the forests. However, it is not wrong to say that even today, the adivasis, although being protected by FRA, are still treated as encroachers, but not publically. Why is it so? Due to existence of contradictions and overlapping of the related forest acts and continues tussle between the Ministry of Environment and Forest and Ministry of Tribal Affairs, implementing of FRA is rendered ineffective.

The nodal agency for smooth implementation of FRA is Ministry of Tribal Affairs (MoTA). But the practices show that still the order of law is governed by the Ministry of Environment and Forests (MoEF).

### **Constitutional support to Scheduled tribes**

The Constitution of India promotes democracy and treats every citizen of India, irrespective of their caste, sex, creed, customs, religion, etc, as equal. However, since before independence, the discrimination against the backward classes of sections is existing. Therefore, after independence of Indian in 1947, the first Constitution of India gave support to the backward classes of sections, who required special protection for leading a life of respect and dignity by it citizens and also by the state. Such backward sections were safeguarded under the Constitution of India based on their religion, language, culture, traditions, etc. The Scheduled tribes are scattered in various parts of India, namely the North-Eastern region, Madhya Pradesh, Bihar, Orissa, certain parts of Gujarat and the hilly regions of most states. Such tribes practice their own traditions, religion and speak their own languages even until today.

To safeguard the identity of the Scheduled tribes, the Indian Constitution granted protective rights to the tribal. The articles in the Constitution that governs the Scheduled Tribes are mentioned in Schedule V and Schedule VI of the Constitution of India. The provisions relating to the administration and Control of the Scheduled Areas and Scheduled Tribes in any state, other than Assam, Meghalaya, Tripura and Mizoram

are contained in the Fifth Schedule to the Constitution. There are no institutional autonomous bodies in the Fifth Schedule areas. However, under PESA Act, 1996, administration at the local village level, i.e. Gram Sabha and Gram Panchayat, acts local bodies of self-governance.

### **Types of Constitutional rights conferred on Scheduled castes and Scheduled tribes.**

1. Educational and Cultural Rights (Articles 15(4), 29, 46 and 350)
2. Social Rights (Articles 23 and 24)
3. Economic Rights (Articles 244 and 275)
4. Political Rights (Articles 164(1), 243, 330, 334 and 371)
5. Employment Rights (Articles 15(4), 16(4) and 16(4A))

### **To Protect Educational and Cultural Rights of Tribals**

1. Article 15(4): Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.<sup>20</sup>

In other words, it states that socially backward classes of people as in Scheduled Castes and Scheduled Tribes must be safeguarded and protected and hence reservations in all the government organisations must be provided to them. Such a protection also extends in the education sector where the special laws for relaxation of minimum qualifying marks for such a community was to be provided.

2. Article 29: Protection of interests of minorities

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.<sup>21</sup>

3. Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.<sup>22</sup>

4. Article 350: The Constitution also gives right to every person to submit a representation for the redress of grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the States as the case may be.<sup>23</sup>

### **To Protect Social Rights of Tribals**

1. Article 23: Prohibition of traffic in human beings and forced labour

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them<sup>24</sup>

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<sup>20</sup> Constitution of India: Article 15 (4)

<sup>21</sup> Constitution of India: Article 29

<sup>22</sup> Constitution of India: Article 46

<sup>23</sup> Constitution of India: Article 350

<sup>24</sup> Constitution of India: Article 23

2. Article 24: Prohibition of employment of children in factories, etc : No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment Provided that nothing in this sub clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub clause (b) of clause (7); or such person is detained in accordance with the provisions of any law made by Parliament under sub clauses (a) and (b) of clause (7).<sup>25</sup>

### **To Protect Economic Rights of Tribals**

1. Article 244: Administration of Scheduled Areas and Tribal Areas

(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam Meghalaya, Tripura and Mizoram.<sup>26</sup>

2. Article 275: To promote the welfare of the socially backward classes or raising the level of administration level in the Scheduled areas, the powers are given to the parliament to make special grants to the States to undertake schemes of development in those Scheduled areas.

### **To Protect Political Rights of Tribals**

1. Article 164(1): The chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor: Provided that in the State of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.<sup>27</sup>

2. Article 243, 330 and 334: Here, the reservation of seats of the Scheduled castes and Scheduled Tribes in the House of the people or commonly known as the *panchayats*<sup>28</sup> are mentioned.

3. Article 371: The north eastern Indian states such as Sikkim, Tripura, Meghalaya, etc. are governed under this article.

### **To Protect the Employment Rights of Tribals**

1. Article 15(4): It provides that the states have the rights to reserve seats for the Scheduled tribes and Scheduled castes in the educational institutions.

2. Article 16(4) and 16(4A): It provides that the states have the rights to reserve seats for the Scheduled tribes and Scheduled castes in the employment sector.

### **Fifth and Sixth Schedules of the Constitution of India**

1. Article 244-A: It empowers parliament to form an autonomous State comprising certain Tribal areas in Assam and create local legislature or Council of Ministers for such States.

### **CONCLUSION**

After seeing above the various protections that is granted to the indigenous people in the Constitution of India, why it is so that even today the articles provided in the Constitution governing the Scheduled Tribes and Scheduled Castes is not properly implemented. With respect to The Scheduled Tribes and Other

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<sup>25</sup> Constitution of India: Article 24

<sup>26</sup> Constitution of India: Article 244

<sup>27</sup> Constitution of India: Article 164 (1)

<sup>28</sup> Local self government institutions at the village level.

Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, this act is an extension to the intention behind the Constitution to safeguard and protect the rights of the tribal. However, overlapping laws and contradictory sections with reference to tribal governance in the country renders the smooth functioning of FRA as ineffective. In my opinion, only when there is a balance and union of concerned agencies, namely MoTA and MoEF, then only there will be a long lasting effective and smooth implementation of FRA. Then only we can claim the success of the Constitution thereby acknowledging that the indigenous people are an integral part of the country and providing them their rightful place in the community. A deep study is further intended to be made with respect to the overlapping laws, namely between Forest Rights Act 2006 vis a vis The Wild Life (Protection) Act, 1972 (for protected areas and protection of certain species), The Indian Forest Act, 1927 (for any forest land or waste land being declared under the Act as a category of forest), The Biological Diversity Act, 2002 (for biological resources), Panchayats (Extension to Scheduled Areas) Act, 1996 or PESA (it enable the local government to self govern their natural resources), and the The Forest Conservation Act 1980 (for forest land declared as forest by FD or falling under dictionary definition of forest).

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Constitution of India: Article 15 (4)

Constitution of India: Article 29

Constitution of India: Article 46

Constitution of India: Article 350

Constitution of India: Article 23

Constitution of India: Article 24

Constitution of India: Article 244

Constitution of India: Article 164 (1)