

RIGHTS OF FOREST DWELLERS IN INDIA: A CRITICAL LEGAL STUDY

ABSTRACT OF THESIS

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ABSTRACT

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INTRODUCTION

Human civilization has advanced to a level where everyday affairs of life are managed and guided by the products of technology and for large sections of human populations; it is simply unimaginable to think of survival without the support of modern scientific discoveries. But at the same time, scientific and technological advances have given the human beings more power to control the environment, instead of being under its control.¹

As per the researcher, the advancements in the field of science and technology have undoubtedly led to the human development but unfortunately relying on the exploitation of natural resources. Most of the modern comforts which are available to mankind in the present age are the outcome of this rendezvous idea of development. It has also been supported by the culture of conspicuous consumption, which has catapulted the materialistic aspect of culture on the center stage.

The environment has become an issue of common concern for all of us in India. Environment and natural resources are generally given importance, exclusively from the ecological or the commercial point of view. But, unfortunately most of the time, the interest of human being is ignored. Ecology holds a meaning only for human being and environment is related to society only to that extent that it is viewed in relation to the people who are affected by it and depend on it for their survival, based on the understanding of this relationship, it becomes imperative to work for the restoration of a balance between nature and human needs.

CONCEPT OF ENVIRONMENT

Now what is environment and what all is part of it, is difficult to define. According to Section 2(a) of the Environment (Protection) Act, 1986², (EPA), the term ‘environment’ includes water, air and land and human beings, other living creatures, plants, micro-

¹ William Scott & Stephen Gough (et al.), *Sustainable Development and Learning: Framing the Issues* 2 (Routledge, Kindle, 1st edn., 2003).

² The Environment Protection Act, 1986 (Act 29 of 1986).

organism and property. As per the Encyclopedia Britannica, environment means the entire range of external influence acting on an organism, both the physical and biological and other organism, i.e., forces of nature surrounding an individual. Recently, it has been explained under section 2(1)(c) of the National Green Tribunal Act,³ as: “environment” includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property.

Recently, the NGT discussed the concept of environment. The relevant para from the NGT order is produced below:

“Word ‘environment’ originates in the French ‘environ’ and ‘environner’ meaning ‘around’ ‘round about’ and ‘to surround’ to encompass. Thus, we can conclude from this etymology that environment means the things or event that surrounds something else. If that something else is an individual organism, then the environment means and includes factors that surround and interact with it and may include predators, foods, chemical elements, soil, atmosphere etc. Environment thus includes natural factors which do not have any political or artificial boundaries. Environment thus includes natural factors which do not have any political or artificial boundaries. Through a “holocoenotic diagram” redrawn from that of the original sketch drawn by Dwight Billing in 1952 took holistic approach to the environment in the sense that he recognized the environment as a whole influencing the organism and none of them being independent of each other. According to him the environment is like a tightly woven spider’s web with the organism at its center and 14 others environmental factors namely wind, temperature, solar radiation, time, atmosphere, fire, water, land form, gravity, parent material, soil, other plants, animals, and microorganism at the periphery of the web affecting each other. A smallest variation in any one of them affects others.⁴ It is scientifically observed as aforesaid that the pollutants generated at one place are carried away over a distance of more than 1000 kms by natural forces. Orders passed in the present case, therefore, need to have all India applicability.”⁵

³ National Green Tribunal Act, 2010 (Act 10 of 2010).

⁴ Frank B. Golley, *A Primer for Environmental Literacy* Page No. 286-288 (Yale University Press, UK, 1st edn., 1998).

⁵ *Satish Kumar v. Union of India*, Through its Secretary and Ors. On 12 December 2013, available at: <https://indiankanoon.org/doc/81588383/> (last visited on October 30, 2022).

Forests are the most important part of environment, which is intimately connected to the tribal-their economy, social, religious and cultural life. The tribes, who comprise 8.61% of the total population of India, are facing numerous problems today, economic crisis and poverty being at the fore.⁶

Forest plays a major role in the economic growth and ecological stability of any country. It conserves soil and prevents flood and draught. Forest performs manifold functions, as it is used for food, medicinal products, fuel, fodder and materials for tools, ornaments, handicrafts, etc. It also contributes in enhancing agricultural productivity and eco-tourism. More importantly, forest is an important source of livelihood for the weaker sections of the society, particularly the tribal people. Forest represents a way of life, a culture and home for the tribal communities. The tribal communities have their symbiotic relationship with the forest. They have been living in perfect harmony with forest for generations and their livelihood as well as culture has revolved round the forest. As tribal life has been totally dependent on forest, the former cannot be conceived without the latter.

Classification of Forest

The classification of forests has bearing on the silviculture and management practices. The classification done by Champion and Seth, is the most widely used which has been done on the basis of climate variation, temperature and moisture regions. It is as follows:

Tropical wet evergreen forests, tropical semi-evergreen forests, tropical moist deciduous forests, littoral and swamp forests, tropical dry deciduous forests, tropical thorn forests, tropical dry evergreen forests, sub-tropical dry evergreen forests, sub-tropical broad leaved hill forests, sub-tropical pine forests, montage wet temperate forests, Himalayan moist temperate forests, Himalayan dry temperate forests, subalpine, moist alpine scrub and dry alpine scrub.

Categories of Forests

These are the following categories of the forest which are covered under the Forest Rights Act, 1927:

⁶ Office of Registrar General & Census Commissioner India. Census Info. Ministry of Home Affairs, Government of India. 2011 *available at*: <http://www.censusindia.gov.in/2011census/HLO/HH14.html> (last visited on October 30, 2022).

1. Reserved Forests

An area notified under the provision of The Indian Forest Act and other State Acts having full degree of protection. In reserved forests all activities are prohibited unless permitted.⁷

2. Protected Forests

An area notified under the provision of The Indian Forest Act and other State Acts having limited degree of protection. In reserved forests all activities are permitted unless prohibited.⁸

3. Unclassed Forests

An area recorded as forests but not included in the above said categories. Their ownership varies from state to state.⁹

NEED OF FOREST CONSERVATION

Forests are not just trees, but part of an ecosystem that underpins life, economies and societies. The term ‘forest’ is derived from the Latin word ‘foris’ which means ‘outside’.¹⁰ Since the earliest times, people have realized the importance of forests and of the wealth generated therein. Forests provide goods and services like timber, fuel wood, fodder, and a wide range of non-timber products. Further, forests are a source of natural habitat for biodiversity and act as repository of genetic wealth. They also serve as a means for recreation and expand opportunity for eco-tourism. They contribute to the process of carbon sequestration and act as carbon sink, which is important for reduction of greenhouse gases and global warming. In ecologically sensitive areas like mountains, as well as river catchments, forests play an important role for prevention of floods, etc. In fact, forests are important to nearly all kinds of human activity: providing shelter to people and habitat to biodiversity; as a source of food, medicine and clean water; and play a vital role in maintaining a stable global climate and environment. Forests provide a wide range of services which include prevention of soil erosion, floods, landslides, maintenance of soil fertility, and fixing carbon from the atmosphere

⁷ Environmental Assessment and Review Framework (DRAFT), *available at:* <https://www.adb.org/sites/default/files/project-document/158348/38411-043-earf.pdf> (last visited on October 30, 2022).

⁸ Environmental Assessment and Review Framework (DRAFT), *available at:* <https://www.adb.org/sites/default/files/project-document/158348/38411-043-earf.pdf> (last visited on October 30, 2022).

⁹ Environmental Assessment and Review Framework (DRAFT), *available at:* <https://www.adb.org/sites/default/files/project-document/158348/38411-043-earf.pdf> (last visited on October 30, 2022).

¹⁰ *Ibid.*

as biomass and soil-organic carbon. Not just this, forests maintain life support systems and degradation of forest resources has a detrimental effect on soil, water and climate, which in turn affects human and animal life. After centuries of felling of trees, the world's forest cover has shrunk drastically. World's atmosphere has been undergoing massive changes thereby causing irreversible damage. This has created global concern for protection and preservation of forests.¹¹

UTILITY OF FOREST CONSERVATION

Further, explaining the utility of forests, it has been rightly observed by Food and Agriculture Organisation that:

“Forests provide more than 10% of the GDP in many of the poorest countries. It is estimated that the forestry sector provides formal employment for 10 million people and informal employment for additional 30 to 50 million people in developing countries. Notwithstanding such a relevant role in world economy, progress towards sustainable forest management is still limited, and there is continuing loss and degradation of forests in many developing countries. Losing forest diversity means missing opportunities for medicines, food, raw materials and employment opportunities, in one word: welfare.”¹²

ENVIRONMENT PROTECTION AND SUSTAINABLE DEVELOPMENT

As Caldwell observed “At the beginning of the twentieth century, neither environment as an integral ecological concept nor the biosphere as the planetary life support system was an object of international concern.”¹³

The ideal of environmental sustainability is achieved only when the States make environmental protection a basic goal by committing institutional resources towards the formation and implementation of substantive actions perceived necessary to mitigate those tendencies within socioeconomic systems that compromise ecological integrity.¹⁴

Over the last quarter of twentieth century, two new and complementary themes have had considerable impact on the development of contemporary international law

¹¹ Ministry of Environment, Forest and Climate Change “State of Environment Report, 2009”, *available at*: <http://moef.nic.in/downloads/home/home-SoE-Report-2009.pdf> (last visited on October 30, 2022).

¹² *Ibid.*

¹³ S. C. Shastri, *Environmental Law* 332 (Eastern Book Company, Lucknow, 2008).

¹⁴ Scott Frickel and Debra J. Davidson, “Building Environmental States: Legitimacy and Rationalization in Sustainability Governance” Volume 19 Issue 1, March 2004, *International Sociology* 89-110 (2004).

environmental protection and sustainable development. Like most subsequent efforts to characterize the idea of sustainability, the implications are conceptually ambiguous and has, thus, generated immense discussion and debate.¹⁵

“Sustainable Development” as defined by the Brundtland Report means “development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”.¹⁶

RIGHT TO DEVELOPMENT VIS-A-VIS RIGHT TO ENVIRONMENT

The basic crux of the notion of sustainable development is the balancing effect between the competing interests of different needs of the society. Development is essential but it cannot be done at the cost of our future generations. The element of integration of environmental and developmental aspects has been well recognized at international level as well.¹⁷ The Brundtland Report transformed sustainable development from an ecologically focused notion to a human centered approach by establishing a link between social, economic and environmental issues.

The life of the tribals always centers on the forest. The religious, cultural and economic activities of the tribal people depend on the forest. The forest is their main life supporting system and it plays a vital role in their economy. The relationship thus established between the forest and the tribals is mutual and has been referred to even by the National Forest Policy (1988) as symbiotic. However, this link is affected and disappearing slowly. Traditionally the tribals use forest resources rationally and try to preserve these for the future. But since the last few decades, the harmonious relationship is fast changing, to the disadvantage of both. The majority of our population is not aware of the effect of deforestation. Over 40 million people of diverse origins, predominantly tribal communities, live in and around forests. Over centuries, these

¹⁵ A. E. Boyle and D. Freestone (eds.), *International Law and Sustainable Development: Past Achievements and Future Challenges* 1(Oxford University Press, Oxford, 1999).

¹⁶ The World Commission on Environment and Development (WCED) “Our Common Future” 1987, available at: <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf> (last visited on October 30, 2022).

¹⁷ The significant 1992 Summit also known as the Earth Summit, was held in Rio de Janeiro, Brazil from 3-14 June. The Rio Declaration was put forth which contained 27 principles wherein Principle 3 stated the rule of inter generation equity by providing that the right to development must be accomplished in a manner wherein the developmental and environmental needs of the present and the coming generations are equitably met. Further, Principle 4 recognized environmental protection as an integral aspect of development so as to make it sustainable.

communities have developed lifestyles that are adapted to the forest ecosystem. Till the Neolithic prehistoric period (about 3000 BC), when plants and animals were domesticated in India, these communities derived all their subsistence needs from nature.

The tribal people largely depend on forest resources for their economic, cultural and ethnic survival. The socio-cultural practices of these people are interwoven with the life cycle of forests.

The present study proposes to study the relation of the forest and the tribals, and examine nature of the change if any, in the life pattern of the tribals due to deforestation as well as for afforestation. It would also be studied whether and how the outside agencies, including the government, have been exploiting the forest wealth in the name of tribal development. The study would also examine whether in the context of forest protection, the traditional rights of the tribals on the forest have been affected or not. How the deforestation and the resultant erosion of the life-support base affected the forest dwellers and rendered them poor, vulnerable and impoverished in all respects - social, cultural and economic? And whether the afforestation programs have solved the problem or made their life tougher than earlier? The study also tries to find out the effect of Joint Forest Management - whether it has been successful in protecting the forest resources and improved the quality of forest or failed to sustain the development.

THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is also known as The Forest Rights Act, 2006. The Act is an attempt to redistribute power the state, and seeks to create a new democratic system The Act seeks to reconcile the social justice claims the nation's goal of preserving forests and wildlife. Have begun implement the Forest Rights Act The recent disposition of the Orissa Government India Ltd. has violated the Forest Rights Act. The taken the local communities, specifically consideration.

a. Rights of Forest Dwellers

This Act aims to confer the right to livelihood upon the forest dwellers who have resided in and depended on forest or forest lands for their bona fide needs. Since forest dwellers

depend on the forest for leaves, grazing animals, fruits, firewood, and medicinal herbs, rights over minor forest produce would sustain their livelihood. In the absence of a rights regime, these resources were often harvested unsustainably by private contractors under license from the forest department. In pursuance of this right to livelihood, there are other rights that the Act vests in the forest dwellers that secure individual or community tenure or both.

The intent here is not to take a comprehensive look at relevant case law but to delineate noticeable trends in how the case law has influenced the rights of forest dwelling populations prior to the coming into force of the Act. A cursory glance at some prominent court judgments suggests that forest dwellers' rights have sometimes been taken seriously by courts.

*In the case Banvasi Sewa Ashram v. State of U.P.*¹⁸ the SC held that indisputably, forests are much wanted national asset. On account of the depletion thereof ecology has been disturbed; climate has undergone a major change and rains have become scanty. These have long term adverse effects on national economy as also on the living process. The concept of sustainable development demanded that the outtees be rehabilitated after examining their rights.

In another case of *Fatesang Gimba Vasava v. State of Gujarat*¹⁹ the Gujarat High Court ruled that the Gujarat Forest Department's action to prevent the transport of bamboo for sale to Adivasi's at concessional rates was unwarranted. The court ruled that once bamboo had been converted to bamboo chips it did not constitute a produce from nature and hence was a violation of the Indian Forest Act, 1927.²⁰ In both *Sri Manchegowda v. State of Karnataka*²¹ and *Lingappa Pochanna v. State of Maharashtra*²² the Supreme Court ruled in favour of the protection of Adivasi lands; in former case it nullified private purchases of Adivasi land and in the case it upheld state legislation aimed at restoring lands to Adivasi.

Moreover, there is the famous case of *Samatha v. State of Andhra Pradesh and others (Samatha case)*.²³ In a prior case, *P Rami Reddy v. State Andhra Pradesh*,²⁴ the

¹⁸ AIR 1987 SC 374.

¹⁹ AIR 1987 Gujrat HC.

²⁰ P. Leelakrishnan, *Environmental Law* pp. 97-102 (Lexis Nexis, New Delhi, 2005).

²¹ AIR 1984 SC 1151.

²² AIR 1985 SC 389.

²³ AIR 1997 SC 3297.

²⁴ AIR 1988 SC 1626.

Supreme Court had held that prohibitions against transfer of adivasi land to persons who were not adivasis were necessary given the poor economic status of adivasis. The Supreme Court in *Samatha* went further by saying that prohibited transferees included the government. Generally, adivasi rights are upheld when they are not in conflict with “greater common good or sustainable development.”²⁵

The Act clearly provides for rights to in situ rehabilitation alternative land in case of illegal eviction or forced displacement provided under sections 3(1) (m) and 4(8). However, neither the Act nor its rules expressly provide any method by which this rehabilitation or compensation should be provided.

Only in the conditions to be satisfied for the creation of a critical wildlife habitat, in section 4(2(d)) is there any mention of resettlement substitute land to be provided by the central government. In this provision the phrase “policy of the Central Government” can only be interpreted correspond to the National Rehabilitation and Resettlement Policy of notified on 31st Oct. 2017. This policy provides that the scheduled tribe families who are or were in possession of forest lands in the affected area prior 13th Dec. 2005, sub clause (vii) of clause 6.4 of the 2007 policy be included in the survey of the administrator for resettlement and rehabilitation.

However, it does not guarantee land-for-land compensation to the displaced families as it is subject to availability of land. This provision contravenes the right of alternative land as vested in the forest dwellers. It is unclear whether the central or the state government will be responsible preparing a package for rehabilitation. The Act recognizes a tribal community as claim forest rights; but section 4(6) of the Act, in the same manner as an individual or a family recognition of rights shall in no case exceed seems to have negated its positive intent. In north-and in many other parts of the country, community management of forest tracts go much beyond provides that much beyond four hectares²⁶ “The holders of any forest right, village level institutions, are empowered to (a) and biodiversity; (b) ensure that adjoining catchment and other ecological sensitive areas are adequately that the habitat of forest dwelling scheduled forest dwellers is preserved from any form of destructive their cultural and natural

²⁵ Ajit Menon, “Engaging with the Law on Adivasi Rights” 42 *EPW* 2239-2242(2007).

²⁶ B.K. Roy Burman, “Ambiguities, Incongruities, Inadequacies in Scheduled Tribes and Other Technical Forest Dwellers (Recognition of Forest Rights) Act 2006: A Case for Constructive Engagement”, *XLVI Mainstream* Page no. 67-73 (2008).

heritage; (d) ensure Gram Sabha to regulate access to community forest activity which adversely affect the wild biodiversity are complied with.”

b. Rights and Development

Time has shown that the rights of forest dwellers have always been conflict with development, each struggling to out compete the other. A classic story of human rights violation and injustice is the experience of the Dongaria Kondhas with Vedanta, a British mining company. Alumina, a subsidiary of Sterlite Industries, signed an agreement with Orissa Government in October 2004 to mine bauxite in the Niyamgiri this project trampled on the rights of the forest dwellers in the region well as threatening them with arrest. It provides good example linkages between the environment and human rights in the conflict between multinational corporations and communities across the country from- Madhya Pradesh to Chhattisgarh, from Bihar to Jharkhand, and from Andhra Pradesh to Karnataka. The acts of Vedanta are a prime illustration development aggression.²⁷

An appeal to the Supreme Court of India was filed to restore the tribal people in the Niyamgiri Hills.²⁸ The Central Empowered Committee (CEC) found illegalities in the central government clearances to the industries bauxite mining project in the state and recommended that Supreme Court deny diversion of forest lands for the project. The allocated to the company forms part of a schedule V area as specified the Constitution and accords protection to the Adivasi people residing these areas.²⁹ The Supreme Court’s ruling on 23rd Nov. 2007 delighted tribal people as it barred Vedanta Resources from mining Niyamgiri hills. But the decision was a temporary ordered the company's Indian unit, Sterlite Industries, proposal for the project. The court also provided mining giants by setting up a special purpose compliance with environmental regulations. The road brought settlers, stole the tribe’s game and exposed them to disease. Jarawa suffered outbreaks of measles a disease tribe’s worldwide following contact with outsiders. The Indian the closure of the road through the Jarawa open, and poaching and exploitation are posing in 2004 the authorities announced a radical new Jarawa

²⁷ Geetanjoy Sahu, “Mining in the Niyamgiri Hills and Tribal Rights”, Vol. 43, Issue No. 15, 12 Apr, 2008 *EPW* 19-21. (2008).

²⁸ Biswajit Mohanty of Wildlife Society of Orissa, Praftilla Samantara and Academy of Mountain Environics have filed Application Nos. 564, 571 and 579, respectively before the CEC against the establishment of the project.

²⁹ Central Empowered Committee Report (2005) in regarding alumina refinery plant being set up by Vedanta Alumina at Lanjigarh in Kalahandi district, Orissa.

would be allowed to choose their own intervention in their lives would be kept to headings in the media do not give an assurance intervention is being adhered to.

In Jagatsinghpur (Orissa), the Pohang Iron and Steel Company Ltd. South Korean Steel Corporation (POSCO) is setting up a steel private port. Subsidies have been given to POSCO displaced tens of thousands of people. The POSCO and other organizations have blockaded the preventing the police and the company from their lands. But the company has responded with Party of India has expressed “deep concern” support for the POSCO project in Orissa, also be in flagrant violation of the Forest Rights continued to surround the POSCO project communities have pledged to intensify agitations against the 51,000 Foreign direct investment (FDI) project. The special environment bench headed by K.G. Balakrishnan CJI allowed POSCO India Pvt. Ltd., to go ahead with its plans. With order the Supreme Court also cleared a forest diversion proposal for plant site, which requires 1253 hectares of forest land.

When Adivasi rights are juxtaposed with development concerns, Adivasi rights are often limited or redefined. This was demonstrated in the Narmada and the Tehri cases as well as in a host of similar cases related to power projects, mining and industrialization. Typically, the Adivasi rights to land are denied and redefined in terms of rights to resettlement rehabilitation. No attempt has ever been made to secure the consent those being adversely affected by these projects, to involve them in devising humane and appropriate strategies of rehabilitation or to make them a party to the project’s benefits. A large majority of the displaced have Adivasis, either because the only sites remaining for location of these large projects, such as Narmada, are in the Adivasi hinterland, or because Adivasi homelands such as Jharkhand are extremely bountiful in mineral resources.

c. Implementation and the Bureaucracy

At every stage the initial aspirations for the Act seem diluted to be politically accommodating to the Ministry of Environment, Forest and Climate Change (MoEF), departments and the wildlife lobby. There were many draft bills recommended by the joint parliamentary committee struck down by the bureaucrats at the last instance. The weak can be inferred from ongoing primary research in three West Bengal, Orissa and Andhra Pradesh Since the coming into force of the Act, the government ranged from weak at best to outright denial continued to seek to control the forest estate and rights

to forests. Where there have been action individual's rights. The issue of collective rights is also reported that forms for claiming lands have villages.

STATEMENT OF PROBLEM

1. With growing consciousness about environmental issues, the problem of deforestation has become a live subject of discussion not only among the policy-makers but also among the people at large. India is losing forests at an alarming rate.
2. From 2002 to 2021, India lost 371 kha of humid primary forest, making up 19% of its total tree cover loss in the same time period. Total area of humid primary forest in India decreased by 3.6% in this time period.
3. The government of India is formulating a new National Forest Policy and the Draft Resolution on National Forest Policy is being circulated. It is necessary to analyze this policy which, if accepted and implemented, would affect the environment and the animal and plant life in the country. However, before doing this it is necessary to make a brief review of the forest policy statements adopted earlier.
4. The coming of 1980 Act, marked the growing concern towards the misuse of power, conferred by Section 27 of The Indian Forest Act, 1927, on the State Government of de reserving the reserved forests and thereby leading to increase in deforestation.
5. According to the Forest Act, 2006, persons who have been either traditionally residing in forests or forestland for over 75 years and/or traditionally dependent on forest produce for livelihood are the eligible and rightful claimants to these areas. But there were no written data were available for last 75 years to produce their claim. So, SC ordered that for eviction of the forest dwellers whose claim has been rejected.
6. There were lots of laws and policies for the conservation of forests at international as well as national level, but there is a gap between the policies on paper and the practical implementation.

OBJECTIVE OF STUDY

The researcher has focused on the following broad objectives:

1. To trace the evolution of laws relating to forest protection.

2. To study the impact of laws on the protection and conservation of forests and to analyze the scope and extent of these existing laws.
3. Among the many concerns plaguing the Forest rights Act, 2006 rejection of claims for various regions of the forest dwellers.
4. The misuse of the section 4(5) Act is another much talk about issues. It deals with eviction, and many times, is used against the claimants without proper investigation.
5. To develop an understanding about the status of problems faced by the forest dwellers and the rights given to them.
6. To examine/analyze the role of Judiciary in relation to forest laws.

HYPOTHESIS

1. Existing legal framework in relation to forests in India ensures a greener tomorrow and Constitutional mandate relating to the forest dwellers.
2. Rejection of claims of forest dwellers due to the lack of literacy and the written data of last 75 years and Misuse of Forest Rights Act, 2006 by the forest authority.
3. Pro Judicial pronouncements for protection of the Rights of the forest dwellers sufficient to protect their rights.

RESEARCH METHODOLOGY

For conceptual clarity and understanding the evolution of laws relating to forests, the doctrinal approach has been followed. This method has been used to explore the concept of the Rights of Forest Dwellers as a human right in the modern India in the context of the forest dwellers. Both primary and secondary data have been used in the research study. Accordingly, the relevant statutory and case law has been collected and critically analyzed. The research work has made extensive use of secondary data available through research articles, books, reports, magazines, newspapers, case laws etc.

SIGNIFICANCE OF THE STUDY

The study is specifically important for the forest dwellers as it covers comprehensive study dealing with their rights. Improvement in the condition of forest dwellers will not only benefit forest dwellers but will also facilitate the forest, environment, integration into the society, ultimately benefiting whole world. The study will be helpful in following ways:

1. The present study highlights that in order to avail the rights guaranteed by Constitution and other legal provisions it is necessary for forest dwellers to be aware of the various rights available to them. This study does not deal only the legal provisions but has also critically analyzed nearly all the legislations and cases related to the environment, forest and forest dwellers.
2. Researcher has come across a few studies conducted on forest dwellers. The study mainly dealt with political rights, Socio-Economic Condition etc. Government has set up legislations for the forest dwellers and to ensure that forest dwellers rights safeguarded under the Constitution are protected. The study will be helpful for the Policy maker on environment, forest and the forest dwellers and for the non-governmental organization, etc. to review the implementation of policies and to overcome lacunae.
3. The study will provide impetus to review decision which has annihilated the rights of forest dwellers. This will contribute to concretize the rights of forest dwellers in the light of various legislations and judicial decisions.
4. It will provide base for further research and education.
5. The study will facilitate the researcher to provide sound legal advice to various non-governmental organization and legislation.

LIMITATION OF THE STUDY

Rights of forest Dwellers have emerged as a clearly defined area of academic and practical work in India as well as many parts of the world. However, in India there are some difficulties as Forest Dwellers are nowhere defined in Constitution or Constituent Assembly Debate. Concept of forest dwellers had to be deduced through various international instruments, national legal and Constitutional provisions and through judicial pronouncements.

Researcher has confined the study *to the rights of forest dwellers envisaged through various international and national legislation which has been critically examined with the help of the current situation of forest dwellers and judicial pronouncements.*

Researcher has dealt the problem of eviction of the forest dwellers and misuse of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. This study is also dealt the forest legislation and critically examine as protection of the rights of the forest dwellers. Hence the study is focused on existing

legislations and land mark judgments of Supreme Court and various High Courts of the country.

SCOPE FOR FUTURE RESEARCH

The present work is confined to the protection of forest and forest dwellers regarding legal provisions and policies of forest dwellers as well as to exploring the national and international legislations for the protection of forest and forest dwellers. There are many national and international legislations related to the protection of the environment and forest. But there is a lacuna no much legislation available for the protection for the forest dwellers. In this study researcher has critically examined all national and international legislations which are directly or substantially related to the forest dwellers. A multidisciplinary approach to research is required with a combination of law and empirical study of a universe.

PLAN OF THE STUDY

The whole thesis has been divided into seven chapters. The researcher has completed all VII chapter. These are as following:

CHAPTER I: INTRODUCTION

This chapter of introduction comprises the brief introduction and statement of problem as to the forest conservation and rights of the forest dwellers. Researcher introduced research work and outlined research problem, hypothesis, research methodology and hypothesis testing by findings of data and the qualitative debates under the subject matter. Brief of the chapters of the research thesis is also included in this chapter.

CHAPTER II: EVOLUTION AND CONCEPT OF FOREST AND FOREST DWELLERS IN INDIA

This chapter contain the definition and evolution of forest and rights of forest dwellers. The researcher discussed the importance of the forest as forest dwellers have been staying in the forest for many generations. Forest dwellers started residing in the forest and their livelihood depends on farming and cultivating various things like bamboo or tendu leaves etc. For many years their rights of livelihood were not disturbed per se, as long as there is no degradation of the forests. But during the time of the colonial government, the focus shifted from the protection of the rights of local communities to

the commercial interest for the purpose of doing more and more agriculture on the land on which the communities have been residing. Even after independence, the government for many years was not able to protect the rights of forest dwellers and their rights were always compromised. Like Wild Life Protection Act, 1972 the wanted to protect the wildlife and forest from any degradation but still, the rights of the dwellers were ignored. Therefore, to protect the rights of the dwellers, the Parliament enacted The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, which provide the various rights for the forest dwellers.

CHAPTER III: PROTECTIVE RIGHTS OF FOREST HABITAT AND FOREST DWELLERS

The Researcher in this chapter discussed the various protective rights of the forest habitat and forest dwellers. The Researcher study the about the importance of the forest habitat for the forest dwellers. The forest dwellers are depending on the forest for their livelihood and their culture. while every attempt must be made to preserve the fragile ecology of the forest area and protect the Tiger Reserve, the right of the tribals formally living in the area to keep body and soul together must receive proper consideration. The researcher studied in this chapter the effort made to ensure that the tribals, when resettled, are in a position to earn their livelihood.

In this chapter the researcher has also discuss the problem faced by the forest dwellers and their solution. The forest dwellers face the many problems related to the Social, Economic, Educational and also related to the communication.

Among a large number of tribal people indebtedness has become unavoidable and thus normal phenomenon of their existence Following are some of the important reasons of indebtedness common to almost all the affected groups:

1. Loss of tribal rights over land and forests;
2. Poor and primitive mode of agriculture resulting in deficit supply of food grains;
3. Ignorance;
4. Expenditure beyond their means due to extravagant spending on marriages, deaths, fairs and festivals;
5. Fatalist attitude and locally-oriented worldview; and
6. Adherence to panchayat decisions regarding fines for fear of excommunication.

Due to the above-mentioned reasons, he is always in need of money and thus becomes an-easy victim of exploitation by unscrupulous moneylenders and middlemen. Small

amounts borrowed at usurious rates of interest from time-to-time snowball into a sum beyond his capacity to repay and what little he possesses by way of land is snatched by the moneylender. No programme of economic development is likely to have any impact on the tribal economy unless vigorous measures are taken to rescue the tribal from the clutches of the moneylender

CHAPTER IV: THE PROTECTION OF FOREST AND RIGHTS OF FOREST DWELLERS: INTERNATIONAL LEGISLATIVE DEVELOPMENT

In this chapter researcher discusses the issue of Forests and Forest Dwellers are related to the entire world of environmental and development issues, including the right to socio-economic development on the sustainable basis. All types of forests embody complex and unique ecological processes which are the basis for their present and potential capacity to provide resources to satisfy human needs as well as environmental values, and as such their sound management and conservation is of international concern for the protection and preservation of environment.

Forests play an important role in meeting energy requirements through the providing of a renewable source of bio-energy, particularly in developing countries. The demands for fuel wood for household and industrial needs should be met through sustainable forest management, afforestation and reforestation. However, forests worldwide are being threatened by uncontrolled degradation and conversion to other types of land uses, influenced by increasing human needs. The impacts of loss and degradation of forests are in the form of soil erosion; loss of biological diversity, damage to wildlife habitats and degradation of watershed areas, deterioration of the quality of life and reduction of the options for development. Therefore, there is a need to recognize the vital role of forests in maintaining the ecological processes and balance at the local, national, regional and global levels through, inter alia, their role in protecting fragile ecosystems, watersheds and freshwater resources and as rich storehouses of biodiversity and biological resources and sources of genetic material for biotechnology products, as well as photosynthesis.

The activists of vigorous protection of forests on a global scale have long called for forests to be recognized as a global common good, thus subjecting them and their overall functions to the rule of international law. However, there are legal objections

and political obstacles to this demand, for the present time at least, since recognition of forests as a common good is completely inconceivable for the countries of the South.

CHAPTER V: NATIONAL LEGISLATIVE PROTECTION OF FORESTS AND FOREST DWELLERS IN INDIA

In this chapter, researcher has made a detailed study of Indian laws dealing the issue of protection of forest and rights of the forest dwellers. For this purpose, researcher has first provided the provisions available under the traditional laws i.e., under Constitution of India, under environment law and under special law i.e., Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and then tried to evaluate the rights available in the specific law dealing with the protection of forest and protection of rights of forest dwellers.

Various national policies related to protection of forest and forest dwellers also discussed, where the researcher has critically analyzed the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

CHAPTER VI: JUDICIAL PRONOUNCEMENT TOWARDS PROTECTION OF FOREST AND FOREST DWELLERS

This chapter deals with the judicial pronouncement made by the Supreme Court, High Courts and Environment Tribunals. The Indian judiciary has shown deep concern for the forest conservation and rights of the forest dwellers. Indian judiciary has not only played a pivotal role in a manner to interpret the forest laws to protect the forest and environment but also it has shown judicial activism by the entertaining public interest litigations under article 32 and 226 of the Constitution. The Supreme Court and High Courts while protecting environment in the same time protecting the rights of the forest dwellers while promoting sustainable development have delivered many important judgments

CHAPTER VII: CONCLUSION AND SUGGESTIONS

The concluding chapter presents the research study with reference to the theoretical and critical analysis, the result obtained from the critical analysis the conclusion arrived and suggestions provided. Further, a few suggestions have also been made to reform the law with respect to the rights of Forest Dwellers as well as to spread awareness for the

protection of the forest and forest habitat among the people of this nation to understand the value of the Forest and Forest Dwellers as well as the environment

From the beginning of this research work, the researcher formed the premise of the topic and formulated the problem profile, it has been observed that problem is not in the law but in implementation of law and law-abiding citizens. Firstly, the people who have to implement the law and secondly the people on whom or for whom the law has to be implemented. So, the conflict or gap between what is sought to be achieved and what is actually achieved is perennially fed and thus widened by the lack of will on one side and the lack of awareness on the other. When these two elements work together, there is violation of law and the system loses its credibility. For instance, in the problem profile, the researcher has quoted various reports reflecting the violations of rights of the Forest Dwellers.

There is no lack of analysis put forth by various legal thinkers regarding the nature of colonial laws. Further, it has been constantly observed in judicial decisions and now through legislative action that the forest legislations before independence targeted revenue and forest protection and protection of rights of Forest Dwellers were a secondary goal. Further, the rights of Forest Dwellers were hardly recognized. The researcher has critically analysed the forest legislations and studied their impact and scope, thus, validates the hypothesis that *'the existing legal framework in relation to forests in India ensures a greener tomorrow'*.

Suggestions

On the basis of the research work the researcher has reach on the conclusion that forestry must be protected and develop not for the improvement for Indian economy but also to provide and promote the rights of Forest Dwellers. Therefore, the researcher has suggested the following and it can help extremely not only in the conservation of forests in a sustainable way but also in safeguarding the rights of Forest Dwellers:

- I. Forestry has been an important component of Indian economy. It consists of many problems mainly on account of poor allocation of finance. Our Statesmen will have to change traditional outlook in the allocation of finance for the conservation forestry. Our aim should be that 10% of yearly national investment in Public Sector should be allocated for the optimum promotion of Forestry.

- II. Allocation of small amount of finance is bound to weaken the tempo of development, forestry plays pivotal role in the development of Indian economy and hence due share in national investment must be allotted to it, traditional approach regarding allocation of finance must be substituted by broad minded approach at the earlier.
- III. The Government must pay serious consideration for allocation of one-tenth share to forestry in the total national investment.
- IV. There is an urgent need to involve the local community, particularly the marginalized section of the society, through their local community representatives. They are dependent on local environment and its resources. Not only that they are the worst hit in case of any adverse impact on the environment. Hence their inclusion is a priority. This is possible only if they are involved in the law and policy making process, or made part of formulation and implementation of action plans and so on.
- V. Active engagement of government agencies is required at the central, state and local level.
- VI. Efforts of and suggestions made by the Civil society agents like the NGOs need to be given due consideration and implemented.
- VII. A proper set up needs to be put in place to facilitate the industrial and other developmental sectors which are directly dependent on the forests.
- VIII. Public consultation needs to become an integral part of law-making process, for instance when new policies/laws/action plans, are to be introduced or existing needs to be amended.
- IX. Inputs based on public announcements (e.g., on the ministry or relevant state department's website, or through advertisements in local media).
- X. Focused group workshops need to be conducted for different sections of the society, separately as well as jointly so as to generate awareness.
- XI. Further, regular dialogue forums on policies/ laws/action plans, specific projects, and specific schemes/activities such as protected areas should be part of day-to-day governance.

- XII. Establishment of a constitutional, non-judicial mechanism to monitor the implementation of relevant laws, policies, regulations, and programmes is very much required which can act as a citizens' grievance redressal mechanism outside the courts.
- XIII. Mandatory participation of (Panchayati Raj Institutions) PRIs with full local community participation in decisions affecting their lives and resources, including clearance procedures for development projects, is a must. Provision should also be made wherein the communities can give feedback on the extent of consideration given to their feedback.
- XIV. The public purpose based on which people are displaced or otherwise deprived of their livelihood should be defined. Prior informed consent to be affected by it should also be mandatory.
- XV. Right to life with dignity enshrined in Article 21 of the constitution should be respected. So, the displaced persons should have a better lifestyle after displacement than before it because they are paying the price of national development. Hence being the priority beneficiaries from the project and having right of instant rehabilitation.
- XVI. Showing the concern on the increase in illegal cutting and removal of forests by contractors and their labour leading to drastic decrease in tree cover, so the suggestion is that contractors should be replaced by institutions such as tribal cooperatives, labour cooperatives, government corporations, etc. as early as possible;
- XVII. The user agency shall make arrangements for mutation and transfer of equivalent non-forest land identified for compensatory afforestation to the ownership of the State Forest Department.
- XVIII. It was also recommended that a resource pool of expert trainer must be created at all levels, so as to take up the implementation of FRA in a mission mode.
- XIX. Monthly review meeting for a periodic review of the process has been put forth.
- XX. Coordination between various states and the centre needs to be strengthened for better implementation and facilitating information exchange.

- XXI. The delay in conversion of forest villages in to revenue villages has been a source of concern. For this it has been suggested that action plan for FRA implementation must take place within indicative time line.
- XXII. The states have come to a consensus with regard to looking into the causes of rate of rejection of claims and also the reason for such rejection.
- XXIII. There should be the review of the FRA, 2006 for implementation and the situational analysis of the problem;
- XXIV. Annual submission of governors reports with real time assessment and a follow up through annual meeting and conference;
- XXV. Issuance of guidelines acknowledging the role gram sabha and should be people friendly;
- XXVI. The potent provision of the 5th Schedule read with Article 275(1) and Article 339(2) needs to be effectively used to improve the situation of 'poorest infrastructure in the resource rich Schedule Areas inhabited by poorest people'.