RIGHT TO LAND OF INDIGENOUS PEOPLE IN INDIA

Dissertation submitted to the National University of Advanced Legal Studies, Kochi, in partial fulfilment of the requirements for the award of L.L.M Degree in Constitutional and Administrative Law.

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CERTIFICATE

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DECLARATION

I declare that this dissertation is titled 'Right to Land of Indigenous People in India' researched and submitted by me to the National University of Advanced Legal Studies in partial fulfilment of the requirement for the award of Degree of Master of Laws in Constitutional and Administrative Law, under the guidance and supervision of Dr. Namitha K L, is an original, bon-fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

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Anamika MJ

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TABLE OF ABBREVIATION

AfCHPR	African Court on Human and People's Rights
AIR	All India Report
Art.	Article
BALCO	Bharat Aluminium Company Ltd.
CBD	Convention on Biological Diversity
CEC	Central Empowered Committee
CFR	Community Forest Rights
CONST	Constitution
CWH	Critical Wildlife Habitat
Et al.	And others
etc	Etcetera
FCA	Forest (Conservation) Act, 1980
FRA	Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
FRC	Forest Rights Committee
Guj.	Gujarat
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
IFR	Individual Forest Rights
ILO	International Labour Organisation
ITPC	Indigenous and Tribal Peoples Convention
JFPM	Joint Forest Planning and Management
Ltd.	Limited
MoEF	Ministry of Environment and Forest
NCA	National Commission on Agriculture
NWDT	National Water Dispute Tribunal

OAS	Organisation of American States
PESA	Panchayat Extension of Scheduled Areas Act, 1996
POSCO	Pohang Steel Corporation
PVTG	Particularly Vulnerable Tribal Group
SC	Scheduled Castes
SCR	Supreme Court Reports
SDLC	Sub-Divisional Level Committee
ST	Scheduled Castes
TFD	Traditional Forest Dwellers
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous People
UNTS	United Nations Treaty Series

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4.	Apirana Mahuika v New Zealand, CCPR/C/55/D/547/1993.
5.	Balco Employees Union v Union of India and Ors., AIR 2002 SC 350
6.	Banwasi Seva Ashram v State of Uttar Pradesh, (1987) 3 SCC304.
7.	B D Sharma v Union of India, Supreme Court of India, Writ Petition (Civil) no. 1201 of 1990
8.	Bombay Natural History Sty & Ors. v Union of India, Writ Petition (Civil) 514/2006.
9.	Calder et al v Attorney General of British Columbia, 1973 CanLII 4 (SCC).
10.	Centre for Minority Rights Development & Minority Rights Group International on behalf of the Endorois Community v. The Republic of Kenya, (2010) 4 Afr. Hum. Rts. Rep. 1.
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17.	Manchegowda v State of Karnataka, 1984 AIR 1151.
18.	M K Ranjithsinh & Ors. v Union of India, Writ Petition (Civil) No. 838 of 2019.
19.	Moiwana Community v Suriname, Inter-Am. Ct. H.R. (ser. C) No. 124 (June 15, 2005).

20.	Narmada Bachao Andolan v Union of India, Writ Petition (Civil) 328 of 2002.
21.	Orissa Mining Corporation Ltd v Ministry of Environment and Forests, (2013) 6 SCC 476.
22.	Pradeep Krishen v Union of India, AIR 1996 SC 2040.
23.	Pradip Prabhu v State of Maharashtra v Others, Write Petitions (Civil) No. 1778 of 1986.
24.	P Rami Reddy v State of Andhra Pradesh, 1988 AIR 1626.
25.	R v Sparrow, [1990] 1 S.C.R. 1075.
26.	Samatha v State of Andhra Pradesh, AIR 1997 SC 3297.
27.	State of Kerala v Gwalior Rayons, AIR 1973 SC 734.
28.	State of Madhya Pradesh v Narmada Bachao Andolan, AIR 2011 SC 1989.
29.	St. Catherine's Miling & Lumber Co. v The Queen, 13 SCR 557 (1887).
30.	Te Renanganui o Te Ika Whenua Inc Society v Attorney General, CA 124/93 [1993] NZCA 218.
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33.	T N Godavarman Thirumalpad v Union of India, (1997) 2 SCC 267.
34.	Wik v Queensland, [1996] HCA 40.
35.	Wildlife First v Ministry of Forest and Environment, Writ Petition (Civil) No. 109/2008.

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CHAPTER 1

INTRODUCTION

Land rights are often associated with property rights and often discussed extensively in that line; land rights usually fall within the categories of land laws, land tenure agreements, or planning regulations; they are rarely associated with human rights laws and need to be seen as human rights.

Indigenous people have a strong relationship with their land, and possession and access to the land are preconditions for them to survive and enjoy their fundamental rights. India has a diverse tribal population. The Constitution of India seeks to protect the tribal interests and their autonomy and rights to land. There have been attempts to protect the land rights of the Indigenous population through various legislations. The extent of such protection and the success of the efforts will be examined in this study.

1. Indigenous people and Tribal groups

The terms indigenous people and tribal people are often used interchangeably. The term Indigenous people is not used in the Indian context for many reasons. The government have continued to deny the use of the term indigenous people claiming that all Indians are indigenous. This view that all Indians are indigenous have been a challenge to define the group in India. In India, the indigenous people, who are original inhabitants are termed as tribals and are often described as Scheduled Tribes. The scheduled tribes which are mentioned in the Constitution are also referred to as adivasis or banvasi in different parts of India.

The Indian Constitution defines tribal people as the scheduled tribes but does not define tribes. Article 342 of the Constitution states that scheduled tribes are "the tribal communities or parts of or groups within tribes or tribal communities.[1]" The President may specify this by public notification. Certain criteria were used to determine the status of tribes, this includes the (i) primitive way of living, (ii) habitation in remote and less accessible areas, and (iii) nomadic habits[2]etc. There have been demands for

[1] INDIA CONST. art. 342.
[2] Hari Mohan Mathur,*Tribal Land Issues in India : Communal Management, Rights and Displacement*,in LAND AND CULTURAL SURVIVAL 193, 201 (Jayantha Perera, Asian Development Book, 2009).

the inclusion of certain groups as scheduled tribes, which are originally not tribes. The World Bank consultation workshop[3] in 1998 has come up with certain characteristics that distinguish tribals from others as the present system of classification of tribes has been criticised as lacking a systematic basis.

2. Land Rights

The relation with the land of the Indigenous population is not limited to ownership; they attach sacred meaning to the land and have cultural value and significance to it. The land becomes part of the spiritual and social identity. A UNDP report has described the indigenous population's special relation with land and suggested that the right to own, occupy, and use land is collective and is not vested on an individual but in a community or a tribe.[4]

It is inevitable to discuss tribal land rights without the cultural connection they have with their land. The displacement from their land would most often result in them losing their community as they tend to be split up during the displacement, and this would make them wounded spiritually and socially.

3. Statement of Problem

The Forest Rights Act is meant to address the long-standing insecurity of tenurial and access rights of forest-dwelling Scheduled Tribes and Other traditional Forest dwellers including those who were forced to relocate their dwelling due to State development interventions. The conflict between the forest dwellers and the State continues as the forest land is used for development, leaving them deprived of their land.

4. Objective

1. To understand and analyze the international Conventions and Laws relating to the right to land of indigenous people.
2. To understand and analyse the laws and rules in India for the protection of indigenous people's right to land.
3. To identify the hindrances to the effective implementation of the law.

[3] World Bank Workshop, 1998
[4] UNDP Report, 2004,.

5. Hypothesis

The existing legal framework for the protection of indigenous land right in India is insufficient in protecting the land right of the indigenous population.

6. Research Question

1. How do international legal frameworks and treaties influence the legal landscape concerning the right to land for indigenous people in India?
2. How are the laws available in India for the protection of the right to land of indigenous people implemented?
3. How does the existing legal mechanism balance land acquisition for development with the preservation of the rights of the indigenous communities?
4. How do forest laws intersect with the land rights of indigenous communities, and what mechanism exists to balance environmental conservation goals with the protection of indigenous land rights?

7. Methodology

The research methodology relied on for the work is purely doctrinal. The researcher have relied on the doctrinal materials available to complete the research. The international conventions and regional tools available have been examined. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 have been analysed in detail and have been relied upon through out the research along with other legislations like Panchayat Extenstion Act, Forest Conservation Act, Land Acquisition, Rehabilitation ans Resettlement Act, 2013 etc. Various judicial decisions have also been relied upon during the research. The study is also based on secondary sources, which includes books, journals, reports of the Law Committion in India, newspaper articles,. Besides, journals, articles and amagaines are also referred.

8. Literature Review

Various Articles relating to the indigenous or tribal rights in India have been examined for the research and it has been understood that the rights of the indigenous communities, referred to as Adivasis, to their ancestral land are crucial. The indigenous land rights are rooted in historical contexts and the implementation of the right is a challenge. There is a research gap in the existing research on the impact of the international mechainsm in the Indian context and the implementation of the laws in place. The rehabilitative measures and the reason for the lack of implementation of the measures must be understoof. The intersectionality of development and protection in terms of displacement of the forest dwelling tribes must also be studied. The writing of Jeremie Gilbert have been relied upon in the intial stages of the research for identifying the research gap.

Jeremie Gilbert in Historical Indigenous People's land Claims[5], have laid down the historical patterns of use and occupancy and corresponding traditional land tenure. The extend of the common law doctrive compared the international law while dealing with the historical arguments are also laid down in this article.

Jayantha Perera in Land and Cultural Survival[6], have dealt with the socio-cultural impact of the land use control and the factors affecting the success of the development projects. The impact of the customary rights over ancestral lands and territories were also discussed with special reference to Asian countries.

Charlene Yates[7], have tried to conceptualise the indigenous land rights in the commonwealth countries. The land rights and the resource management in the commonwealth have been examined in this article.

9. Limitations of the Study

The study have tried to cover various aspects relating to tribal land rights in India. The research work is done with substantial limitation of resources and time.

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[5] Jeremie Gilbert, *Historical Indigenous People's Land Claims: A Comparative and International Approach to the Common Law Doctrine on Indigenous Title, 56* INTERNATIONAL AND COMPARATIVE LAW QUARTERLY, 583 (2007).

[6] Jayantha Perera, LAND AND CULTURAL SURVIVAL THE COMMUNAL LAND RIGHT OF INDIGENOUS PEOPLES IN ASIA, (Asian Development bank)

[7] Charlene Yates, *Conceptualisinf Indigenous Land Rights in the Commonwealth,* 8 AUSTRALIAN INDIGENOUS LAW REPORTER, 96 (2004).

10. Chapterisation of the Study

1. Introduction
2. International Convention and Laws Relating to the Right to Land
3. Right to Land an: Indian Perspective
4. Displacement and Development
5. Judicial Approach: Tribal Land Right
6. Conclusion

11. Scheme of the Study

The study is divided into six chapters. The first chapter discusses the need for the study and its relevance in the current scenario, along with the methodology adopted for the study.

The second chapter relates to the International Convention in place and the laws relating to the indigenous people's right to land. The regional treaties and mechanisms that deal with tribal land rights are also analysed, and laws in certain other jurisdictions, including countries like Australia, Canada, and New Zealand, are examined.

The third chapter deals with the laws in place in India to protect tribal land rights in India. The examination of the legislation is traced back to the colonial era, and the evolution of the law to what we have now is laid down. The limitations of the implementation of the laws are also examined in this chapter. The chapter also examines certain statutes that deal with rehabilitation in case of displacement of the tribal population from their ancestral property. These laws help us understand the measures by the government in place to protect tribal rights.

The fourth chapter deals with the displacement of the tribal population from their land. The reason for the displacement from their land is identified and categorised into two groups: development and attempts for conservation. Examples of rehabilitation measures taken in case of displacement and the extent of their success are also discussed in this section. There are also examples of land struggles by the tribal population in India, and the results of such struggles are examined briefly.

The fifth chapter examines the judicial decision relating to tribal rights. This chapter is divided into sections dealing with the case before the implementation of the Forest Rights Act and after its enactment. It also deals with cases that deal with development-induced displacement as well as protection-induced displacement. The judicial decisions that have paved the way for the status of the land rights of the tribal community have been discussed separately.

The sixth chapter concludes the discussion and lays down the research findings, suggestions and recommendations for the effective implementation of the Forest Rights Act and the protection of the land rights of the tribal population.

CHAPTER 2

INTERNATIONAL CONVENTIONS AND LAWS RELATING TO INDIGENOUS LAND RIGHTS

1. Introduction

The Indigenous population and their relation with land is not merely limited to the proprietary right or ownership; it goes beyond that. The rights of indigenous people relating to land have existed for some time, but there is not much international backing for the same. International law is based on customs and practices, so a deep dive into the conventions existing related to the same is necessary. In this chapter, different international conventions relating to the same will be explored in detail. The author recognises the effort and instruments in place that address the land rights of the Indigenous people but finds that a deeper understanding of these instruments is necessary to understand the land rights in India for Indigenous groups.

In order to broaden the study, certain regional instruments adopted by different countries are also examined, as it would be beneficial to deal with the Indian legislation in the coming chapters.

2. United Nations Declarations and Conventions

There was no specific recognition of the land rights of the indigenous population as such, but this could be interpreted from the instruments available at the time. The International Covenant on Civil and Political Rights is a prime example of the same. The rights of the indigenous population were not explicitly recognised, but some provisions could be interpreted in that manner. Article 1[8] of the ICCPR deals with people's right to self-determination. This article empowers people to freely determine their political status and pursue their economic, social and cultural development. The right to self-determination can be considered a collective right of the people in question and is important for an effective guarantee of individual human rights. Self-determination thus helps establish the procedural rights of individuals.

[8] International Covenant on Civil and Political Rights (ICCPR) art. 1, Dec. 16, 1966, 999 U.N.T.S. 171.

Article 27 also plays a crucial role in determining the land rights of the Indigenous population, even though it does not explicitly state about the land rights. Article 27 is worded as follows:

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."[9]

As mentioned in the beginning, this article can only be interpreted as concerning the land rights of the Indigenous people as it does not exclusively deal with Indigenous land rights, but it mentions cultural, religious and linguistic rights. This means that it protects minority ethnic, religious, and linguistic groups. One may find it difficult to draw a connection between this Article and land rights, but this can be drawn from the term 'culture'. As mentioned in the introductory chapter, land rights for the indigenous population are not merely ownership, but land has strong cultural significance. Thus, the cultural significance of the land can be equated with the cultural rights mentioned in the Article.

The first document solely focused on Indigenous rights can be traced back to the Indigenous and Tribal Peoples Convention[10], ILO Convention No. 169. This Convention resulted from the general conference of the International Labour Organisation. The convention was held with the understanding that in many parts of the world, fundamental human rights were not enjoyed by the indigenous people as the rest of the population of the State within which they live, and their laws, values, customs and perspectives have often been eroded.[11] The distinctive contribution of indigenous peoples and tribal people to cultural diversity and social and ecological harmony was recognised in this convention.

This convention opened the way for the recognition of land rights as the convention contained specific provisions relating to the land rights of the community. Articles 13-19 of Part II of the Convention deal with land. Article 13 directs that the government shall respect the special importance of the cultures and spiritual values of the peoples

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[9] International Covenant on Civil and Political Rights (ICCPR) art. 27, Dec. 16, 1966, 999 U.N.T.S. 171.
[10] Indigenous and Tribal Peoples Convention (ITPC), June 27, 1989, 1650 U.N.T.S. 383.
[11] Indigenous and Tribal Peoples Convention (ITPC), June 27, 1989, 1650 U.N.T.S. 383.

concerned with their relationship with the lands or territories they occupy or use.[12] The collective aspect of the Indigenous people's relationship with the land can be observed here. The collective rights of the individuals emphasised that the diversion of land to individuals would effectively hinder the exercise of the communal rights of the indigenous people. Article 14 of the Convention can be considered as one of the important provisions as it deals with ownership and possession of the land and recognises the right of ownership and possession of the peoples concerned over the lands which they traditionally occupy, which shall be recognised, and takes the necessary steps to identify these lands and guarantees effective protection of their rights of ownership and possession.[13] Emphasis must be given to the term 'traditionally occupy' as this term distinguishes the property for ownership. Thus, the indigenous people would own the land they occupied, used, and exercised control over. The article specifically mentions the 'rights of ownership and possession' instead of the 'right of ownership and possession.'This plural reference can be considered to be with respect to the collection of rights the person possesses through this article. The rights relating to natural resources are mentioned in Article 15; it suggests that the rights of the people relating to natural resources must be safeguarded. Their occupational rights are protected by way of Article 16. The Convention thus provided an elaborate ground for the recognition of the land rights of the indigenous population.

There were attempts and efforts in other Conventions where the indigenous population was acknowledged. Article 8 (j) of the Convention on Biological Diversity[14], mentions national legislation that is intended to preserve and maintain indigenous practices and local communities' lifestyles.[15] It also promotes the practices that promote application and involvement in sustainable development. By this provision, the convention has acknowledged the importance of the Indigenous community in sustainable development.

After the first document that addressed the indigenous people, it took more than a decade to address the rights of indigenous people. This was done in the United

[12] ITPC, art.13.
[13] ITPC, art. 14..
[14] Convention on Biological Diversity (CBD), opened for signature June 5, 1992, 1760 U.N.T.S. 79.
[15] CBD,art.8.

Nations Declaration on the Rights of Indigenous Peoples, 2007.[16] UNDRIP gave the indigenous people the right to full enjoyment, as a collective or as an individual of all human rights and fundamental rights as recognised under the Charter of the United Nations, UDHR and international human rights law.[17] The spiritual relationship the indigenous people have with the land was addressed in this document. The right of the Indigenous people to maintain and strengthen their spiritual relationship with their traditionally owned or occupied and used land, territories, water and coastal seas and other resources to uphold their responsibilities to future generations was validated.[18] The land and tenurial rights were discussed in detail in the document. This right extended to land and territories traditionally owned, occupied or otherwise used or acquired. The States have the burden to give legal recognition and protection to these lands and territories.[19] This document addressed an array of issues that were overlooked most of the time. Article 27 directs the States to establish and implement a process in conjunction with the indigenous people to recognise traditions, customs and land tenure systems pertaining to their lands, territories and resources. The use of indigenous land for development projects is an issue that affects the land rights of the population. The declaration noted that the Indigenous people have the right to redress by means of restitution and, on failure to do so, just, fair and equitable compensation for lands or territories that have been confiscated, taken, occupied or damaged without their free, prior and informed consent.[20] Compensation can take the form of land, territory, and resources. Article 32 of the declaration also gives the indigenous population the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.[21]

Another important instrument that deals with the rights related to land is the Voluntary guideline on responsible governance of tenure of land, fisheries, and forests in the context of national food security. This guideline is released by the Committee on World Food Security, which is part of the Food and Agriculture Organisation of the United Nations. One of the objectives of the guideline is to strengthen the capacities and operations of implementing agencies, indigenous people, and other communities

[16] United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).
[17] UNDRIP, art. 1.
[18] UNDRIP, art. 25
[19] UNDRIP, art. 26.
[20] UNDRIP, art. 28.
[21] UNDRIP, art. 32

concerned with tenure governance and promote cooperation between the actors. Part 2 of the guideline contains provisions dealing with land rights and responsibilities. Human rights are declared to be universal, indivisible, interdependent and interrelated[22]; the State is given the burden of protecting the civil and political rights of the defenders of human rights of these people, including the indigenous people. The guideline further lays down in detail the policy and organisational framework related to tenure and the delivery of services as well. The States are responsible for delivering services to the people and ensuring coordination between implementing agencies.

Apart from the declarations and conventions mentioned, the Conference of Parties to the UN Framework Convention on Climate Change, which produced numerous climate change agreements, including the Cancun Agreement, Paris Agreement and Green Climate Fund have mentioned the role the indigenous community plays in sustainable development and climate change. The Preamble of the Paris Agreement acknowledged the rights of the indigenous people.

Apart from this, the Glasgow Leader’s Declaration on Forests and Land Use, which was signed by 130 world leaders, recognised the importance of the land tenure security of the Indigenous People, and they were considered to be the central pillar for sustainable development.[23]

3. Regional Treaties and Agreements

Apart from the international instruments we have seen above, regional mechanisms have made attempts to recognise indigenous land rights. Noted contributions are from the Inter-American Commission on Human Rights and the African Charter on Human and Peoples Rights. These attempts will be discussed in this section.

3.1 Inter-American Charter of Social Guarantees

The Inter-American Charter of Social Guarantees recognises indigenous peoples as a special subject of international concern in Article 39.[24] It requires the State in the

[22] Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (Food and Agriculture Organization of the United Nations 2012).
[23] IACtHR, Moiwana Village v. Suriname, Judgment, 15 June 2005, Series C, No.145 (2005).
[24] Inter American Charter of Social Guarantees, OAS Res. XXII.

Inter-American system to take necessary measures to protect the indigenous people's lives and property, "defending them from any extermination, sheltering them from oppression and exploitation.[25] This regional recognition was followed by the Convention concerning the Protection and Integration of the Indigenous Population and Other Tribal and Schmi Tribal Populations in the Independent Countries. The role of the Inter-American Commission on Human Rights can be understood from the cases that have come up before it and the role it has played. Even though the Inter-American Convention on Human Rights does not explicitly deal with indigenous rights, the provisions can be read to protect indigenous land rights. The Awas Tingni case[26]sheds light on communal land rights as the provisions of the convention were invoked in the said case. This was the first time a legally binding international tribunal found a government in violation of the collective land rights of an indigenous people. The case was against the State of Nicaragua for granting a logging license to a Korean lumber company, SOLCARSA. The state claimed that Awas Tingni did not have a legal title to the land even though the Constitution provides equal protection for indigenous communities on the Atlantic coast. The Inter-American Court found that the right to property, as affirmed in the Inter-American Convention on Human Rights, protects the traditional land tenure of indigenous peoples.[27]

Moiwana Community v Suriname[28], dealt with the Moiwana community's right to property and how the State of Suriname failed to conduct an effective investigation to study the internal displacements of the Moiwana community. The Court in its decision stressed the ties of the Moiwana community to their traditional lands which are integral to their identities. The reason for the forced displacement of the Moiwana community was the massacre by members of the armed forces of Suriname which restricted the people from the Moiwana community from their livelihood and subsistence. The court in its decision held that the lack of formal legal title to the territory did not prevent the community from exercising their communal rights. The court recognised the unique and enduring ties that bind Indigenous communities to their ancestral territories. The court in its decision observed that the relationship of an

[25] S. James Anaya & Robert A. Williams Jr., The Protection of Indigenous Peoples' Rights over Lands and Natural Resources under the Inter-American Human Rights System, 14 HARV. HUM. RTS. J. 33 (2001).
[26] The Mayagna (Sumo) Awas Tingni Community v. Nicaragua, 14 Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001).
[27] Ibid. (Mayagna)
[28] Moiwana Community v Suriname, Inter-Am. Ct. H.R. (ser. C) No. 124 (June 15, 2005).

indigenous community with its land must be recognised and understood as the fundamental basis of its culture, spiritual life, integrity, and economic survival.[29] The court stated that the inhabitants should enjoy the communal rights to the ancestral property. It held that Suriname failed to protect the rights of the inhabitants by preventing them from exercising their communal use and enjoyment of the traditional property. The court highlighted that the forced displacement of the community would threaten the existence of the community itself and the deprivation of indigenous groups of their rights to use and enjoy their land would amount to a violation of fundamental rights.

3.2 African Charter on Human and People's Rights

The African Charter on Human and People's Rights does not expressly mention indigenous people. This does not limit its application to indigenous people as the people's rights in the document have been argued to protect the rights of the indigenous groups. The Commission stated that Indigenous people have no specific definition, and it depends on self-identification as indigenous. Another major characteristic the Commission attaches is the special attachment to and use of their traditional land, whereby their ancestral land is of fundamental importance to peoples' collective physical and cultural survival. [30] Article 14 of the African Charter guarantees the right to property but this right is limited as it can be encroached upon in the interest of the public need or the General interest of the community.[31] The cultural importance of land was addressed and recognised in the decision by the Commission in Centre for Minority Rights Development & Minority Rights Group International on behalf of the Endorois Community v The Republic of Kenya[32]. Here, the Endorsis community of Kenya contested the eviction from their ancestral land by the Kenyan Government. They alleged a breach of Endorois' right to property under Article 14 and a violation of the right to culture protected under Article 17 of the

[29] Moiwana Community v Suriname, Inter-Am. Ct. H.R. (ser. C) No. 124 (June 15, 2005).
[30]Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities submitted in accordance with 'Resolution on the Rights of Indigenous Populations/Communities in Africa adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session (2005) 93 ; International Law and Land Rights in Africa: The shift from states' territorial possessions to indigenous peoples' ownership rights Jérémie Gilbert & Valérie Couillard, Robert, (ed.) Essays in African Land Law. Pretoria University Press, pp. 47-68. ISBN 9781920538002 Availiable at : http://www.pulp.up.ac.za/cat_2011_15.html
[31] African Charter on Human and Peoples' Rights, art. 24, June 27, 1981, 1520 U.N.T.S. 217, art. 14.
[32] Centre for Minority Rights Development & Minority Rights Group International on behalf of the Endorois Community v. The Republic of Kenya, (2010) 4 Afr. Hum. Rts. Rep. 1.

African Charter. The Commission concluded that the Kenyan government was in violation of Articles 8 and 17 of the African Charter, which dealt with rights to cultural and religious rights. It held that the government has a duty to recognise the right to property of members of the Endorois community within the framework of[33] the community property system. This decision recognised the indigenous people's collective rights over ancestral land in Africa. This decision is important as it sets a precedent for protection against the forced acquisition of land by the government.

The African Commission of Human and People's Rights v Kenya[34], also known as the Ogiek case, is the most recent decision that has outlined the significance of the realisation of indigenous rights. The application was filed before the court against the removal of the Ogiek people from the Mau Forest. The Kenyan government argued that the eviction was to prevent deforestation of the Mau Forest, Kenya's largest remaining indigenous forest. The eviction was argued to have failed to consider the importance of the Mau Forest for the survival of the Ogiek people, as their way of living was highly dependent on their ancestral homeland. The Court determined that Kenya had breached seven articles of the African Charter during the eviction proceedings, which included the right to non-discrimination[35], the right to religion[36], the right to property[37], the right to natural resources[38] etc. The commission made a claim on behalf of the people for monetary compensation for material prejudice and moral harm suffered. The court has ordered compensation to be paid by the Kenyan government for material prejudice against the people due to the loss of natural resources and property by the people. The court has also held that the Kenyan government must provide non-pecuniary reparation to the Ogiek people, which includes consultation with them to delimit, demarcate and title the Ogiek ancestral land and granting the collective title of such land.

[33] Ibid. (Centre for Minority Rights)
[34] African Commission of Human and People's Rights v The Republic of Kenya, (Application No. 006/2012) [2017] AfCHPR 2.
[35] African Charter on Human and Peoples' Rights, art. 24, June 27, 1981, 1520 U.N.T.S. 217, art. 2.
[36] African Charter on Human and Peoples' Rights, art. 24, June 27, 1981, 1520 U.N.T.S. 217, art. 8.
[37] African Charter on Human and Peoples' Rights, art. 24, June 27, 1981, 1520 U.N.T.S. 217, art. 14.
[38] African Charter on Human and Peoples' Rights, art. 24, June 27, 1981, 1520 U.N.T.S. 217, art. 21.

This decision was appreciated for its approach and has been lauded as a milestone for Indigenous rights as it stresses the significance of the protection of the land and cultural rights of the Indigenous groups.

4. National Legislations and Constitutional Provision

In this section, various national legislation relating to native land rights will be discussed. This section is intended to act as a bridge between international legislation and the Indian scenario. The discussion with regard to other jurisdictions will help us understand how the international instruments have enabled them to adapt to their particular jurisdictional needs. Hence, it will help us understand the land rights in India. We will examine indigenous land rights in Australia, Canada and New Zealand. Three of them are common law countries with the British colonial period as a precedent, and their evolution on indigenous land rights would help us understand the needs of the Indian indigenous and tribal population. Another common link with these countries are the fact that they have voted against UNDRIP.

4.1 Native Title and Australian Indigenous Population

The Indigenous population lost their land during colonisation due to conquest, cessation, and occupation. The acquisition of land by mere occupation is possible only if it had not previously belonged to someone; this is known as *terra nullius.* Australia can be considered as an apt example of terra nullius. The terra nullius was often viewed as a social construct that enabled the expansion of the colonial settlements without any compensation. This lack of title deeds was used in favour of the Crown, which prompted them to grant the land of the Aboriginal and Torres Islanders to the freed prisoners. There was continued resistance to land allocation, and the colonial officers hoped to quell the Aboriginal and Torres Strait Islander resistance by allocating reserve lands to individuals and families for cultivation. This receive system was utilised by the Aboriginals to regain control over their land, and this resulted in the Treaty of 1835, which is also known as the Batman Treaty, which acknowledged that the lands were owned by the Aboriginals. This Treaty was later declared void on the basis that "the land belonged to no one prior to the British crown

taking possession."[39] The view regarding the Australian and Aboriginal land rights remained the same until the historical judgement in Mabo v Queensland[40].

The traditional land rights of Aboriginals and Torres Strait Islanders, considered the world's oldest continuous civilisation, are now acknowledged by Australian law. The current state of affairs is a result of land struggles that began in the 1960s. The 1966 Wave Hill Walk Off and other strikes have prompted the government to introduce measures to remove the discriminatory and restrictive practices in place. A first attempt in this direction can be seen in the Aboriginal Lands Trust Act 1966, which established a Trust that allowed the previously owned aboriginal land to be transferred to the Aboriginal Trust, which was governed by the Aboriginal people. Later, the Aboriginal Land Rights (Northern Territory) Act of 1972 was passed to return land to the indigenous population. A commission was appointed to decide on an appropriate manner for restoring traditional land to the Aboriginal people in the Northern Territory, and it was known as the Woodward Commission. The Aboriginal Land Rights Commission Report, 1974[41] recommended legislation restoring traditional land to the Aboriginals. As a result of this recommendation, the Aboriginal Land Rights Act 1976 was passed and established that the Aboriginal people in the Northern Territory could claim rights to land based on traditional occupation.

Native title continued to be an enigma even after these legislations were passed. The decision in Mabo v Queensland[42] brought clarity to this issue. The case was centred around Murray Island in the Torres Strait, where people continued to own land in accordance with the customs, traditions and practices of the Miriam people. It was argued that the rights exercised by the Miriam people were not exhausted by any existing legislation. The court found that the Australian common law could recognise traditional law and custom as a source of property rights, and the legal fiction of Terra Nullius was rejected. The Native Title Act 1993[43] was passed as a result, which defined native title rights for the first time. It was defined as a "communal, group or individual rights and interests" possessed under traditional law and custom and held by the Aboriginal and Torres Strait Islander peoples with a continued connection to

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[39] AUSTRALIAN GOVERNMENT. European ascoverj and the colonisation of Australia. Canberra: Commonwealth, 2015.
[40] Mabo v Queensland, (1992) 175 CLR 1.
[41] Aboriginal Land Rights Commission Report, 1974
[42] Mabo v Queensland, (1992) 175 CLR 1.
[43] Native Title Act, 1993 (Australia).

the lands. [44] The definition of Title title came with its own set of problems as it is difficult to show a continued connection to the lands by the people in a colonised country. These limits were discussed in other judicial decisions. In Wik v Queensland[45], the extinguishment doctrine was revisited, and it was observed that the native title could co-exist with other rights as the native title is a bundle of rights. This decision has resulted in amendments to the Native Title Act, but these amendments are criticised for reducing Indigenous land rights. In Akiba, on behalf of the Torres Strait Regional Seas Clam Group v Commonwealth of Australia[46], the prior assumption that native title rights and interests did not include commercial rights and interests was rejected.

Common Wealth of Australia v Yarmir[47], the applicability of native title to sea was discussed. The case was related to the sea bed surrounding Croker Island in Northern Territory. An application was filed for exclusive possession of this area, which would empower the native titleholders to regulate and control fishing and navigation in the native title. The court has observed that the Native Title Act would extend to the sea, but navigation and fishing are not exclusive to the natives as the common law has obligations under international treaties for public use.

4.2 Canada: The Crown and the Indians

Canada, like Australia, had to break from the clutches of the colonial past. However, this does not make the land struggle in the two countries similar to the earlier attempts for recognition of indigenous land rights, unlike in Australia, where the native title was not recognised. The earlier attempts to recognise indigenous land rights in Canada can be traced back to 1763, when the British Crown issued a proclamation stating that its North American colonies would only acquire further territory through negotiation and treaty-making with the "Nations or Tribes of India".[48] This acknowledgement took place mainly in Ontario and the Prairie Provinces. This proclamation thus initiated the voluntary surrender of the right of the land rights. This

[44] Marcia Dieguez Leuzinger & Kylie Lyngard, The Land Rights of Indigenous and Traditional Peoples in Brazil and Australia, 13 BRAZ. J. INT'l L. 418 (2016).
[45] Wik v Queensland, [1996] HCA 40.
[46] Akiba on behalf of the Torres Strait Regional Seas Clam Group v Commonwealth of Australia, [2013]HCA 33.
[47] Commonwealth of Australia v Yarmir, [2001] HCA 56, (2001) 208 CLR 1.
[48] 'PUSHED TOTHE EDGE' THE LAND RIGHTS OF INDIGENOUS PEOPLES IN CANADA A HEALTHY ENVIRONMENT IS A HUMAN RIGHT, Amnesty International

proclamation continues to form a legal basis for the land rights of the tribal population. There were judicial pronouncements relating to Aboriginal rights at the time. St Catherine's Mining & Lumber Co. v The Queen[49] dealt with the surrender of lands in Ontario under the Treaty in 1873. The question before the Privy Council was regarding the lands situated within the boundaries of Ontario. The Court, while deciding the matter, has held that the Indians, that is, the Aboriginals, have a personal and usufructuary right, dependent on the goodwill of the government to use their land.

The Canadian Constitution[50] affirms the inherent rights of three distinct Indigenous Peoples: First Nations or "Indian", Inuit People of the Arctic, and the Metis, whose nation was formed by the merging of Indigenous and European cultures prior to the creation of the Canadian State. Section 35 affirms the existing aboriginal and treaty rights. Aboriginal titles have continued to be a concept for contention, resulting in few judicial decisions that defined the idea for the application as we see it now. Calder case[51] can be considered as a decision that played a pivotal role in the Aboriginal title in Canada as it recognised that the Aboriginal title has a place in Canadian law. However, the decision in Delgamuukw v British Columbia[52] defined the extent of an aboriginal title. This provided a test for recognition of aboriginal title by the Indigenous people for their ancestral territories. The court held that the oral history of Aboriginal people must be accepted as evidence proving historic use and occupation.

Calder expanded the concept of aboriginal title by recognising the pre-existence of the right. The action was brought before the court seeking a declaration that the tribe's aboriginal title had never been extinguished. The action involved a large area occupied by the Nishgas. The government did not claim that the land was surrendered by the tribes by treaties, but instead, they implied that they had extinguished their right by proclamations by the Royal governor. The Court was divided on the matter but, at the same time, agreed that the land rights were pre-existing rights and not dependent on the Royal Proclamation. The observation in the decision in Catherine was redefined by Calder, where the fiduciary relationship was a result of the continued occupation rather than the legislative affirmation.

[49] St. Catherine's Miling & Lumber Co. v The Queen, 13 SCR 557 (1887).
[50] Constitution Act, 1982 (Canada).
[51] Calder et al v Attorney General of British Columbia, 1973 CanLII 4 (SCC).
[52] Delgamuukw v British Columbia, [1997] 3 SCR 1010.

In Guerin v The Queen[53], the leasing of the reservation land was considered. The case raised the question of whether the Masqueam Indian could recover damages from the government for a breach of the agreement. The government argued that the Aboriginals have no legal right to make any claim. The Court observed that the Aboriginal's property rights were pre-existing rights that were not created by the Royal Proclamation or any legislative provision. The Indian rights of occupation and possession were held to be undisturbed by European colonisation. The Aboriginals were held to have an independent legal interest.

Before discussing the decision in Degamuukw, we need to look into the judgement of R v Sparrow[54]. The application of aboriginal rights under section 35 of the Constitution of Canada was discussed in this decision. This case was also filed by a member of the Musqueam band, like in Guerin. Here, the fishing rights of the aboriginals were examined. The Trial court held that section 35 protected only existing treaty rights and there was no inherent right to fish under the Constitution for the Aboriginals. However the Supreme Court, in its decision, held that the appellant was exercising an inherent aboriginal right that existed before the provincial legislation and was guaranteed and protected by section 35 of the Constitution Act. The sparrow test was laid down in this decision, where certain criteria were given to test whether a person is exercising an aboriginal right.

The decision in Degamuukw contained a comprehensive account of aboriginal title in Canada. It also provided clarification on how to use the Sparrow test while dealing with the questions related to the aboriginal title. The majority in the Supreme Court opined that the aboriginal title is a sui generis right arising from the prior occupation of the land by the Indigenous people. The Aboriginal title was placed on a spectrum along with other Aboriginal rights. The customs, practices, traditions, and relationship with the aboriginal right to the title were established in this decision. A test for proving aboriginal title was also placed by the decision. According to this test, the land must have been occupied prior to the sovereignty, there must be continuity in occupation, and the occupation must be exclusive.

[53] Guerin v The Queen, 13 DLR 4 321 (1984).
[54] R v Sparrow, [1990] 1 S.C.R. 1075.

4.3 Land Rights and Indigenous Rights in New Zealand

One of the key elements that cannot be forgotten while discussing the Indigenous rights in New Zealand is The Treaty of Waitangi[55] of 1840. The important aspect of the Treaty was that Maori people, the indigenous population who had settled there around 500 years before the first Europeans visited the island, were given greater control over their lands and resources. The Maori land could only be sold to the Crown, who would either keep it as Crown land or sell it to settlers. This treaty was meant to uphold the sovereignty of the Maori people, but it was undermined by the settlers in the 19th century. The indigenous land of the Maori people was being used for purposes that were not in the interest of the Maori population. With the increase in settlers, the Maori community property was being granted to the settlers. The Maori population did not associate the sale of the property to the Crown as giving up of their continued use of the property. This was exploited by the settlers and the Crown equally by keeping a pre-emption right to land for the Crown. After the realisation of the nature of ownership of the settlers, there were claims for the native land. In 1862 and 1865, the Native Lands Act[56], recognised the Maori right to uncultivated land if it was specified in a certificate title. Subsequent Land Acts in the country concentrated on the settlement of other groups and did not consider the land rights of the Indigenous groups.

The protection of land rights has remained a question of concern in New Zealand. It has resulted in the formation of the Waitangi Tribunal, which resulted from the Treaty Waitangi Act 1975, where the Maori can claim their land. The Tribunal was empowered to hear claims by Maori, individually and collectively, the acts of the Crown that deprived them of their rights under the Treaty. The tribunal does not have the power to remedy the claims, making the process futile. The Resource Management Act 1991[57] was implemented to provide direct and indirect support for the Maori population to incorporate their participation in the policy and other related resources in their land. Section 6 of the Act lists matters of national importance that should be recognised and provided for; this included the Maori culture, tradition,

[55] Treaty of Waitangi, 1840.
[56] Native Land Act, 1865 (New Zealand).
[57] Resource Management Act, 1991 (New Zealand).

ancestral land, water, sites etc[58]. Te Ture Whenua Maori Act[59], also known as the Maori Act, 1993 recognised that the land is of special significance to the Maori people. This Act was enacted to reform laws relating to Maori land that recognise the Maori land's special significance to the people. The pre-existing rights of the indigenous population to the land were recognised through this Act. It also gave the Maori Land Court the jurisdiction to consider the claim. It also gave the Maori Land Court powers to enforce when the land was allowed to change hands.

Although there were several attempts at protecting land rights, it was only in 1993 that a judicial opinion was sought. In Te Renanganui o Te Ika Whenua Inc Society v Attorney General[60], the Court held that the aboriginal title, which is identical to the Marotu customary title," is protected by the Treaty of Waitangi.

In Apirana Mahuika v New Zealand[61], the extent of the rights of the indigenous community to fisheries was discussed. The matter was before the UNHRC, and the decision resulted in the Maori population having effective control of over 40% of New Zealand's fishing quota.

6. Conclusion

The examination of the international instruments available along with the regional instruments regarding the land rights of the indigenous people shows that the land rights of the indigenous population are still in their developing stages. The ambiguity in the land rights of the population that has existed in a particular area even before the arrival of the settlers is problematic. The reason for this slow development with regard to land rights can be associated with the fact that the international community did not feel a need to address these issues. The recognition of Indigenous Rights and the subsequent developments have remained slow-paced.

The regional instruments are put to use to an extent as we have seen from a few examples. However the recognition of the land rights with the cultural rights did take its time. The matter relating to displacement has also been addressed only recently.

[58] Resource Management Act, 1991, § 6 (New Zealand).
[59] Te Ture Whenua Maori Act, 1993 (New Zealand).
[60] Te Renanganui o Te Ika Whenua Inc Society v Attorney General, CA 124/93 [1993] NZCA 218.
[61] Apirana Mahuika v New Zealand, CCPR/C/55/D/547/1993.

The examination of the National legislation in Australia, Canada and New Zealand has helped us to understand the evolution of the law from the colonial period and the attempts made by the legislature to remove itself from the shackles of colonial legislation. The judiciary, as we have seen in each country has played a crucial role in defining the land rights of the indigenous population and is continuing to do so as the right to the land of the indigenous population has not been completely achieved by any of the legislations that we have seen in these countries. The understanding of the extent of the progress in these countries will help us to understand the laws in place in India as India shares a similar colonial past with the countries we have examined but it sure has other challenges which is peculiar to the nation.

CHAPTER 3

RIGHT TO LAND: AN INDIAN PERSPECTIVE

1. Introduction

In the previous chapter, we have seen the legislation for the protection of land rights of indigenous populations in different countries and the international tools available for their protection. The discussion of Indigenous land rights in India becomes tricky as the term Indigenous cannot be found in any of the Indian legislation. As discussed in the first chapter, in the Indian context, we will be looking into the land rights of the tribal population. Here, we will be analysing the existing legislation for the protection of land rights in India. Its evolution over the years and its impact. We will primarily examine whether these legislations address the land rights issues faced by the tribal population in India.

In India, it is impossible to describe the land rights of the tribal population without describing the forest rights, and it inevitably leads us to analyse the legislation relating to forest conservation as, more often than not, the rights of the tribal populations are mentioned and at some point denied via these legislations. We will be looking into the statutes relating to forest rights and those enacted to uphold the land rights of the tribal population.

While analysing the legislations relating to forest rights in India, we will have to look into our colonial past and the legislations that were in place at the time. One of the expectations while examining the legislation will be to observe the shift from a leissez-fair state to legitimate intervention by the State during the colonial period for the protection of Forests. The independent India had a bigger task in hand, which was to undo what had been done in the past while establishing a balance between the conservation of the forest and recognising the forest rights of the scheduled tribes and the forest dwellers. This could not be done in a single step and was done with the help of an array of legislations, which have tried to establish a more stable scenario for the exercise of the rights of the people dwelling in the forest, including the Scheduled tribes and the forest dwellers. The reason for the use of these terms will also be understood from the discussion below.

2. Colonial Attempts and the Forest Rights

Forest rights have changed over the course of time, and pre-colonial forest rights have changed. During that time, forests were not merely considered a source of resources. The forest was an important source for the forest dwellers as it was integral to their livelihood. The nomadic tribal people used to convert forest into pasture land for crop cultivation and cattle rearing.[62] Many of the tribal population worshipped the forest as well. The relation to the forest was spiritual in nature for the population. There was less control by the State or the monarchy at the time on the forests, even though there were areas where the rulers had control and officers were appointed to collect the produce as well. However, the State intervention was less in the forest areas.

We can see a shift in the handling of the forest area during the Colonial period. There were specific legislations dealing with the provisions for protecting the forest and managing the resources from the forest. The forest rights envisaged during the colonial period cannot be equated to tribal rights. This can be understood from the various legislations enacted during the colonial period. The forest during the colonial period was more of a source of wealth due to the rich resources, and the cultural significance of the people inhabiting these areas was not given much thought. There was a gradual shift from the laissez-faire in the pre-colonial period, and more power was given to the State. The State intervention in matters relating to forests became a common practice during this period.

The empowerment of the State to intervene in matters relating to forests was not uniform across the State since there were few territories that were not under the hands of the British Empire. Soon, this was changed with the enactment of certain statutes, which made the law uniform throughout the British colony. One of the tools used to gain control of the forest area was the conservation of the forest. This can be understood from the following example. The state intervention in matters relating to forests can be witnessed from the introduction of the Charter of Indian Forest[63], which was issued in 1855 and changed large land areas, including forests, into government property. This was known as the Memorandum for Forest Conservation, which restricted the private trade of timber. The charter was introduced under the pretext of

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[62] Somnath Goyal, *Pre-Colonial and Colonial Forest Culture in the Presidency Bengal,* 5 J. STUDIES AND RESEARCH IN HUMAN GEOGRAPHY,107, 107 (2011).
[63] Charter of Indian Forests, 1855.

the protection of forests, but it failed to address the cultural link it had with people. It denied the rights of the forest dwellers. This is evident from the legislation that was enacted in pursuance of the Charter. The Indian Forest Act[64] 1865 declared Forests and wasteland, Government Reserve Forests. Forest was defined under the Act "as land covered with trees, brushwood and jungle."[65] This provision empowered the State government to declare certain areas as forests. This definition was problematic on different levels, even though section 2 of the act mentioned the protection of the existing rights of the individuals or the community.[66] Even with a section that was meant to protect the rights of the communities, the definition of the forest was a loophole that was exploited. The Act also imposed restrictions on the collection of forest produce by the people living in and near the forest.[67] In effect, the Act imposed restrictions on the livelihood of the people dependent on forests and their resources.

The Indian Forest Act[68] of 1878 replaced the Act of 1865, which classified forests into three categories and empowered the British government to restrict the tribal and forest dwellers from moving inside the forest. The classification of the forests was into state or reserved forests, protected forests, and village forests. This classification meant that different levels of protection would be given to different forests, with the forest dwellers having access to village forests. The collection of timber was limited, and the sale of the produce was prohibited under this Act. The private property was limited to cultivated land, and the land that did not fall under continuous cultivation was classified as forest land, thus undermining the tenurial rights the forest dwellers possessed. The implementation of the Act prioritised the revenue generation rather than the community rights. There were restrictions placed on grazing and shift cultivation, and communities were excluded from accessing the resources; this was done when certain groups of trees were considered as reserves, and the local grazing and cultivation were held to be damaging to the ecosystem. So, by gradual steps, the community rights diminished.

The first National Forest Policy[69] 1894 classified forests into protection forests, economic forests and economic forests, which met the timber needs and forests in and

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[64] Indian Forest Act, 1865, No. 7, Governor-General of India in Council.
[65] Indian Forest Act, 1865, § 1, No. 7, Governor -General of Indian in Council.
[66] Indian Forest Act, 1865, § 2, No. 7, Governor -General of Indian in Council.
[67] Indian Forest Act, 1865, § 4, No. 7, Governor -General of Indian in Council.
[68] Indian Forest Act, 1878, No. 7, Governor General of India in Council.
[69] National Forest Policy, 1894.

around villages, which met the needs of local populations. This classification was an attempt to increase the revenue from the forest, and in this process, the rights of the forest dwellers to maintain the forest were ignored. This has led to the overexploitation of the available forests, and the government has had to come up with plans to tackle this exploitation.

The legislation for land acquisition has also played a role in diminishing the forest rights of the tribes and forest dwellers. The Land Acquisition Act 1894[70] conferred the power of acquisition of land for "public purpose", enabling subsequent enactment of the Indian Forest Act and Mines Act, respectively. The legal principle of *res nullies,* which we have discussed while dealing with the land rights of the indigenous population in Australia was used to acquire undocumented property. This further deprived the tribal peoples of land rights, as their rights revolved mainly through oral agreements rather than any written documents.

The establishment of the Forest Department further elevated the problems. The Royal Commission on Agriculture, 1928[71] suggested the division of a Forest Department, one which managed the first two categories of Forest and the second intended to benefit the local villagers.

Taking inspiration from the National Forest Policy, the Indian Forest Act[72] of 1927 was enacted, which prescribed a manner in which forest resources could be exploited for industrial and commercial exploitation. The main objective was to increase revenue and thus promote timber export. The forests were categorised into three in this Act based on privileges enjoyed by the communities. These categories were 'reserve forest[73]', 'protected forests'[74] and 'village forests'[75]. The reserve forests were exclusive to the Forest Department, and the communities did not have any rights over the forests other than those explicitly permitted. Protected forests provided community rights for household consumption. At the same time, section 28 of the Act constituted village forests, which authorised the state government to assign to any village community the right of government to or over any land that had been

[70] Land Acquisition Act, 1894, No.1, Government of India (India).
[71] Report of the Royal Commission on Agriculture, 1928.
[72] Indian Forest Act , 1927, No.16, Act of Parliament, 1927 (India).
[73] Indian Forest Act , 1927, § 3, No.16, Act of Parliament, 1927 (India).
[74] Indian Forest Act , 1927, § 29, No.16, Act of Parliament, 1927 (India).
[75] Indian Forest Act , 1927, § 28, No.16, Act of Parliament, 1927 (India).

constituted a reserved forest[76]. This provision created a scope for the involvement of village communities in forest management, but the state government could cancel such assignments when they deem fit. The provisions were framed to appear favourable to the local communities. Still, the illiteracy and the social standing prevented the tribal population from utilising them and thus effectively excluded them from the benefits of these provisions.

3. Independent India and Forest Rights

In the wake of independence, the Indian government had a lot of problems to tackle. The rights of the tribal population were one among millions. However, the Indian Constitution had included provisions to protect the interests of these populations as well. The Constitution of India has provisions to reconstruct the unequal social order. The economic inequalities in the weaker section, especially those who belong to scheduled tribes, are intended to be eradicated by Article 46 of the Constitution. There are also various other provisions in the Constitution that are laid down for the protection of the rights of the scheduled tribes. Article 39(b) directs the State to frame a policy for ownership and control of material resources of the community. [77] Article 244 (1) mandates the State to ensure the total prohibition of transfer of immovable property to any person other than to a tribe for peace and proven good management of a tribal area and to protect possession, right, title and interests of the ST's.[78] The provisions under Schedule V of the Constitution are not limited to the administration and control of areas notified by the President of India as Scheduled Areas but also those notified as Scheduled Tribes. The Constitutional assembly debates regarding this schedule suggest that the intention behind the non-transfer of the land to non-tribals in Schedules areas was to protect the interests of the tribals. Even though the particular interests they intended to protect were not laid down clearly, the core of such provision was to ensure the rights of the tribes. These rights later came to be defined as cultural and other attached rights after several international conventions relating to the tribal population.

Even though the Consitution provided for the protection of the interests of the tribal population, the post-independence policies also gave little to no importance to the

[76] Indian Forest Act , 1927, § 28, No.16, Act of Parliament, 1927 (India).
[77] INDIA CONST. art.39, § cl (b).
[78] INDIA CONST. art.244 § 1 .

rights of the tribal population, specifically their land rights. They concentrated more on revenue as a developing country, which was similar to British policy. This can also be seen from the Forest policies, and the shift to recognising the forest and land rights was gradual.

The National Forest Policy[79], 1952 stated that the forest policy should be based on paramount national needs. This was, in a way, an extension of the British policy as it kept the national interests above the claims of the communities living in and around the forests. This was in the wake of independence; hence, the State was more concentrated in development, which led to the use of forests for developmental programmes and defence, and community rights took a back seat. While the policies were more inclined to use forest land for other purposes, there were also other attempts to establish the rights of the tribal population. The recommendation of the UN Debar Commission[80] in 1960 is an example of such an attempt where it was recommended that the tribal lands alienated before January 26, 1950, must be returned to the original inhabitants, Adivasis. The recommendations remained as recommendations only as nothing came out of it, and people continued to be displaced from their land.

The National Commission on Agriculture[81], 1976 advocated the commercialisation of forests at all costs and recommended regularising forest dwellers' rights over forest produce. The Commission recommended a drastic reduction in people's rights over forests. It was noted that the free supply of forest produce to the rural population has resulted in the destruction of forests, and there was a need to reverse this process. A social forestry scheme was introduced upon the recommendation of the NCA to meet the needs of the tribal and rural population. It was opposed to industrial and revenue purposes. The main purpose of social forestry was managing and protecting forests and afforestation of barren and deforested land. Social forestry was carried out by providing fertilisers and other requirements to the villagers and people living near the forest, and they were directed to plant commercially viable trees. This scheme has resulted in large areas of eucalyptus trees and other commercially valuable trees. This

[79] The National Forest Policy, 1952.
[80] Report of the Scheduled Areas and Scheduled Tribes Commission (1960-61).
[81] Report of the National Commission on Agriculture, 1976.

has further alienated the rights of the forest dwellers and the scheduled tribes in such areas.

The Forest Conservation Act[82], 1980 has shifted the focus to conservation rather than revenue earning, and it has also placed the protection of forests over the community rights of the tribal population. In Andhra Pradesh, almost all the tribal areas under Schedule V of the Constitution were designated as forests. At the same time, most of it was cultivated by tribal groups before the enactment of the Act. A government memorandum in 1987 regularised the cultivated land by the tribal people, and another memorandum issued in 1995 directed that all such lands should be brought under the Joint Forest Management Project. This changed the legal status of the tribal lands, making it state-owned forest land.[83] Most often, forest conservation efforts tend to be violative or against the interest of the tribal population who are dependent on the forest produce.

The National Forest Policy[84], 1988 addressed the intrinsic relationship between forests and local communities, the protection of their customary rights, and the recognition of the importance of forests as a means of livelihood. This can be termed as the first time a balance was struck between the conservation and rights of the communities. The objective of the policy was the conservation and protection of forests, but it has also recognised the involvement of people in achieving the objective.

The Joint Forest Planning and Management was launched in 1993 to maintain this new balance. The idea was to work the forests subjected to biotic pressure, with the people as partners, while providing them a share of the benefits. The JFPM has been criticised for limiting the communal rights of the people. It has been argued to distract the property regime where the government claim the ownership of the forests.[85] There is also criticism that this only creates new obligations without resolving the old ones.

The 73rd amendments of the Constitution, which formalised the constitution of Panchayats as the micro institutions of governance, can be seen as steps to incorporate

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[82] Forest (Conservation) Act, 1980, No.69, Act of Parliament, 1980 (India).
[83] Kinsuk Mitra & Radhika Gupta, *Indigenous Peoples' Forest Tenure in India*,in LAND AND CULTURAL SURVIVAL 193, 201 (Jayantha Perera, Asian Development Book, 2009).
[84] National Forest Policy, 1988.
[85] Andy White, Introduction: The Problem oF Inadequate and Insecure Community Property Rights Over Community Forests, DEEPER ROOTS : STRENGTHENING COMMUNITY TENURE SECURITY AND COMMUNITY LIVELIHOOD, 6 (Lynn Ellsworth and Andy White, 2004)

the community in forest conservation and, hence, recognise their rights. The Panchayat Extension of Scheduled Areas Act[86], 1996 was enacted to improve the governance of the Scheduled Areas to protect the interests of tribal. It recognised the community-based decision-making rights of tribes. Consultation with Gram Sabha about acquiring land was made mandatory. It also required the gram sabha's consultation to rehabilitate people displaced due to acquisition. There are shortcomings to the legislation as it only deals with the land in the scheduled areas, and many Tribal populations living outside the tribal areas are left out of this legislation. The word 'recommendation' of the gram sabha was ambiguous and was used as a loophole in the statute's application. Licenses were granted even when the gram sabha made recommendations against acquiring land or mining due to this ambiguous nature.

The dual personality of the legislators while framing laws and policies relating to the rights of the tribal population can be seen in a circular released by the Ministry of Environment and Forest[87], which denoted the tribals as encroachers and directed them to evict the forest. The Protected Area Network has further fueled the incapacitation of the forest-dwelling tribes. The Biodiversity Act, 2002[88]is another example of the bias as it is industry-friendly rather than environment-friendly.

The Wildlife (Protection) Amendment Act, 2006 were primarily to ensure the protection and conservation of tigers have also mentioned the protection and conservation of tigers to ensure safeguards for the agricultural, livelihood, developmental and other interests of people living in the forests.[89] The Commission for Scheduled Castes and Scheduled Tribes, in its report in 2008, mentioned that in order to ensure the rights under the FRA are protected while carrying out the provisions of the Wildlife Protection Act, importance must be given to the relocation that arises out of such protective measures.

The conservation of forests and the dwellers' rights have always been a topic of contention; as we have seen previously, the Forest Conservation Act also brings in that element. Even though the Forest Rights Act has given tribal communities and

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[86] Panchayat Extension of Scheduled Areas Act, 1996, No. 40, Acts of Parliament, 1996 (India).
[87] Circular No. 13-1/90-FP of Government of India, Ministry of Environment & Forests, Department of Environment, Forests & Wildlife dated 18.9.90.
[88] The Biological Diversity Act, 2002, No18, Act of Parliament, 2003 (India).
[89] The Wildlife Protection Amendment Act 2006, No.39, Act of Parliament, 2006 (India).

forest dwellers the right to claim lands, we will see this in the next section. The question of whether these conservations and management fall within the Forest Conservation Act has always existed. The amendments in the Forest Conservation Act 2021 make the question more relevant as it essentially breaks down the progress achieved.

4. Forest Rights Act - Forest tribal relationship

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act[90]2006 was lauded for recognising the forest rights of the forest-dwelling Scheduled Tribes. It can be termed as a landmark legislation in recognising the forest-tribal relationship. It recognised the forest rights enjoyed by the forest-dwelling Scheduled Tribes on all kinds of forest lands for generations. This Act is a result of struggles by the community, and the final product has been argued to be short of what they actually envisioned it to be.

The objective of the Act was to recognise the rights of forest-dwelling communities and to encourage their participation in the conservation and management of forests and wildlife. It addressed the fact that the government failed to recognise the forest rights on ancestral lands and their habitats during the consolidation of state forests in the colonial period and independent India. It also addressed the historical injustice to the scheduled tribes and other traditional forest dwellers. The Act was meant to address the tenurial insecurity and access rights of the scheduled tribes and forest dwellers who were forced to relocate due to development.

The definition of forest land included the "*land of any description within any forest area and includes unclassified forests, un-demarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Park."*[91]This definition has widened the scope of the forest land to include different areas and thus made it applicable to more people. The section 3 of the Act laid down the forest rights which included the right to hold and live in the forest land under individual or common occupation for habitation or self-cultivation for a livelihood; right to ownership, access to collect, use and dispose of minor forest produce and right to in

[90] Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No.2, Act of Parliament, 2007 (India).
[91] Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, §2 cl. (d), No.2, Act of Parliament, 2007 (India).

situ rehabilitation including alternative land in cases where Scheduled Tribes and other traditional dwellers have been displaced.[92] The customary relation of the tribal population to the land was not explicitly mentioned in the Act, but the traditional rights in Section 3 (1)(l) can be considered to be dealing with cultural rights.

While recognising forest rights, the Act also provides for the diversion of forest land for developmental projects like schools, hospitals, roads, water pipelines, electric and telecommunication lines, etc. The FRA encourages the participation of the community in the decision-making process as it mandates the government's recommendation of gram sabha for clearance of forest land for developmental projects. The statute lays down that the creation of conservation zones and curtailment of rights in protected rights require ‘free, prior and informed consent’ of tribal people who live on such land.

The Act recognises a tribal community as a legal person eligible to claim forest rights as it treats them as an individual or family. The Act recognises forest rights of forest-dwelling scheduled tribes if they have primarily resided in the forests for at least three generations before December 13, 2005, and have depended on the forests for bona fide livelihood. It also safeguards that no one can be removed or evicted until the verification is completed. It provides for the ceiling of occupation of forestland to recognise forest rights to areas under occupation, and it shall not exceed four hectares. The gram sabhas are authorised to initiate the process and extent of the community forest rights, or both are given to the forest dwellers.[93]

FRA stipulates that the displacement of tribal people may occur only after a resettlement or alternative package has been prepared in consultation with them.[94]This package should ensure that the affected communities have appropriate income and livelihood sources. The resettlement won’t be complete until the facilities and land allocation are complete and satisfactory. This is an improvement in the rehabilitation and compensation for land acquisition.

[92] Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, § 3, No.2, Act of Parliament, 2007 (India).

[93] Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, § 6, No.2, Act of Parliament, 2007 (India).

[94] Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, § 4, No.2, Act of Parliament, 2007 (India).

At first glance, the Forest Rights Act is a perfect document that tackles all the problems the previous legislation possessed. Still, in reality, the implementation of the same had its own set of challenges that needed to be addressed. The FRA was implemented after the Forest Rights Rules were published in 2008. The Tribal Development Department has taken various steps to implement the Act, which involved arranging the Gram sabha, forming the Forest Rights Committee (FRC) at the village level, etc. The FRC helps the gram sabha determine the claims. The claims have been rejected without assigning the proper reasons, based on a wrong interpretation of the other forest dwellers, or due to a lack of evidence. Due to this reason, the land that is claimed may not be considered forest land, and the inclusive definition of forest land appears to be short of reaching its goal. The rejections are not communicated to the claimants, thus preventing them from exercising their appeal. The State governments tend to focus on individual rights rather than community rights, further limiting the forest rights as was envisioned.

As mentioned earlier, the FRA authorises the forest-dwellers communities to protect the forest against destruction. The rules mention that the community shall protect the forest as a duty following a working plan prepared by the Forest Department. There is no clarification on whether the forest dwellers will be consulted on a free, prior and informed basis. This lack of clarity gives the forest dwellers a tool to implement a working plan, which deviates from the objective mentioned in the Preamble of the Act.

The rules do not stipulate the displacement caused by development actions and the cause of action to be followed in such instances.

The lack of documentary evidence is one of the reasons for the rejection of the claims, which further makes the implementation of the Act and the existence of the act itself questionable. As we have already mentioned, most of the land used by the community may not be documented and transferred through oral agreements, but this must not act as grounds for their rejection of their right to claim their community rights. The lack of documents is a result of a number of reasons, including the rejection of their rights in the earlier period, which may include the British colonial era, which made them outcasts in their own land. A better policy must be made to ensure that their rights are not ignored by the authorities.

There have been attempts to amend the Act, which would drastically affect its objective.

Implementing the Act faces the biggest hurdle, as a uniform implementation method would not work as the needs vary among communities. The existence of the Unifrom work can be understood as being done for administrative efficiency. Still, there must be an option to make it more flexible to fit the needs properly, as certain areas need more time and consideration for the dwellers. This flexibility is required because the availability of resources and tribal inhabiting in the different areas differ. The needs of the Western ghats differ from those of the Eastern ghats, making all the difference.

The tribal population needs to be aware of their rights as well for the smooth implementation of the Act. This can also be considered a reason for the failure of the FRA, as community claims within the forest have been less than expected.

5. Land Acquisition and Rehabilitation Laws and Policies

The discussion so far has dealt with forest rights, the land rights associated with it, and the evolution of the same. While discussing the land rights of the tribal population, we cannot ignore the land acquisition for development and other programmes by the government. The acquisition surely is not limited to one particular group, but the impact on the tribal population is significantly more than the general population due to their spiritual and cultural connection to their land. There must be tools to rehabilitate and compensate for these acquisitions, which can be traced from the colonial period. Here, we will be following the same pattern that was followed earlier, as it helps us bring clarity to the current legislation.

The Land Acquisition Act of 1894 was adopted after the independence, and various amendments were made occasionally. The Act enabled the State to acquire land through the 'eminent domain' legal principle. This meant that the State had the first right on any piece of land for public purposes and could forcibly acquire the land from the private party. The Act outlines the purpose for which the land is acquired, the procedure for acquisition, and the payment of compensation for such acquisition. The land can be acquired for any public purpose, which includes the development of village sites, residential development, education, health, etc.[95] The procedure for land

[95] Land Acquisition Act, 1894, § 3, No.1, Act of Parliament, 1894 (India).

acquisition includes notification of the land[96], hearing in case of any objection[97], declaration of the land after the hearing[98], and payment of compensation[99]. The granting of compensation under the Act was problematic as the amount was computed based on the value of the land in the marketplace and only considered people who were title holders of the land. This system did not address the people who are dependent on the land for their livelihood, mainly the tribal population and the forest dwellers. This was addressed in the Law Commission Report[100], where it was noted that the loss suffered by the persons was directly a result of the acquisition, and hence, a policy must be introduced to address the issue. The Act defined public purpose loosely, which made it possible for even private entities to acquire land, and the courts have also allowed for the acquisition if the final product would benefit the public as it helped a public scheme.[101] The compensation scheme, as mentioned earlier, was not satisfactory as it effectively excluded a large number of people who were affected by the acquisition. The 1894 Act continued to be in effect even after the independence, further escalating the problems associated with it.

The acquisition of land has increased its pace post-independence due to the interests of the State for development. This was done by different legislations, which included the Coal-bearing Area Acquisition and Development Act, 1957[102], the Railway Act 1989[103], and the National Highways Act, 1956[104].

The National Mineral Policy, 2008[105], while laying down special emphasis on the utilisation of mineral resources, has also discussed the protection of the environment and resettlement & rehabilitation of affected persons. The policy states that a framework for sustainable development should be designed to take care of biodiversity issues and to ensure that mining activity takes place along with suitable

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[96] Land Acquisition Act, 1894, § 4, No.1, Act of Parliament, 1894 (India).
[97] Land Acquisition Act, 1894, § 5, No.1, Act of Parliament, 1894 (India).
[98] Land Acquisition Act, 1894, § 6, No.1, Act of Parliament, 1894 (India).
[99] Land Acquisition Act, 1894, § 23, No.1, Act of Parliament, 1894 (India).
[100] Tenth Report of the Law Commission of India, 1958.
[101] Thambiran Padayachi v. State of Madras, AIR 1952 Mad 75.
[102] The Coal Bearing Areas (Acquisition and Development) Act, 1957, No.29, Parliament of India, 1957 (India).
[103] The Railway Act, 1989, No. 24, Parliament of India, 1989 (India).
[104] The National Highways Act, 1956, No.48, Parliament of India, 1956 (India).
[105] National Mineral Policy, 2008, Ministry of Mines (India).

measures for restoration of the ecological balance and measures must be taken to protect the interest of tribal population[106]

Two bills were introduced in the parliament to address the lacunas of the Act: the Land Acquisition (Amendment) Bill and the Rehabilitation and Resettlement Bill. The bills lapsed with the dissolution of 14th Loksabha but it found its way back as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013[107].

Fair Compensation Act has also mandated the consultation with gram sabha in case of acquisition similar to the PESA while recognising that such acquisition must only be made as a last resort.

The inclusion of social impact assessment for larger projects is necessary as it acknowledges the needs of the public in general of the issue of land acquisition.

National Policy of Resettlement and Rehabilitation, 2003 was formulated for Project affected families and came into effect in 2004. This policy has resulted in many issues and tried to address the economic and social impact of the acquisition and the use of the land acquired. It also stated that the social impact assessment should be done before acquiring land. These requirements were considered in the subsequent policy in 2007.

The National Rehabilitation and Resettlement Policy of 2007 provided that the scheduled tribe families who are or had forest lands in the affected area before 13-12-2005[108] must be included in the survey of the administrator for resettlement and rehabilitation. The policy was applicable to more people as it considered people whose land, property, or livelihood had been affected by the acquisition of mand and also the population that had been involuntarily displaced. The objective of the policy was to minimise the displacement and promote non-displacing or least displacing alternatives. The consultation of gram sabha or panchayats was also laid down here, taking the lead from FRA. The displaced family should be allocated land for land if the government land is available in the resettlement area. The procedure for payment

[106] National Mineral Policy, 2008, Para 2.3, Ministry of Mines (India).
[107] Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, No. 30, Parliament of India, 2013 (India).
[108] Resettlement and Rehabilitation Policy, 2007, Para 6.4, Ministry of Rural Development (India).

of compensation was also included in this policy. Even though it did have a provision for land to land, it was not mandatory and was subject to availability. This availability clause deviates from the provisions of FRA. The Resettlement and Rehabilitation Policy of Coal India Ltd.[109] has also emphasised minimising displacement and regaining the tribal population's original standard of living.

6. Conclusion

The examination of the legislation shows that the forest rights of the scheduled tribes and the forest dwellers have gone through significant changes. This evolution is a result of the colonial influence, and the post-colonial attempts to undo the problems have not been successful. Even with the enactment of legislation that deals solely with the forest rights of individuals, the implementation of the same has been tricky as there are other legislations that counter the benefits of the FRA and hence water down the objectives. The recognition of forest rights by the FRA was intended to erase the years of denial of the forest rights of the community. But in reality, that has not been the case. The recognition of the forest community, particularly the people belonging to the scheduled community, has not brought much change, and the deprivation of their land has continued.

There are rehabilitation measures and legislation in place to counter the deprivation. However, most of these legislations have failed to recognise individuals' spiritual connection with their land and its cultural significance. The displacement of the scheduled tribes and forest dwellers has continued, and it has often been associated with the development and, in certain instances, with forest protection measures. This has actually questioned the effectiveness of the legislation in place for the protection of their interest.

[109] Resettlement and Rehabilitation of Coal India Ltd, 2008.

CHAPTER 4

DISPLACEMENT, CONFLICTS AND REHABILITATION

1. Introduction

The importance of land in tribal life has been laid down in the previous chapters, and the initiatives and attempts to protect it have also been discussed. As we have mentioned, Land Rights are inevitable for the tribal population. Hence, the land right for them is not merely ownership or proprietary right but also has cultural significance. However, one of the main problems faced by the tribal population is displacement from ancestral property. The reasons for the displacement are many. These reasons will be identified and analysed, and the attempts by the population to resist change to protect their rights will also be discussed in this chapter.

Land grabbing or large-scale acquisition of land would deprive them of their enjoyment of their ancestral property and deprive them of their cultural right. The land grabbing of the tribal lands occurs mainly through developmental projects and in the name of extraction of other minerals from the said land while pushing them out of their land. Another way in which they lose land is through forest protection measures and certain legislation. As discussed in the previous chapter, these attempts can be seen from earlier legislation. Here, we will look into such instances of displacement and attempts for rehabilitation and whether those were successful or to what extent they were successful.

The conflict of the tribal population with developmental activities and the conflict that has been created for environmental protection need to be analysed as it throws light on the extent of violation in various instances. There are also examples of conflicts and resistance from the population, which have resulted in some kind of temporary solutions, and these attempts will also be looked into.

There has also been a conception that the tribal population were in conflict with the environment, and there were legislations that were intended to protect the forests and their produce from exploitation. These attempts, along with the developmental activities, have denied the population of their land and, hence, their cultural identity. This has resulted in conflict with the governmental agencies and their attempts at

resistance. We will also be looking at these attempts of resistance and what has come out of them.

2. Development induced Displacement

Development and displacement go hand in hand. More often than not, the tribal population is the most affected by these displacements. This is not only because the land acquired for development may be tribal but also because of the strong relationship the tribal population has towards their land, which they consider not merely a property right but a strong cultural right.

One of the main reasons for the displacement can be identified as developmental activities. Development projects in the national interests were given priority compared to the other rights exercised by people in the lands acquired. The development model, as we see now in India, was a result of an attempt for economic growth in the post-independence India. Development is vital for any country, and in India, there are multiple attempts for development to ensure access and economic growth. But these attempts have also led to the displacements of a large number of people. In most of the activities, the most affected by the developmental activities are primarily the rural population. If we look into the data carefully, the tribal population is the most affected by these activities. This is mainly because of their interpersonal connection to their land and the land's cultural value for the community in general.

Large-scale development projects in tribal areas have physically evicted a significant number of tribal people. The existence of legislation to protect the land rights and forest rights of the tribal population has not actually deterred the government and the private players from violating the rights of the tribal population. They have used different methods to seize the resources and violate the land rights of the tribal population. One legislation to protect their rights has been pitted against several legislations that violate the same. One can say the tactful use of certain legislation has contributed to these violations.

The Land Acquisition Act[110], as discussed in the previous chapter, has been used against the tribal communities, which helped other players take their resources and

[110] Land Acquisition Act, 1894, No.1, Act of Parliament, 1894 (India).

push them out of their land. In Orissa, more than 40 memoranda of understanding have been signed by mining companies, which would result in huge displacement.

Lands or resources owned by the government are transferred to private companies when the tribal people who have cultural and spiritual relations to these lands are deprived of their rights. The special economic zone has been criticised as land grabbing[111], where private companies are given the power to take over the land.

After the independence, planned development was chosen for nation-building, initiated by the Five Year Plans. The economic development was symbolised by the mega projects, including dams, factories, mining, etc. Among development projects, the dams can be described as the biggest agents of displacement and people in the tribal regions are more affected by these developmental programmes.

Dams were a major cause of displacement initially, but this has also shifted to other sectors. Urbanisation and transport have also resulted in a significant amount of displacement. Parks and protected areas that are intended for conservation do not physically displace people explicitly, but they prevent them from acquiring products that they traditionally depend upon. The World Commission on Dams[112] has stated that over 40-50% of those displaced are estimated to be tribal people, who account for barely 8% of the total population of India. Karjan and Sukhi reservoirs in Gujarat have displaced tribal people exclusively. The Balimelo Hydro Project in Orissa State displaced a large number of people, of which 98% were tribal people. The Upper Kolar Dam was not different either, as 96% of the total affected population were tribal people.[113] The Sardar Sarovar Dam, which can be considered one of the projects that have caused a large number of displacements, is another example of development and displacement. The judicial decision relating to the same will be discussed in the next chapter.

The development for economic growth has indeed resulted in economic growth, but it has also deteriorated the quality of life of the people, especially those depending on the forests for livelihood, as the developmental activities have effectively hindered their livelihood and habitat.

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[111] Manju Arora, *The Forest Right Act, 2006: Victory and Betrayal,* 52 J. INDIAN LAW INSTITUTE 484, (2010).

[112] Report of the World Commission on Dams (2000), Earth Scan Publication.

[113] Report of the World Commission on Dams (2000), Earth Scan Publication.

After the construction of dams and reservoirs as part of development, mining can be considered as the next developmental activity that has influenced the tribal population at large. This economically intensive mining has surely helped us, but it has also deteriorated the livelihood the the tribal population. Capital-intensive mining for economic growth has also resulted in violating the land rights of the tribal population. Different States had different approaches to these activities, and Odisha is an example of the mining and its effect on the tribal population. This is mainly because of the large number of tribes residing in Odisha. The tribal population, according to the 2011 census, is 22.85 per cent of the state's total. [114]

Mining-induced displacement can also be brought under development-induced displacement, as mining indirectly leads to development. The Mines and Mineral (Development and Regulation) Act[115], regulates the mining sector and refers to traditional forest dwellers as occupiers of the surface of the land.[116] The rules framed under the Act state that if the occupier of the surface refuses to consent, the state government has the power to order the occupier to allow the licensee to enter the land after verifying whether the compensation offered is fair.[117] This deprives the forest dwellers of their land and strips them of their rights, which have been granted by other legislation. The real struggle here is striking the balance, and when one legislation seemingly strikes the balance, the other provides an opportunity to exploit their rights. The mining companies often do not evict the population directly but push them out of their ecosystem, depriving them of their livelihood.

In Jahatsinghpur, Orissa, a South Korean steel company, Pohang Steel Corporation(POSCO), a steel plant, iron ore mines, and a private port were set up. The development will displace a large group of Forest dwellers. The matter was not particularly targeted at tribal people but forest dwellers. When the clearance was granted to the company, the government observed that the people claiming that they were dependent on the land in the project area did not satisfy the conditions that needed to be satisfied by other forest dwellers.

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[114] Panda N K and Das L N , *Dam and Tribal Displacement: A Case Study of Odisha,* THE TRIBUNAL TRIBUNE.
[115] The Mines and Mineral (Development and Regulation) Act, 1957, No. 67, Acts of Parliament, 1957 (India).
[116] The Mines and Mineral (Development and Regulation) Act, 1957, No. 67, Acts of Parliament, 1957 (India).
[117] The Mines and Mineral (Development and Regulation) Rules, 1957.

The encroachment of tribal lands for building a highway has also caused controversy. The road construction brought settlers and poachers into the forest and exposed them to diseases that would wipe out the tribes. The Supreme Court has ordered the closing of the roads through the Jarawa land to prevent the exploitation, but the question as to its implementation is still concerning.

3. Forest Protection and Displacement

As we have discussed in the previous chapter, the forest laws were in conflict with the interests of the forest dwellers from the colonial period itself. These were resolutions and legislations that were passed by the colonial government, which restricted the forest dwellers and tribal population from accessing the forest lands as the access to forest lands to these populations was seen as a threat to the forests. At the same time, the forests were exploited for the needs of the government. The Forests in Nagaland and the Terai were cut to meet the demand for wood during World War I and II.[118] This state of the forest dwellers has continued even after the end of the colonial government. As stated in earlier chapters, the national interests were prioritised, and the forest dwellers' rights were kept below the national interests. The shift to consider the interest of the scheduled tribes and forest dwellers was slow, and even after the recognition of these rights, other legislations continuously denied them, resulting in displacement.

Guidelines have been issued by the Ministry of Environment and Forests, which have relocated thousands of people from national parks and sanctuaries.[119] The guidelines have violated the rights of the people living in the areas and contravened the provision of the Forest Rights Act. This guideline was an attempt to hastily declare these areas free of people as critical wildlife habitat was later scrapped, but this has not necessarily brought back the people that have been displaced from their land. The Wildlife Protection Act[120], 1972 empowers the district Collector to admit or reject a claim. Section 24 (2) of the Act lays down three ways to admit a claim, which include excluding the claimed land from the proposed sanctuary limits, proceeding with acquiring land or rights except where the right holder has entered into an agreement to

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[118] CULTURAL SURVIVAL, https://rb.gy/fyqs24 (last visited Jun.10, 2024)
[119] Manju Arora, *The Forest Right Act, 2006: Victory and Betrayal,* 52 J. INDIAN LAW INSTITUTE 484, (2010).
[120] The Wildlife Protection Act, 1972, No. 53, Act of Parliament, 1972 (India).

surrender rights over the land on payment of appropriate compensation by the government as per the Land Acquisition Act, 2013 and to permit the right of the claimant in Sanctuary.[121]

A circular for eviction was released by the MoEF in 2002, resulting from the misinterpretation of a court's order in the decision relating to T N Godavarman[122]. The order directed the inspector general of forests to evict the encroachers post-1980 in a time-bound manner, and this has resulted in widespread destruction of the dwelling spaces of the tribal population. This has also resulted in widespread destruction across the country, including Assam and Maharashtra, where elephants were used to destroy the huts and crops of the tribals, which had led to protests. This compelled the MoEF to issue a clarification order in 2002 that the 1990 circulars[123]remained valid and that not all forest dwellers were encroachers.

Forest conservation and displacement have been occurring in India for a long time. Different examples show that a large number of tribal populations have been displaced due to the measures by the government to protect the forest.

The Forest Conservation Act[124], in itself, was problematic as it did not consider the rights of the forest dwellers and tribal population. The intention was exclusively to conserve the forest, and the Act violated the rights of the forest dwellers. It gave the Central government more power as it was made the final arbiter for forest diversion for non-forestry purposes. The amended Act of 2023 also posed problems as it discarded the requirement to obtain consent from the gram sabhas before final forest clearance. The lacunas in the previous Act could be ignored to an extent as it was enacted before the FRA, but the recent Amendment Act also does not consider the FRA. There are instances where the FRA prevailed over FCA, including the decision in Niyamgiri, which shall be discussed in detail in the next chapter. However, these continue to be rare occasions, and the common stance remains that forest dwellers' rights should be overlooked.

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[121] The Wildlife Protection Act, 1972, §24 cl.2 No. 53, Act of Parliament, 1972 (India).

[122] T N Godavarman Thirumalpad v Union of India, (1997) 2 SCC 267.

[123] Circular No 13;l/90-FP of the Government of India.

[124] The Forest (Conservation) Act, 1980, No.69, Act of Parliament, 1980 (India).

The conservation of forests in India is done mainly in two ways, and these two methods, in some ways, influence forest dwellers' rights. The establishment of protected areas like national parks and sanctuaries through the Wildlife (Protection) Act of 1972 practically drives the native habitants from their land. The second path is the regulatory regime, which takes care of forest diversion for non-forest purposes. The forest diversion threatens the livelihood of the tribal population and forest dwellers. Most of the time, the FCA fails to protect the forest; instead, the rules are twisted to facilitate the fast clearance of forest land. Clearances are mostly for developmental purposes, which makes the entire existence of the FCA questionable. The Forest Conservation Rules, 2022[125] paved the way for the 2023 Amendment Act as the rules allowed for compensatory afforestation and development and infrastructure projects without the prior consent of Gram Sabha.

The dilution of this legislation for the ease of doing business has actually reverted back from the progress we have achieved through legislation to the colonial era principles to some extent. The tug-of-war between the Ministry of Tribal Affairs and the Ministry of Forest and Environment regarding tribal rights and forest conservation has persisted for some time now. This mainly occurs with regard to the diversion of forest land for projects where the permission for clearance is obtained in two stages. Generally, at Stage I, approval is obtained from the Gram Sabha, and then in Stage II, the regulatory clearance for environment, water, etc., is obtained. MoEF has at one point tried to change this by requiring the approval of gram sabha only in the second stage, which would deprive the participation of the communities concerned from the decision-making process and would violate the forest rights ensured by the FRA.

Compensatory afforestation mandated by FCA for the diversion of forests for non-forest purposes such as mining or infrastructure also differs now. Now, compensatory afforestation can be done in the lands of private individuals. This change does not consider the livelihood of the forest dwellers and scheduled tribes involved, as the forest diversion would result in the loss of their livelihood, and the compensatory afforestation does not consider the livelihood aspect or any cultural significance attached to it to the traditional forest dwellers and scheduled tribes.

[125] Forest Conservation Rules, 2022, (India).

The land tenure system in tribal areas is characterised by uncertain tenure rights. There are no clear guidelines on property rights on land for several reasons, including a lack of periodical updating of land records in many areas. Even the land market institutions in tribal areas face challenges that deter the genuine empowerment of tribals.

4. Conflicts and Resistance

Land Rights, as we have seen, have been an issue for a long time, and the conflicts relating to land rights are not new in India. Most of the conflicts are related to the land rights of the tribal community for proper implementation of FRA and against forced eviction and dispossession of land.[126]

The physical displacement, more often than not, is done through force and threat, and there are various instances of conflict due to this, which have happened across the country. As a result of the force, there has been resistance from the population, which needs to be examined to understand the extent of these displacements. The resistance, in some way or the other, has also resulted in a temporary solution to their problem. The success of the resistance form their part is meagre, but that hasn't stopped them from resisting. The use of Salwa judum in Chattisgarh to fight Maoists has in turn, destroyed the Adivasi settlement and driven them out of their land, which made it easier to be handed over to the mining companies. The use of military and police force to extinguish the people's resistance is seen across the country.

The Conflict with Vedanta, a British mining company, is a classic example of rights, development, and aggression. The Supreme Court's decision relating to the same will be discussed in detail in the next chapter.

There are different movements across the country that have dealt with tribal land rights. The Kharwar tribals of Madhya Pradesh had a movement in 1957 that called upon the people to stop payment of rent to revenue-collecting agents, utilise timber and forest produce without making any payment, defy magistrate and forest guards, and flout the forest laws which violated the tribal customary rights.[127]

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[126] Jacob Joshy, *One-third of land conflicts are in constituencies where forest rights are key poll issue: report*, THE HINDU, Apr. 13, 2024.
[127] M Gadgil and R Guha, *This Fissured Land: An Ecological History of India,* OXFORD UNIVERSITY PRESS (1995).

The tribal land struggles in Kerala throw light on the lack of implementation of the rehabilitative measures in place. The infamous Changara land struggle and Muthanga land struggle are all reminiscences of the failure of the authorities to uphold the land rights of the tribal community. The Chengara struggle was aimed at reclaiming the ownership of the land that had been promised by the government for land distribution.[128] The protest at Muthanga was also for similar reasons. This was also related to long pending demands of dispossessed Adivasis in the hills of Wayanad, seeking the right to land and autonomy. Even though agreement was reached by the tribal community and the government. The promises remained in papers and forced the agitators to resume the struggle, where makeshift huts were erected in the plantations near Muthanga Forests in Wayanad.[129] The struggle has resulted in the Muthanga incident as well, but the land rights of the tribal population in Muthanga have yet to be solved as the struggle for their land continues.

Another instance that can be seen is the land struggle in Odisha. The Odisha government issued a circular dealing with the compensation for tribal-occupied lands in 2013 after the enforcement of the Land Acquisition, Resettlement and Rehabilitation Act. The violence of land procurement in different States can be seen, which include Nandigram, Bengal, and bauxite mines in Niyamgiri Orissa, which have led to legal battles and have resulted in judicial pronouncements that have recognised the cultural rights of the Tirbal population. This will be discussed in detail in the nest chapter.

5. Resettlement and Rehabilitation

There are different kinds of displacement, which may include disaster-related, development-related, or conflict-induced. The government-led acquisition process of the lands has also led to the involuntary displacement of the tribals. As we have seen in the previous chapter, there are provisions for compensation for the displaced and specific legislation for resettlement and rehabilitation.

The resettlement and rehabilitation of the displaced people due to development projects, particularly large multi-purpose river valley projects, came to the limelight

[128] Haseena V A, *Land Alienation and Livelihood Problems of the Scheduled Tribes in Kerala,* 4 RESEARCH ON HUMANITIES AND SOCIAL SCIENCES 76, 78 (2014).
[129] A K Shiburaj, *Two Decades After Muthanga, Kerala's Adivasis Continue to Struggle for Constitutional Rights,* THE WIRE, (Apr. 27, 2024), https://rb.gy/1aaf6d.

with the emergence of the Narmada Bachao Andolan. The construction of a dam in the Sardar Sarovar dam on the Narmada River has caused the displacement of a large number of the population. The resettlement programmes initiated for these populations, which included tribal groups, have tried to change their livelihood. A community that was dependent on natural resources or non-timber forests was forced to be agricultural labourers, and the lack of economic stability also led them to move to urban areas as wage labourers, which would further lead to their impoverishment.[130] The resettlement packages that were offered were based on the patriarchal definition of family, which excluded women-headed households.[131] This has further impacted the women's access to resources. Thus, there was gender inequality in resettlement planning as well.

The resettlement and rehabilitation that have been caused by the construction of Hirakud Dam is another example. The choice of place for resettlement by the Tribals was influenced by certain criteria, which included the proximity to forest, availability of agricultural options, easy access to water and pasture for animals. The reason for such a choice was their dependence on the forestlands for their livelihood and the lack of resources to buy cultivable land.[132] Even after the resettlement, the tribals faced problems with adjusting to the cohabitants in the newly settled areas.

Different States have had different approaches towards the rehabilitation of the community. The Aralam Farm in the Kannur district of Kerala is an example of the state's effort for rehabilitation. Even though Kannur was not counted as a tribal habitat like Wayanad and Palakkad, Kannur had about 200 tribal colonies, most of which were from the Paniya community. The tribal movement in Kannur gained attention after the 1990s. With the rise in demand for land among the tribal community, the Kerala government made an agreement with the State Farms Cooperation of India to take over Central State Farm in Aralam. The transaction of the farm from the Central to the State occurs through the funds through the Tribal Development and Resettlement Mission. The agreement mentioned clauses that priority must be given to the people belonging to the Paniya Community. The government has changed its

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[130] Morse Bradford & Berger Thomas, *Sardar Sarovar: Report of the Independent Review,* International Environmental Law Research Centre, 11 (1992).
[131] Renu Modi, *Sardar Sarovar Oustees: Coping with Displacement,* 39 ECONOMIC AND POLITICAL WEEKLY 1123 (2004).
[132] Baboo Balgovind, *Big dams and Tribals: The case of the Hirakud Dam Oustees in Orissa,* CONTEMPARARY SOCIETY:TRIBAL STUDIES.

plan for rehabilitation on the Farm and tried to establish ecotourism projects on the farm. It also excluded the tribes from the Wayanad district. This move was short-lived after protests, and the government proceeded with the allocation of the title deeds to individuals where each family was eligible to get one acre of land with basic facilities, but out of the 7,500 hectares of land, 3,500 were set aside as farmland to generate revenue for the welfare of the tribal people. Even after the distribution of land, the state of the community has not improved as the government has failed to provide the basic facilities, and there have not been efforts to alleviate their problems.

These examples of rehabilitation show that the resettlement measures are not well thought out. The rehabilitation of the population, which is dependent on the forest land for livelihood, is a difficult task. It is important to consider their rehabilitative requirements as they are uprooted from their surroundings and placed in a different set-up. It is not easy to merge with the existing population as there are cultural differences associated with the population. The land for them is not merely proprietary, so the rehabilitation would take some time as their existence depends on their land.

6. Conclusion

The displacement of tribals from their land has resulted in numerous problems associated with it due to their close connection to their land. Their dependence on land for economic benefits will further cause economic distress and push them to abject poverty. It is high time that developmental activities consider other aspects of development, even though social assessments are in place. The extent of application needs to be analysed in order to understand the extent of displacement due to developmental activities.

The role of forest and environment protection in tribal land deprivation should not come as a surprise at this point as the earlier legislations which deprived the rights of the indigenous population have effectively used this protection aspect to deprive the population of their forest and other associated rights. The recent legislation also tends to forget the tribal rights in existence and favour development over the forest rights. The conflicts for land rights of tribal population have also led to the recognition of the land right while the promises kept have not been met by the concerned authority in

certain instances. The rehabilitation measures in place have also not considered the rehabilitation as a holistic approach for tribal resettlement. The mer package would not satisfy the needs of the tribal population.

CHAPTER 5
JUDICIAL APPROACH TO INDIGENOUS LAND RIGHT

1. Introduction

The role of the judiciary in recognising and addressing the land rights of the tribal population is pivotal. The judiciary has intervened in the matters of rehabilitation and land acquisition while dealing with the land rights issues faced by the tribal population.

This chapter will deal with the judicial decisions relating to the rights of the tribal population. The judicial interventions before enacting the Forest Rights Act will be discussed initially to give an idea about the judiciary's approach in the initial stages. Further, we will look at the decisions that have shaped the current system in place. Individual decisions have played a pivotal role in determining tribal rights, and the recognition of tribal rights as cultural rights will be discussed at length. The role of the judiciary in the matter relating to rehabilitation and acquisition of lands will also be discussed. As we deal with the issues, we will look into the overlap of the cases and instances where the development and forest protection that we discussed in the previous chapter have come into play, as well as the judiciary's intervention to define both.

2. Court and the Tribal Land Rights before the FRA

The intervention is not limited to the decisions after the enactment of FRA but precedes this Act. One can claim that the judiciary played its part in ensuring the forest dwellers' rights before the FRA was enacted, but it was not uniform. This will be understood from the discussion in this section, where we will be looking into the various decisions that have upheld the Adivasi rights and instances where they have been denied.

In Fatesang Gimba Vasava v State of Gujarat[133], where the Gujarat Forest Department's action to prevent the transport of bamboo for sale to Adivasis was in question. The High Court held that such prevention was unwarranted as once the

[133] Fatesang Gimba Vasava v State of Gujarat, AIR 1987 Guj 9.

bamboo had been converted to bamboo chips, it did not constitute natural produce and did not violate the Indian Forest Act 1927.

The transfer of land owned by tribes to people belonging to other communities is another issue that has come before the court. Some legislations have prevented the transfer of the lands that have been granted for a certain period. The main intention behind this clause was to prevent the exploitation of the tribal community. This was dealt with in detail in Manchegowda v State of Karnataka[134], where the court nullified the purchase of Adivasi land by private parties. A similar matter was dealt with in the decision in Lingappa Pochanna v State of Maharasthra[135]. The matter was related to the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act 1974[136]. The question before the court was whether the enactment for annulment of the transfer of agricultural lands by tribal to non-tribals for restoration of possession was valid and constitutional. The court held that the Consitution permits and directs the State to administer distributive justice which is intended to remove the economic inequalities, and the legislation in question was ensuring distributive justice and hence is constitutional.

While we interpret the earlier cases, we can understand that the reason given by the court for such legislation and the restriction on transfer was economic rights ensured to the tribal population by the constitution. In P Rami Reddy v State of Andhra Pradesh[137], the Andhra Pradesh Schedule Areas Land Transfer Regulation, 1959[138], which prohibited the transfer of immovable properties situated in scheduled areas from members of scheduled tribes to non-tribals without previous sanction from the government and the amendment regulation of 1970 was questioned. The High Court held that, originally, all the lands in the said area belonged to the people belonging to scheduled tribes, and the change of ownership of the land was a result of exploitation by the non-tribals. The court opined that legislation intended to correct such unreasonable exploitation of a community cannot be considered unconstitutional. Here, the economic backwardness of the tribal community was also stressed as the

[134] Manchegowda v State of Karnataka, 1984 AIR 1151.
[135] Lingappa Pochanna v State of Maharashtra, 1985 AIR 389.
[136] Maharashtra Restoration of Lands to Schedueld Tribes Act, 1974, No.14, Acts of Maharashtra State Legislature, 1974 (India).
[137] P Rami Reddy v State of Andhra Pradesh, 1988 AIR 1626.
[138] Andhra Pradesh Schedule Areas land Trasfer Regulation, 1959, No. 1, Andhra Pradesh State Legislature, 1959 (India).

reason for the non-transfer of land to non-tribals. This also shows that the Adivasi rights were upheld most of the time when it was not in conflict with the greater good or sustainable development.[139]

The courts, while deciding on matters relating to climate change, have also remarked on the impact of climate change in the tribal communities as well as how it would result in changes in their habitat and would further result in the loss of their homes.[140]

In State of Kerala v Gwalior Rayons[141], the validity of the Kerala Private Forests Vesting and Assignment Act, 1971[142] was challenged. The Supreme Court refused to entertain pleas for large-scale deforestation, stating that the State was vested with the power to make suitable laws for agrarian reform. The legislation in question was observed to be vesting ownership of forests to the State, and it was held to be a valid agrarian reform beneficial for different groups, including the tribal population.

Pradeep Krishen v Union of India[143], the petitioner was an environmentalist who filed a writ petition challenging the legality of an order issued by the State Forest Department allowing the collection of the tendu leaves from the sanctuaries and national parks by villagers living in the boundaries for maintaining their traditional rights. The petitioner contended that such collection was against the Wild Life (Protection) Act, 1972 and is against the public interest as it is violative of their fundamental right. The Court here did not look into the traditional rights of the people living around the boundaries. The court stated that the State cannot prevent the entry if their rights have not been acquired by notification, and if the notification of acquiring the rights is the only thing that is preventing them from restricting the entry of the people, then that must be done in the interest of the public as the shrinkage of forests is concerning. The entry of people to collect the produce may result in shrinkage, and measures must be taken to prevent such shrinkage.

These decisions show how the judiciary interpreted the forest rights before the enactment of FRA and the importance given to the public interest rather than the

[139] Armin Rosencranz, *The forest Rights Act 1006: High Aspiration, Low Relaization,* 50 J.INDIAN LAW INSTITUTE 656, (2008).
[140] M K Ranjithsinh & Ors. v Union of India, Writ Petition (Civil) No. 838 of 2019.
[141] State of Kerala v Gwalior Rayons, AIR 1973 SC 734.
[142] Kerala Private Forests Vesting and Assignment Act, 1971, No.5 Act of Kerala State Legislature, 1971(India).
[143] Pradeep Krishen v Union of India, AIR 1996 SC 2040.

cultural and traditional forest rights of the scheduled tribes and forest dwellers. This can also be attached to the legislation at the time, as it concentrated on national interests. There were attempts an interventions by the judiciary to protect the land rights of the scheduled tribes, but the lack of a legislation in place to protect these rights is evident from these decisions.

3. Forest Rights Act and Judiciary

Many applauded the enactment of the FRA. Still, a section of conservationists found the Act to be violative of the conservationist efforts and hence would be a threat to the ecosystem in general. This has given rise to the question of the Constitutional validity of the Forest Rights Act. Bombay Natural History Society & Ors. v Union of India[144], raised questions regarding the implementation of the Act.

A subsequent petition filed by three Wildlife organisations- Wildlife First, nature Conservation Society and Tiger Research and Conservation Trust, contended that land is a state subject and Parliament cannot distribute the same. The Supreme Court has issued notices to the Union Ministry of Environment and Forests, the Ministry of Tribal Affairs and the cabinet secretary. The questions raised mainly consisted of whether the Act was beyond the legislative competence of parliament and whether parliament had the right to distribute land rights when land was a state subject. It also examined whether the natural heritage, ecology, and biodiversity, including forest land, fall within the expression ‘right to life and liberty guaranteed under article 21 of the Constitution. The main contention was that the Act infringes the fundamental rights of all citizens to natural heritage and ecology. The petitioners also argued that the Act was violative of the fundamental rights of the petitioners guaranteed under Articles 14 and 21, read with Articles 48 A and 51 A (g) of the Constitution of India. According to the contenders, the diversion of forests for ecological benefits was not considered an infringement.

Wildlife First v Ministry of Forest and Environment[145], as mentioned above, challenged the constitutionality of the FRA. The petitioners have claimed that the Act has resulted in deforestation and forest area encroachment. The question before the court was whether the States had implemented due process while denying the claims

[144] Bombay Natural History Sty & Ors. v Union of India, Writ Petition (Civil) 514/2006.
[145] Wildlife First v Ministry of Forest and Environment, Writ Pettion (Civil) No. 109/2008.

of the forest. One of the petitioners has also requested to return the forest land, which has been trespassed by the persons whose right to land under FRA was denied. An interlocutory application was filed before the Court to order States to evict illegal forest dwellers. The Supreme Court in 2019 gave a judgement where it stated that the individuals who have failed to meet the requirements according to the Act and have been denied the land must be evicted from the said land by the concerned authority. This decision resulted in an order from the Supreme Court to evict the 1,000,000 tribals and forest dwellers from the forest land across different states. The Supreme Court later noted that the authorities had not carried out the eviction and stated that it should be carried out once an order for eviction is passed. In response to this order, the Ministry of Tribal Affairs sought a hearing on it, and the Centre government pleaded that it was not certain whether due process had been followed for the rejected claims. The court further passed a stay order for the previous eviction order. It directed the states to produce affidavits detailing the procedure carried out in the claims filed under the FRA.

The Court upheld the Constitutional validity of the FRA in its judgement. The petitioner has contended the legislative competence of the Parliament to pass the FRA. The argument was based on the fact that the forest land referred to in the Act related to Land mentioned in List II of Schedule VII of the Constitution and not under item 17 A 'Forests under List III of Schedule VII of the Constitution. The Court observed that the preamble of the Act stated that the Act is to recognise and vest the forest rights and occupation in forest land in forest-dwelling Scheduled Tribes and other Traditional forest dwellers who have been residing in such forests for generations. The Act also states that the title granted under the Act is non-transferable; therefore, the provisions of the Act deal with the forests, and the parliament is competitive to enact such an Act. The recognition of the validity of the FRA has helped in upholding the rights of forest dwellers, but there are challenges to overcome in the implementation as the claims need to be screened in a proper manner, and the eligible individuals must not be denied their rights to their land.

4. Rights and Development

As we have seen in the previous chapter, the development and displacement of the tribal population go hand in hand. We can say that most often, rights and development come into conflict. The conflict in Niyamgiri Hills in Orissa and the subsequent decision relating to the rights show how it has been interpreted by the judiciary. The relationship between the environment, human rights, and the conflict between multinational corporations and communities is also revealed by this decision. An appeal was filed to the Supreme Court to restore the rights of the tribal people. The Central Empowered Committee (CEC) found illegalities in the state's central government clearances for the Sterlite Industries bauxite mining project. It was recommended that the Supreme Court deny the diversion of forest land for the project.

Banwasi Seva Ashram v State of Uttar Pradesh[146], raised the question of the process of land acquisition by the Uttar Pradesh government. The government was acquiring the land for the National Thermal Power Corporation plant. The State Government declares a part of the forest land in two tehsils as “reserved forests” under section 4 of the Forests Act. The forest officials started interfering with the operations of the tribal community, and they were accused of encroaching on the forest land. The question before the court was whether the claims of the tribals and the possession of the land were legal and whether the thermal power plant on the land was legal and valid. The Supreme Court held that the claimants have the right to establish their rights on the land. It also held that the right to livelihood is a constitutional right of the tribals. The court noted that industrial development is necessary, but it should not be at the expense of the fundamental rights of the tribals.

The judgements relating to the construction of the Sardar Sarovar dam have discussed in length the development and the infringement of the rights of the Tribal population and displacement as well. The series of judgments will help us understand the court’s opinion on the Court's development and oscillating stance. In B D Sharma v Union of India and Ors[147], the Supreme Court acknowledged that the World Bank had financed the project, and the progress was not satisfactory. It ordered the construction of the dam expeditiously. It viewed that the NWDT Award’s requirement of giving an

[146] Banwasi Seva Ashram v State of Uttar Pradesh, (1987) 3 SCC304.
[147] B D Sharma v Union of India, Supreme Court of India , Writ Petition (Civil) no. 1201 of 1990.

18-month notice before displacement does not serve the ultimate purpose. The court agreed that rehabilitation should be carried out methodically and meticulously, and a committee should be formed to look after rehabilitation issues.

The Narmada bachao Andolan, which was spearheaded by the native tribals and environmentalists against the construction of dam projects across the Narmada River and the legal battle has resulted in a series of observations by the Supreme Court. The movement has also resulted in the withdrawal of the loan by the World Bank and an independent review of the project. The rehabilitation of the people affected by the project was also discussed through different judgements.

In Narmada Bachao Andolan v Union of India[148], which revolved around the construction of the Sardar Sarovar Dam on the Narmada River, it brought a balance between the development and protection of the environment and human rights. The judgement emphasised the importance of the completion of the project. It also emphasised the integration of the marginalised communities into the mainstream, ensuring that they benefit from development projects through improved access to essential services. The decision also entrusted the States involved to implement the tribunal's awards concerning the rehabilitation of the affected population. The rehabilitation measures were not tailored to the needs of the people, as it can be understood from the subsequent cases that arose with regard to the project.

In the State of Madhya Pradesh v Narmada Bachao Andholan[149], the rehabilitation packages for the persons displaced due to the project were discussed. The appellants approached the Supreme Court for relief and to stop further construction of the dam, which may cause submergence in the area. It demanded the resettlement and rehabilitation of the displaced families within six months. It was argued by the appellant that the non-compliance to the R&R Policy was violative of the fundamentals of the displaced under Article 21 of the Constitution. The Supreme Court has rejected the appeal here, stating that the rehabilitation and the allotment of land to landless labourers were not a condition in the R& R package, and hence, it need no be followed. This decision is an example of the courts changing their position with regard to tribal rights and, at certain points, refusing to recognise them.

[148] Narmada Bachao Andolan v Union of India, Writ Petition (Civil) 328 of 2002.
[149] State of Madhya Pradesh v Narmada Bachao Andolan, AIR 2011 SC 1989.

5. Forest Conservation and Forest Rights

Throughout the discussion regarding the forest rights of the tribal community, we have found that conservation-related initiatives have been given more importance, and community rights have taken a backseat. The initial cases that were discussed also show the courts have leaned towards forest protection rather than tribal rights. The decision in T N Godavarman Thirumalpadu v Union of India[150] has also led to a forest protection approach, where several forest-related judgements and orders, at some point, have ignored the forest rights of the individuals. This decision has extended the ambit of the Forest Conservation Act to all lands conforming to the definition of forest. As we have discussed in the previous chapters, the definition of forest in India has varied. The Supreme Court, in this decision, banned the removal of dead, diseased, dying or wind-fallen trees, driftwood, grasses, etc. from all national parks and wildlife sanctuaries. This was interpreted by the MoEF and the Central Empowered Committee appointed by the Supreme Court to mean that no right can be exercised in protected areas and banned the collection and sale of all non-timber forest produce from them.

A circular for eviction was released by the MoEF in 2002, resulting from the misinterpretation of a court's order in the decision relating to T N Godavarman[151]. The order directed the inspector general of forests to evict the encroachers post-1980 in a time-bound manner, and this has resulted in widespread destruction of the dwelling spaces of the tribal population. This has also resulted in widespread destruction across the country, including Assam and Maharashtra, where elephants were used to destroy the huts and crops of the tribals, which had led to protests. This compelled the MoEF to issue a clarification order in 2002 that the 1990 circulars[152]remained valid and that not all forest dwellers were encroachers.

2004 saw another two circulars being released by MoEF where one was titled "Regularisation of the rights of the Tribals on the Forest Lands", which has extended the regularisation of encroachment by tribal to 1993 and the other was titled "Stepping up of process for conversion of forest villages into revenue villages". These circulars were stayed by the Supreme Court. The conflict between the MoEF and the

[150] T N Godavarman Thirumalpadu v Union of India, (1997) 2 SCC 267.
[151] T N Godavarman Thirumalpadu v Union of India, (1997) 2 SCC 267.
[152] Circular No 13;l/90-FP of the Government of India

Ministry of Tribal Affairs has continued for a long time. The MoEF has admitted that the rural people, especially tribals who have been living in the forest, have been deprived of their rights and livelihood for a long time, and consequently, they have been termed as encroachers by the law. The stay on the said orders remained so as the court refused to remove the stay, and this back and forth relating to forest conservation and forest rights has recognised the systematic deprival of rights against the forest dwellers and scheduled tribes. This has resulted in the issuance of a notice by the MoEF to stop the eviction of the forest dwellers until the claims have been settled. This did not have much impact as the eviction processes continued in some States.

Even though there was some relief in the aspect of displacement, the Forest Conservation Act of 1980 has helped the State and Central governments to violate tribal rights consistently. The MoEF has continued to issue orders regarding the encroachment of land and disputed claims, but in vain. The SC/ST Commission have also commended that the acts of omission and commission have led to the violation of the rights of the people belonging to the scheduled tribes.

The Supreme Court in Pradip Prabhu v State of Maharashtra and Ors[153], have also directed Maharashtra and Madhya Pradesh to decide on the people's claims in the light of these orders in Godavarman Thirumalpadu. This shows the influence the decision of Godavarman Thirumalpadu had in the decisions relating to forest conservation. Although the environmentalists have appreciated the decision, it had a different impact on the tribal land rights of the individuals. The enactment of FRA and the judicial decisions in the next decades have helped shape the tribal rights we see now.

6. Samatha and the Forest Rights

As we have seen in the previous section, the recognition of tribal rights by the judiciary has been changing depending on cases. The lack of consistency and the failure to recognise these rights have had a negative impact on the tribal population. The judgement in Samatha have brought a change to this scenario. The decision in Samatha[154] has been applauded as a decision that furthers the rights of the tribes in

[153] Pradip Prabhu v State of Maharashtra v Others, Write Petitions (Civil) No. 1778 of 1986.
[154] Samatha v State of Andhra Pradesh, AIR 1997 SC 3297.

forest land. The judgement was laid down that the government lands, tribal lands, and forest land in the Scheduled Areas cannot be leased out to non-tribal or private companies for mining or industrial operations. This decision made all the mining leases granted by the State governments in fifth Schedule Areas become illegal, null and void.

The judgement dealt with an important aspect relating to the granting of licenses by the government to private corporations for mining. The case was a result of the state government's ignorance of tribal rights while granting licenses for mining in the scheduled area. Samatha, an NGO, has filed a writ petition before the High Court of Andhra Pradesh stating that such leasing of the resources was in violation of section 3 (1) (a) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959.[155] This section prohibited the transfer of land from tribals to non-tribals in the scheduled areas. The petitioners cited that the government comes under the definition of 'person' mentioned under the Regulation and does not have the authority to grant mining leases to non-tribals in the scheduled areas. The High Court dismissed the petition, stating that the State would not come under the purview of the definition of 'person' under the Regulation. The petitioner thus has challenged the decision of the High Court in the Supreme Court, where the Supreme Court declared the decision of the High Court of Andhra Pradesh null and void and the definition of person was held to be wide enough to include the government as a person. The court also gave power to the tribals to exploit the minerals in the scheduled areas without disturbing the ecology or the forest, individually or through cooperative societies.

The State Mineral Development Corporation Ltd was empowered to take up mining in the scheduled areas without violating the Forest (Conservation) Act, of 1980 and the Environment Protection Act, of 1986. The granting of a licence for the State Mineral Development Corporation was upheld since it was a public corporation and acted in the interest of the people. The Court emphasised the importance of Gram Sabha under the PESA Act, 1996 and held that gram sabha has the power to make decisions to protect and promote the interest of the tribal communities. The court stressed the importance of the relationship between the tribal communities and the land resources and laid down guidelines for the transfer of the land. According to these guidelines,

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[155] Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, No. 1 Andhra Pradesh State Legislature, 1959 (India).

the land could only be transferred with the consent of the gram sabha. The court has directed the State government to immediately issue title deeds to the tribals who are occupying these lands. It stated that the government had no right to grant mining leases in these enclosure lands belonging to tribal people. The court has also directed the government to take policy decisions to uniformly govern the tribal lands across the country in accordance with the guidelines laid down in the judgement under which the national wealth lies in the form of minerals. The court, while deciding, was aware of the conflict of interest between the state and the tribal communities but tried to bring about a balance between the competing rights. This was evident from the guidelines issued by the court.

The decision in the BALCO judgement[156] has watered down the protection given in the Samatha judgement. Here, the government's divestment of the public sector to a private company was questioned. The transfer of Bharat Aluminium Company, which is a public sector company situated in a scheduled area, to Sterlite, a private company, was challenged by the State Government of Chattisgarh. The Supreme Court, in its decision, has criticised the Samatha judgement and observed that the Samatha decision has limited application in the present case since the laws applicable in both instances were different.

7. Land Right as Cultural Right

The common theme during our discussion was the importance of land rights to the tribal community and how it is culturally connected. But the judicial decisions we have analysed till now haven't considered land rights as a cultural right and have also been reluctant to uphold tribal rights as well. The Niyamgiri judgement has opened a new aspect to the Indian context. Orissa Mining Corporation Ltd v Ministry of Environment and Forests and Others[157], is commonly known as the Niyamigiri judgement. The judgement acknowledged the tribe's cultural, religious, and spiritual rights to the hills. The petition arose from a memorandum of understanding between the government of Odisha and Sterlite Industries India Limites, the parent company of Vedanta Aluminium Ltd in Tehsil. In 2004, Vedanta Aluminium Ltd filed an application before the Supreme Court to clear the proposal to use 723.343 ha of land.

[156] Balco Employees Union v Union of India and Ors., AIR 2002 SC 350.
[157] Orissa Mining Corporation Ltd v Ministry of Environment and Forests, (2013) 6 SCC 476.

This area included the worship place of the Dongria Kondh Tribe, a particularly vulnerable tribal group (PVTG). This tribal group inhabits the Niyamgiri hills and worships Niyam Raja, who is considered the Supreme deity of the Niyamgiri forest. While deciding the matter, the bench considered various rights ensured by the FRA and noted that the provisions were intended to protect the wide range of rights of the forest dwellers and scheduled tribes. These include the customary right to use forest land as a community forest resource and are not restricted to forest rights.

The Court considered the religious freedom guaranteed to STs and TFDs under Articles 25[158] and 26[159] of the Constitution, which is intended to guide a community of life and social demands. The court observed that these articles guarantee them the right to practise and propagate not only the matters of faith or belief but all those rituals and observations which are regarded as integral parts of their religion.[160] The Court held that their right to protect the deity of Niyam-Raja should be protected and preserved. The Gram Sabha was empowered to safeguard the customary and religious rights of STs and other TFDs under the FRA. Section 6 confers power on the gram sabha to determine the nature and extent of individual or community rights. The court directed the gram sabha to examine whether the mining area would affect the abode of Niyam-Raja and measures to be taken to protect the religious rights of the community. The decision on the Stage II clearance of the land for mining was to be decided after the report was given by the Gram Sabha to the Ministry of Tribal Affairs and the Government of India.

This decision, in effect, has travelled a different path than the previous interventions by the judiciary as it invoked international conventions and emphasised the need to preserve the social, political and cultural rights of the Indigenous community. It aimed to ensure the tribal people did not suffer from the adverse effects of the developmental projects taken by the government, and the public good that was given an upper hand was put aside while recognising the community's cultural rights.

The Niyamgiri judgment paved the way for other judgements as well. This can be seen in Anil Agarwal Foundation v State of Orissa[161], where the Supreme Court

[158] INDIA CONST. art. 25.
[159] INDIA CONST. art. 26.
[160] Orissa Mining Corporation Ltd v Ministry of Environment and Forests, (2013) 6 SCC 476.
[161] Anil Agarwal Foundation v State of Orissa, Civil Appeal Nos. 1144-1146 of 2011 (2013).

protected the tribal rights by quashing the Odisha State government's initiative of land acquisition proceeding for setting up a University project in favour of a private company. The Court observed that the land acquisition was not for public purpose, and the State government failed to hear the objections of the tribes, and it did not get consent from the concerned tribes. The Court added that the grant of land violated the tribal right to life and livelihood under Article 21 of the Indian Constitution since this is a deprivation of their cultural identity and natural resources. The attachment of land rights to cultural rights would further guarantee that the right will be protected.

8. Conclusion

The analysis of different judgements relating to forest rights has thrown light on the evolution of forest rights. The evolution of the forest, right as we see it now, has gone through different stages. The judiciary's interpretation of forest rights has been tricky as the intersection of different disciplines in tribal land rights has not made the process easier. The development and conservation of the forest have hindered the recognition of land rights of the tribal population to an extent, as observed. The judiciary itself has evolved and interpreted the provisions to incorporate the wider ambit of the forest rights and land rights of the tribal population. The dependence of tribes and forest dwellers on the forests must be understood and recognised, and only then will any kind of progress happen. The latest decision, Niyamigiri, rightfully does what needs to be done and is in line with that of international counterparts. The recognition of these rights would help in the upliftment of the tribal population as they are dependent on the forest land for their livelihood.

CHAPTER 6

CONCLUSION

1. Introduction

Throughout our discussion, we have come across different legislations, their implementation and impact. The international laws in place were examined and the extend of its application in India can also be considered from its analyses. The tribal rights especially those associated with land rights have been dealt with in this research and the recognition of the land right and its extend have been determined through this research. The judicial decision have also shed a light on the extend of judiciary's role in determining the rights of the tribal population. The role of judiciary in recognition of land rights have been analysed through different decisions. The rehabilitation and resettlement of the tribal population have also been discussed briefly in this research. The present chapter will be discussing the findings of the research and the recommendations for the protection of the land right of the people belonging to scheduled tribes.

2. Findings of the Hypothesis

The continuing theme of the paper is the land rights of the tribal population. In order to understand the land rights of the tribal population in India, the author has examined the legislation in place and has attempted to trace the evolution of the laws in place to the present scenario. The international mechanisms in place to recognise the land rights of the indigenous population were analysed. The analysis of the Convention and the international mechanisms in place have given us an idea about the influence of different aspects and the need for prioritising land rights. While dealing with international mechanisms, one of the challenges was linking these to the Indian scenario. The author overcame this by analysing different jurisdictions' legislation and judicial decisions. The jurisdictions were selected based on common interests and shared colonial history. The analysis of these jurisdictions, mainly Australia, Canada, and New Zealand, helped us transition to the laws of India.

The legislation in India protecting and recognising the tribal rights to land is comparatively new, and this has been a result of continued efforts by the authorities to

recognise the rights of the tribal population. The main statute that we have analysed is the FRA. The influence of PESA in deciding matters relating to the tribal population cannot be ignored. The FRA has existed for a decade now, but it still can be described as in its nascent stage. This is due to the fact that the judiciary has recognised the constitutionality of the Act only in 2019. The authorities responsible for the implementation of the Act have also commented that implementing the Act and collecting data for the claims under the Act would take years as the database for the implementation needs to be built from scrap. This lack of availability of data can be due to the inherent discriminatory practices that have continued to exist towards the tribal population. The economic status of the majority of the tribal population who are dependent on the forest for their livelihood is meagre. The problems that have existed for a long time have further worsened with the developmental activities and the forest protection measures in place, which have technically evicted them from their land. Depriving a group of people from land on which they depend for survival is not the best way to lift them up from an economic crisis.

The rehabilitative and resettlement measures in place have also been looked upon, and the failure of these measures can also be seen in the judicial measures. The failure of the authority to allocate land and protect the lands has further worsened the situation. The author understands that the failure of the concerned authorities to recognise the cultural importance of the land to the tribal population has worsened the situation. Land must not be associated in the same manner as it is with the rest of the population while dealing with the tribal population. For the tribal population depending on land for livelihood, land has cultural significance and depriving them of this land has far more impact than any other population. Here, we are not depriving them of merely their land but their being. The interconnectedness of the land and the impact of development and forest protection measures have proved the hypothesis to be valid as the proper implementation of the existing law would empower the population.

3. Findings and Suggestions

The challenges to the implementation of the FRA and PESA can be described as one of the main reasons for the lack of proper recognition of forest rights.

The process of implementation of the FRA for instance, has its own struggles. The implementation of the Act, as we have observed, is at the gram sabha level. The Gram Sabhas act at the grassroots level, where the forest committees are constituted and authorised to assist the Gram Sabhas to collate, verify and approving claims to the rights required. In many instances, this was done at the panchayat level, which changes the way the Act is implemented. The village-level officials fail to implement their powers properly, which dilutes the purpose of the Act. [162]

The State-level monitoring committees, whose role is to assess whether the FRA's implementation is taking place as it should be, devise the criteria and indicators for monitoring rights recognition.

The rejection of the claims by the authority is another problem of concern, which has hampered the recognition of the rights under the Act. The rejection, in many instances, has been carried out due to the lack of proper investigation before the rejection.

One of the main intentions of the Act is to recognise the community forest rights of the tribal population, but the enactment of the Act and the further implementation have not seen the claims under the community forest rights as expected[163]. The individual forest rights claims surpassed the community forest rights.

There must also be interventions to support the beneficiaries of the recognised claims in individual forest rights and community forest rights, which include the recognition of the livelihood of the forest dwellers and the promotion of sustainable forest management. There is a lack og recognised and dedicated mechanisms to deal with and support the title holders.

Section 2(c) of FRA deals with Critical Wildlife habitat, which refers to areas specified by a Central government-led committee that includes the local experts and officials in the national parks and sanctuaries based on section 4 of the Act. There are recommendations to keep these areas alienated from the rest of the area in the forest. It must surely be kept aside, but there must be a method to ensure the protection of the tribal rights of the people residing in these areas. Delineating a small population from

[162] Summary Report on Implementation of the Forest Rights Act, Council for Social Development.
[163] Kothari, Ashish (2011), *Not Out of the Woods Yet,* FRONTLINE, 28 (5) : 64-73.

their land wouldn't necessarily solve the problem relating to wildlife, as they have co-existed for a long time.

Even after the Community Forest Rights recognition, there is a lack of CFR management plans in these areas. The absence of management plans leads to delays in the CFR survey map in certain gram sabhas, which further mutes the clarity of the CFR.

There is no specific process in place to recognise the rights of the particularly vulnerable tribal groups. This lack of process has led to the lack of recognition of the lands for these groups, and the habitat rights of the communities remain unrecognised.

The FRA also recognises forest dwellers' rights regarding land use for cultivation. The FRA recognises the statutory rights of the forest-dependent communities to own, access, use and dispose of minor forest produce. Non-forest timber forest products are not exclusively handed over to the gram sabhas. The forest claims continue to be rejected without following due process in terms of both individual and community forest rights. The lack of a mechanism to communicate the reasons for the rejection of the claims further keeps the claimants in the dark.

The demand for awarding development rights without settling IFR claims has created confusion and operation difficulties, There is no provision in the Act that states that the development claims must be given priority over individual rights. However, there is a tendency to give an upper hand to development rather than community rights.

4. Way Forward

As we have seen above, there is a severe lack in the proper implementation of the Act. The reason for this is the doubts surrounding the provisions of the Act and a lack of proper implementing authority concerning the Act. The provisions have been twisted according to the wishes of the other population, which further hinders the implementation of the Act. The lack of relevant data from the authorities can be considered as the major reason for the lack of proper implementation of the Act. The potential villages or tribal settlements must be mapped out to ease the forest claims. It should be implemented in a quick manner for active coordination of the stakeholder

departments which include the Revenue, Forest and Scheduled Tribes Development Department.

The functions of the Sub-Divisional Level Committee (SDLC) must be defined so that they can exercise their responsibilities in the right manner. SDLCs shall provide information to each gram sabha about their duties and duty holders of forest rights and others towards the protection of wildlife, forests, and biodiversity with reference to critical flora and fauna that must be conserved and protected. All the Gram Sabha resolutions must be collated, and the SDLC must provide consolidated maps and details to the Gram Sabha. The resolutions of the gram-sabha must be examined by the SDLC, and it shall also coordinate with the inter-subdivisional committee for matters relating to claims. It also has the duty to raise awareness among forest dwellers about the objective and procedures laid under the Act.

Numerous claims have been under the FRA for individual and community land claims. But the number of settled claims is very few. The claims have continued to pile up without much recourse, and this needs to be resolved. The pending claims must be looked into and settled at the earliest, and this can be done by establishing a defined process for recognition of the claims. There are drawbacks to establishing a uniform system of recognition of land claims across the country since the needs of the communities differ across different areas. However, the lack of uniformity hinders proper implementation. The establishment of a uniform process for recognition across different states would help to solve this issue to an extent. As we have seen, there are several rejected claims as well, and the basis of the rejection remains unclear. A review must be done to analyse the rejected claims and hear the grievance for the claim of arbitrary rejection.

The lack of claims under the community land rights under the FRA can be due to the lack of awareness. The beneficiaries of an enactment must be aware of the rights promised under the Act. This can be achieved by communicating these rights through intermediaries so that they are aware of the legal framework and ensure their rights are upheld. The nature of the rights must also be communicated to the community concerned.

The identification of the Critical Wildlife Habitat (CWH), is important for the protection of wildlife. The FRA recognises the rights of the forest-dwelling tribal

communities and the conservation of forests. The alienation of the recognised land, which is identified as having high ecological/biological/hydrological value, has been suggested by many. The historical examples suggest that the recognition and the attempts to alienate these lands have not always been favourable to the tribal population. The impact of the tribal communities residing in the forest areas on the wildlife must be studied. The impact of developmental activities on wildlife is significantly larger than that of the tribal population on land. Hence, the alienation of this land is not the correct solution for the ecological impact. The recent convention on the environment has also recognised the importance of indigenous communities in sustainable development and environmental protection. The exploitation of forests by a tribal community is not the reason for the depletion of the forest lands, and this needs to be recognised, and the land rights of the community must be protected. Prevention of the transfer of the ancestral land to any other members of the community can solve the concern of exploitation. The cultural significance of the land and the recognition of such rights would act as an incentive for the tribal community to protect the land. The grant of land rights in the ancestral property should not prevent them from coming to the outskirts of the forests if they desire to. There must be measures in place to ensure a smooth transition if and when required. The developmental rights mentioned in FRA must be carried out in a manner that is deemed fit for the ecological and biological demands of the forests.

The recognised titleholders must have institutional support to exercise their rights. The FRA amendment rules, 2012, specify that the state government shall ensure that the government schemes, including land productivity, basic amenities, and other livelihood measures, are provided to claimants and communities whose rights have been recognised and vested under the FRA. Efforts must be made to ensure that individual title holders are given access to loans and other schemes based on the title, and the government of the concerned states must issue orders that direct the bank to remove the hurdles in accessing the loans. The gram sabhas should provide the recognised community forest rights technical and financial support to prepare their community forest resource management plan. The line departments, which include the revenue department, must facilitate a community-driven micro plan to access, use, and protect the recognised Community forest areas. The District level convergence

plan needs to be implemented through the involvement of gram-sabha instead of creating multiple non-inclusive institutions.

The role of the Tribal department in the recognition of the developmental rights of the tribal population along with the land rights should not be ignored. The tribal department plays an important role in ensuring that the rights are upheld and measures are carried out to ensure the tribal rights of the population. The roadblocks to the implementation of the Act must be analysed, and measures to eradicate them must be overseen by the Tribal Department, and the rights of the tribal population must prioritised.

The gram sabhas have a pivotal role in the implementation of the provision of the Act. The Forest Rights Committees established by the Gram Sabhas involve the hamlets and social groups, which include vulnerable sections of the society at the village level. The authority should ensure due process for claim filing and avoid delay and omissions at the Gram Sabha level. It should be empowered to communicate effectively the importance of the individual and community rights to Gram Sabhas for long-term sustainable resources.

Participatory forest management must be synchronised with the identified institutions for better outcomes, and economic opportunity for non-timbers must be used for the benefit of the community and prevent the exploitation of the benefits. The economic aspect must be looked into, and any outcome from such use must be spent on the community itself for its upliftment.

As mentioned earlier, the community must have an option to move from the interior forests to the periphery if they wish to do so. There would be instances of wildlife and human conflict in the interior of the forest, and the need for the tribal community to improve access to development can be satisfied if they move to the periphery of the forest. There should be a provision to provide land in the periphery of the forest if the community show an interest in the same. Creating such an option for the tribal population, if the need be, will increase their autonomy and create a sense of responsibility for their own right. Allowing such movement will not hinder them from achieving economic benefits but, in turn, allow them to achieve socio-economic empowerment. This will actually help them improve the quality of their life as the

changes occur at their own pace, and there is no uprooting from their land, but a change with consent and integration with society in the manner they deem fit.

5. Conclusion

From the examination of the the legislations and the implementation aspect of the legislations in place, we can come to the conclusion that there are lacunas in the existing legislations and certain changes must be made in the current legislations to ensure the tribal land rights of the population. With regards to the development and displacement of the individuals, a change in the policy measures and the procedures undertaken must be made to ensure the rights are upheld. It is time for the development and mining for economic gains to take a back seat while the tribal rights are being upheld as it will also benefit in the protection of the forest. The conservation measures must be made so as to include the participation of the tribal population for a balanced system with less exploitation.

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APPENDIX

CERTIFICATE ON PLAGIARISM CHECK

1	Name of the Candidate	Anamika M J
2	Title of the Dissertation	Right to Land of Indigenous People in India
3	Name of the Supervisor	Dr. Namitha K L
4	Similar Content(%) identified	6%
5	Acceptable Maximum limit	
6	Software Used	Grammarly
7	Date of Verification	23-06-2024

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Name and Signature of the Candidate -

Name and Signature of the Supervisor -