

IN THE ‘JUNGLE’ OF LAW- ANALYZING THE INTRICACIES OF HUMAN RIGHTS VIOLATIONS OF ILLEGAL EVICTION OF FOREST DWELLERS

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ABSTRACT

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

Keywords- *Adivasi Rights, Illegal tree cutting, Forced Eviction, Human Rights*

INTRODUCTION

I. ADIVASI LANDS AND FORESTS: NATIONAL AND INTERNATIONAL RIGHTS

A. *International Native Peoples' Rights*

According to Principle 22 of the Earth Summit in 1992, indigenous people and their communities play a significant role in environmental management, and their traditional practices greatly influence the sustainability of the environment. Every State is responsible for upholding the local populace's rights to preserve themselves and the environment.² The identity of Adivasis is rooted in the land they inhabit, according to the preamble of The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2008.³ For indigenous people, everything they need to survive—from food to housing to cultural and spiritual ties that cannot be severed from the land—depends on the forest areas. For them, the land is connected to their material and spiritual needs. They view it as a distant dream if their wants are

¹Virginus Xaxa, *Tribes as Indigenous People of India*, 34 ECONOMIC AND POLITICAL WEEKLY 3589 (1999), <https://www.jstor.org/stable/4408738> (last visited Dec 3, 2022).

²KIRSTY GALLOWAY MCLEAN ET AL., REPORT OF THE INDIGENOUS PEOPLES' GLOBAL SUMMIT ON CLIMATE CHANGE (2009).

³James S. Phillips, *The rights of indigenous peoples under international law*, 26 GLOBAL BIOETHICS 120 (2015), <https://doi.org/10.1080/11287462.2015.1036514> (last visited Dec 3, 2022).

not met.⁴ It is acknowledged in **Article 13 of International Labor Organization Convention 169** (UNDRIP) that the State has a responsibility to tribal people to respect and safeguard the values they uphold about the land.⁵ The term “*indigenous people*” is defined in the ILO Convention 169 as “*those who are descendants of a particular land, at the time of conquest or colonization, or the establishment of present state boundaries and who, regardless of legal status, retain some or all of their own social, economic, cultural, and political institutions.*”

According to this concept, “Adivasis” are considered indigenous people by the *Supreme Court in the Kaila V. State of Maharashtra*.⁶ Because they were pre-Dravidian descendants. Adivasis are considered indigenous people in India, and the convention protects them. Who is considered to be an “*indigenous person*” is unclear. Why doesn’t Indian legislation have a suitable language to designate those descended from a specific land, even though the international agreement maintained a general term? When phrases like “*tribal people*,” “*forest dwellers*,” etc., are often used. The Inter-American Court ruled in *Saramaka People V. Suriname*⁷ that tribal people have a right to claim ownership of the land they have long used and occupied and the ability to uphold spiritual ties to it. The right of indigenous people to self-determination, recognized by the UN Committees on Economic, Social, and Cultural Rights, includes the right to free, prior, and informed consent.

B. Constitutional Methodology

As a constitutional right guaranteed by **Article 300A of the Indian Constitution**, the property right allows the State to seize Adivasi lands for the greater benefit without compensation. The land acquisition process, especially in forest areas, gives the state power to acquire *terra nullius*⁸ land from Adivasis under the doctrine of public trust and eminent domain. Adivasis’ land rights are included in the right to life as defined by **Article 21**.⁹ The development of tribal welfare in terms of economic empowerment and education is covered in Art. 46. According to **Schedules V and VI of the Indian Constitution, Art. 244 and 244A** provide for the administration, control, and management of scheduled areas and scheduled tribes. **Articles 330 and 331** grant representation to SC and STs in the legislature and state assemblies to ensure social fairness. According to **Article 164(1) of the Constitution**, states must select a Minister for Tribal Welfare to oversee tribal welfare. The **Forest Rights Act, 2006** (*hereinafter* FRA) safeguards forest residents’ rights, including property rights and community usage of forest land. The Gram Sabha is given sole discretion over acquiring land under the **Panchayats Extension to Scheduled Areas (PESA) Act, 1996** (*hereinafter*, PESA Act).

C. Legislative Strategy

The **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of 2013**—the original law established to protect Adivasis—is abolished, and the Adivasis now have the right to offer their free, intelligent, and informed consent (*hereinafter* referred as

⁴Mayagna (Sumo) Awas Tingni Cmty. V. Nicaragua, 2001 Inter-Am. Ct. HRR (ser. C) No. 79.

⁵Athanasios Yupsanis, *The International Labour Organization and Its Contribution to the Protection of the Rights of Indigenous Peoples*, 49 CANADIAN YEARBOOK OF INTERNATIONAL LAW/ANNUAIRE CANADIEN DE DROIT INTERNATIONAL 117 (2012), <https://www.cambridge.org/core/journals/canadian-yearbook-of-international-law-annuaire-canadien-de-droit-international/article/abs/international-labour-organization-and-its-contribution-to-the-protection-of-the-rights-of-indigenous-peoples/FEF9F81DCAB7377D3D20D8D569A78005> (last visited Dec 3, 2022).

⁶(2011) 1 SCC 793.

⁷2007 Inter-Am. Ct. H.R. (ser. C) No. 172.

⁸Terra nullius – means ‘land of no one’. The land traditionally occupied by adivasis have no right to claim ownership.

⁹Ajit Menon, *Engaging with the Law on Adivasi Rights*, 42 ECONOMIC AND POLITICAL WEEKLY 2239 (2007), <https://www.jstor.org/stable/4419702> (last visited Dec 3, 2022).

FPIC). However, the **Forest Rights Act of 2006** incorporates some of the Act's regulations. To do this, Gram Sabha's prior authorization must be acquired. To ensure that the rights of Adivasis are safeguarded. Then, social impact evaluations must be done by an impartial entity.¹⁰ The assessment's goal is to determine whether there is a chance of delineation following the land operations. The Coal Bearing Act, which conflicts with the **LARR Act**, does not include social impact assessments or consent systems, allowing the mining sector to purchase land from Adivasis more readily. According to the **Panchayat (Extension to Scheduled Areas) Act** (*hereinafter* PESA), 1996, any corporation or industry that wishes to purchase land from a tribe must negotiate with the tribe first.¹¹

There is some misunderstanding over the phrase "*consultation*." Executive directives from the Ministry of Rural Development specify that consent letters from the Gram Sabha must be obtained before land acquisition and that consultation must be undertaken before resettling. It is legal for gram panchayats to issue consent letters. Under the terms of the Forest Rights Act, the Gram Panchayats have the authority to deal with the use of forest land for non-forest uses. The Act grants forest dwellers the right to FPIC, the right to occupy and live on forest land, the right to use forest resources, the right to acquire traditional knowledge, and the right to rehabilitation. Policies were put into place. To provide welfare measures for tribal people, the National Forest Policy of 1988 is developed. It introduces new methods, such as the development of forest areas and the importance of intellectual property rights.

II. THE EVICTION OF FOREST INHABITANTS

The **Forest Rights Act of 2006, Section 3**, outlines the rights of forest dwellers in forest lands, including the right to own and live on forest land, the right to collectively collect and use rights, the right to own and use minor forest products, the right to convert all forest villages, and the right to manage forest resources. The affected indigenous people's¹² rights to rehabilitation and resettlement are recognized by the land acquisition law currently before the legislature. The bill, which defends the traditional rights of tribal people, has not yet been passed, but if it were, it would appear to contradict the Forest Rights Act's provisions.¹³ Some local Adivasi (tribal) residents of Aarey Colony protested at Picnic Point to "*Save Aarey Forest*" and denounce the state government for cutting down trees inside Aarey without permission.¹⁴ According to forest officials, a Madhya Pradesh forest department officer fined a member of an indigenous forest tribe 1.20 crore rupees for allegedly felling two trees in the Raisen district forest. The fine was calculated based on trees' measurable and intangible benefits.¹⁵ Afroz Ahmad, an expert member, and Justice Arun Kumar Tyagi, a judicial member, noted that the tribunal had established a joint

¹⁰ Patrik Oskarsson, *Adivasi Land Rights and Dispossession*, 14 *in* LANDLOCK 29 (2018), <https://www.jstor.org/stable/j.ctv75d8rq.8> (last visited Dec 3, 2022); Amita Baviskar, *Fate of the Forest: Conservation and Tribal Rights*, 29 *ECONOMIC AND POLITICAL WEEKLY* 2493 (1994), <https://www.jstor.org/stable/4401788> (last visited Dec 3, 2022).

¹¹Prabhat Kumar, *The Issue of Adivasi Rights: Amendments in the Cnt and Spt Acts of Jharkhand*, 77 *PROCEEDINGS OF THE INDIAN HISTORY CONGRESS* 1001 (2016), <https://www.jstor.org/stable/26552735> (last visited Dec 3, 2022); Ursula Münster & Suma Vishnudas, *In the Jungle of Law: Adivasi Rights and Implementation of Forest Rights Act in Kerala*, 47 *ECONOMIC AND POLITICAL WEEKLY* 38 (2012), <https://www.jstor.org/stable/23214975> (last visited Dec 3, 2022).

¹² Avinash Singh, *Forest right and Tribal affairs in contemporary India*, (2015) 5.1 *NULJ* 107.

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

¹⁴Vijay Singh, *Mumbai: Tribals, activists condemn govt for illegal tree felling at Aarey*, *THE TIMES OF INDIA*, July 31, 2022, <https://timesofindia.indiatimes.com/city/mumbai/mumbai-tribals-activists-condemn-govt-for-illegal-tree-felling-at-aarey/articleshow/93256514.cms> (last visited Dec 3, 2022).

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

committee in its order dated September 1 and instructed it to deliver a factual action-taken report within two months. In a case involving illegal tree cutting in a forest area close to Nainital city, the National Green Tribunal has asked key Uttarakhand government officials, including the Chief Secretary, for a response within a month.¹⁶ To let private developers clear forests without first obtaining the approval of forest residents,¹⁷ the Indian government has created new regulations.¹⁸ The Union Environment, Forest, and Climate Change Ministry notified the State Governments of the Forest Conservation Rules 2022 on June 28 to transfer the Union's responsibility for ensuring that tribal members' rights to their traditional forestlands are recognized and that their permission is obtained before their forests are cut down.¹⁹

The most important resource for tribal people is "land." Their social, economic, and political status is derived from the land. The livelihood of around 60 million indigenous people worldwide depends on the forest.²⁰ There is no suitable legislation to prevent the states from buying land for public interest purposes.²¹ Corporate entities purchase the land to serve the public interest by paying off these elected officials. Human and environmental rights are violated as a result²². The Act will be read in addition to other laws, not in derogation of them, as stated in section 13 of the FRA. Because the Indian Forest Act has not been amended, there is a contradiction when the FRA²³ is implemented (*hereinafter* referred to as IFA). The harvesting of non-timber forest products or fuelwood is a right under FRA but is illegal under IFA. The court ruled in *Threesiamma Jacob v. Department of Mining*²⁴ that the State owns subsurface minerals. The right to life, which includes the "right to the enjoyment of pollution-free water and air for the enjoyment of life,"²⁵ is threatened by mining itself.

III. VEDANTA AND THE ACKNOWLEDGMENT OF THE RIGHTS OF FOREST INHABITANTS

A. Introduction

Orissa is home to the *Dongria Kondh*, *Kutia Kandha*, and a few other tribes. The people of the tribes mentioned above are the ones who created the *Niyamgiri Hills*, and *Niyam King* is their king. The Orissa Mining Corporation and Vedanta group of enterprises intended to launch a bauxite project in the mines.

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

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

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

¹⁹ Nitin Sethi, *Govt may do away with tribal consent for cutting forests*, BUSINESS STANDARD INDIA, September 9, 2014, https://www.business-standard.com/article/economy-policy/govt-may-do-away-with-tribal-consent-for-cutting-forests-114090900008_1.html (last visited Dec 3, 2022).

²⁰ United Nations Permanent Forum on Indigenous Issues, *Backgrounder: Indigenous Peoples- Lands, Territories and Natural Resources* (2007).

²¹ Walter Fernandes, *Land Acquisition (Amendment) Bill, 1998: Rights of Project-Affected People Ignored*, 1998, 33 *Economic and Political Weekly* 2703.

²² Akshay Anurag and Neha Meena, *Juxtaposition between development and tribal rights: a story of determined struggle of Niyamgiri tribes*, 2019 SCC OnLine Blog OpEd 16.

²³ Arpitha Kodiveri, *Wildlife first, people later? Forest rights and conservation – towards an experimentalist governance approach*, 9 *JILS* (2018) 23.

²⁴ AIR 2013 SC 3251.

²⁵ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.

The initial violence erupted when the locals opposed their request to use forest areas for bauxite ore land mining. According to the Supreme Court, businesses must implement a “*repair package*” to approve the mining project. Stage-I forest clearance was granted to the firms. Legally speaking, the Gram Sabha can approve or deny the planned Bauxite project. Following the Forest Rights Act, the court deferred to Gram Sabha’s judgment.

B. Evaluation of the Vedanta case

It was discovered that Orissa Mining Corporation Ltd. did not follow the rules for acquiring land. They did not contact the locals, so it is unclear how the *Niyamgiri Hills*’ ecosystem will be impacted. To determine whether the proposed bauxite mine violates the religious and cultural rights of the *Dongria Kondh*, the corporates must first obtain their permission. The court did not thoroughly study whether there should be restrictions on how the Adivasis can express their consent. This violates the **Environment Protection Act’s** and Forest Rights Act’s provisions. The “*right of ownership of resources*” in forest land is the fundamental problem. For the State, it was merely a matter of legal ownership, but for the tribal people, it concerned a sacred bond. The court admits that the State was owned by a “*trustee*” of the people, carrying out its duties following the law.²⁶

The FRA was passed to solve the problem of not guaranteeing a certain and inalienable right to the tribal communities whose right to the forest is essential to their ability to survive.²⁷ Under **Section 5** of the Act, the Gram Sabha has both a responsibility and authority over forest management. In PESA, the Gram Sabha’s function concerning FRA is described. The Gram Sabha is given the authority to define the type and scope of individual and collective rights under **Section 6 of the FRA**. The Gram Sabha is required by **Section 13 of the PESA Act**, read with **Section 4(d)**, to protect and conserve the identity and resources of the STs and other forest residents. The Gram Sabha may approve the *Niyamgiri Hills Bauxite Mining Project*. However, the religious component of the property is outside the bounds of the religious component. It goes without saying that if the tribal people’s religious practice of worshipping Niyam Raja is harmed, their right to practice their religion, as guaranteed by **Article 25**, must be safeguarded. In this respect, the court views Gram Sabha as an official legal authority on par with the Ministry of Environment and Forests (MOEF).

We must respect the justifications offered by the court in cases where it recognized the significance of upholding tribal peoples’ traditional and customary rights and gave weight to their cultural and spiritual ties to the land and the communal resources of the land. In *Narmada BachaoAndolan V. Union of India*,²⁸ the court argued that while the construction of the Narmada River dam results in the eviction of tribal people, it is nonetheless done for the benefit of society as a whole. The court acknowledged that removing tribal people from their culture, customs, and traditions was inevitable, but the river harvest was necessary for the greater good. Although the author would prefer to disagree with the court’s decision, particularly the section where it says that “*the displacement of tribal people can happen for the sake of society*,” I passionately disagree with the notion, contending that tribal and non-tribal people don’t enjoy an equal playing field. In that situation, it is highly discriminatory to the livelihood of tribal people and is done for the benefit of most non-tribal people. The forest rights act was passed with the express purpose of giving tribal people a means of subsistence and preventing unauthorized land acquisition. When enforcing tribal people’s rights, there is a disconnect between the written and the applied law. The food, housing, and clothing the indigenous people depend on from the forest land are all connected to it on a mental, bodily, and spiritual level. Depriving someone of a basic need is a really cruel act. The State owes

²⁶AmritlalNathubhai Shah v. Union Govt. of India, (1976) 4 SCC 108.

²⁷ Amit Bindal, *Resurrecting the other of ‘modern’ law: Investigating niyamgiri judgment & legal epistemology*, NUJS Journal of Indian L. & Soc. (Vol.5: Monsoon), 2015, Feb 1, 2015. Available at SSRN: <https://ssrn.com/abstract=2778414>.

²⁸ (2000) 10 SCC 664.

the native people the same rights that every other person in Indian Territory deserves. The court gave Gram Sabha final decision-making authority. Vedanta is not a typical case that favors corporations; instead, the court recognized and protected the rights of tribal people to go beyond understanding their claims and took into account the value of biodiversity and their ties to the forest areas.

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

IV. CONCLUSION

The entire nation is witness to the conflict between the Dongria Kondh tribes. The time has come to defend forest inhabitants' sociocultural and environmental rights from building and development projects that are hostile to people. There is no mention of "*indigenous people*" in Indian law. legislation. Locals are called Adivasis, forest dwellers, and tribal people in various ways. To prevent ambiguity, all concepts are suggested to keep under the description of "*indigenous people*." Any state's goal is to promote welfare. The State works to improve people's lives, the nation's welfare, and the environment's preservation. Conflicts must not be used as a justification, and it is the responsibility of the State to protect the rights of socially disadvantaged groups. To put forest dwellers and other non-tribal people on an even playing field and grant them recognition of their rights, I would like to suggest that some amendments be made. A fine of Rs. 1,000 is imposed under **Section 7 of the FRA** for failure to comply with the Act. Because the non-compliant are frequently states, state agencies, or strong non-state actors,²⁹ the liability of the amount must be increased.

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

²⁹ Rudresh Mandal & Sathvik Chandrasekhar, *Examining violation of adivasi land rights by the mining industry – A case for Crossing the fence from Anthropocentric to ecocentric paradigms*, NLIU LR (2017) 66.