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With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL

THE EVOLUTION OF FOREST RIGHTS IN INDIA FROM THE CONSTITUTIONAL PERSPECTIVE

(By Shayam Chakraborty)

ABSTRACT

The socio-cultural-environmental rights of the indigenous communities have been recognized by the Indian Constitution which gave birth to numerous welfare legislations and policies related to the same. Though over the years effective legislations were passed keeping in mind the rights of the tribal people with the changing socio-economic and environmental transitions, but the wide gap between the laws and their implementations is still considered to be a great challenge. Though India is having bunch of laws when it comes to tribal rights, which includes Constitutional provisions which are explicitly upholding the rights of the indigenous people, welfare legislations for the protection of Scheduled Tribes and Governmental policies to address and redress the grievances of the tribal communities, but their voice remains unaddressed most of the time not only for the remoteness of their geographical positioning but also due to lack of empowerment to the tribal communities by effective and proper implementations. When it comes to forest rights of the indigenous people, their connection with their surrounding environment which includes forests, hills, rivers etc, cannot be ignored. The inadequacy of the Indian Forests Act, 1927 was highly felt and there has been a positive outcome by passing “The Forest Right Act, 2006” and “Panchayet Extension to Scheduled Areas Act (PESA),” 1996, for rendering Constitutional rights to the indigenous communities, by broadening their using, conserving, managing and governing rights related to forests. The expansion of the term “forest dwellers” when it comes to indigenous communities, contributed positively as the terms like “forest offenders” or “forest encroachers” are nowadays treated to be derogatory in nature. The paper also focuses on the socio-cultural and environmental rights of the indigenous communities from the perspective of the Indian Constitution.

Keywords: Indigenous, Constitution, Forest-Rights, Welfare-Legislations

INTRODUCTION

The principle of the “Supremacy of the Constitution” brought India to the threshold of an era which recognized her to be the country having the largest and thriving democracy. Since India is having a Constitution which is an amalgamation of various philosophies borrowed time to time from different parts of the world from its inception, it is an ever-evolving Constitution which addressed some of its substantial “Constitutional goals” which includes protecting the interests of the indigenous communities related to their Forest Rights.

THE INDIAN CONSTITUTION AND THE CONSTITUTIONAL SAFEGUARDS

Indian Constitution does not remain silent only on the level of recognition of such indigenous communities, but it provided some of the substantial Constitutional safeguards, which paved the way for the betterment of such communities not only by providing welfare approaches by uplifting their living standards and bringing them to the mainstream developmental arena, but at the same time giving them the Constitutional empowerment which includes substantial principles like self-governance, democratic forestry, protecting the interests of the Scheduled tribes, forest rights, rights related to self-cultivation and so on. There are safeguards related to the education and culture like in Article 15(4) of the Indian Constitution for the advancement of the “other backward classes” which includes people belonging to the Scheduled tribe communities. Then safeguards which are social in nature are also included and economic safeguards like Article 275 of the Indian Constitution, which is explicitly talking about “Grants -in-Aid” to the states which are specified having Scheduled tribe populations and getting covered under the 5th and the 6th Schedule of the Indian Constitution. The “political safeguards” like Article 330 of the Indian Constitution which allotted reserved seats for the people belonging to the Schedule Tribe communities in the “Lok Sabha,” and Article 332 in the state levels, empowered the Scheduled tribe communities constitutionally. Though there are other “Constitutional Safeguards” provided to the indigenous communities across the Indian Territory, but there has been always a gap between the laws and their implementations.

THE LAWS AND THEIR IMPLEMENTATIONS

The Indian Constitution upholds the philosophy of “Welfarism” and almost most of the legislations are the products of this “welfare approach” which is flowing through the veins of India since time immemorial. The verse from the Rig Veda, “Bahujana sukhaya bahujana hitaya cha,” which means “the welfare and happiness of the many,” still resonates in today’s India as the very soul of this country. One of the substantial aspects of the principle of

“Supremacy of the Constitution” is that, if any law is passed, which is not maintaining consonance with the core philosophy or the principles of the Constitution, it will face the fate of striking down. The welfare legislations in this country were passed time to time, to address and redress the issues related to the indigenous communities. Though there are Constitutional safeguards in the Indian Constitution which explicitly upholds the protection of the Scheduled tribes from “social injustice and other forms of exploitations” and welfare legislations like Indian Forest Act, 1927, but there have been always a wide-gap between the legislations and implementations due to several reasons involved.

THE ENVIRONMENTAL AND SOCIAL JUSTICE

It is a fact that *Indian Forest Act of 1927*, was made applying a colonial psyche where modern values like environmental and social justice were ignored. Moreover the democratic ideals related to the indigenous communities when it comes to recognising their rights and duties were not addressed properly, which were directly responsible for the infringement of their social and environmental rights. The concepts like “self-cultivation” as a matter of right could not be ensured effectively seeing the inadequate statutory provisions. Though in the recent years two substantial legislations came into being, *The Forest Rights Act (FRA) 2006* and *Panchayat Extension to Scheduled Areas Act (PESA), 1996*, to end-up bureaucracy-centric colonial ideals of the *Indian Forest Act of 1927*. Moreover, the 73rd Amendment of the Indian Constitution which provided Constitutional status to the Panchayati Raj institutions and welfare legislations like PESA which empowered substantially such institutions for safeguarding the forest rights of the indigenous communities, the Gram Sabhas as such were given powers to make decisions whenever any developmental works are to be done in the Schedule Tribe areas.

Such enactments paved the way for democratic-forest approaches and at the same time for the democratic forest-governance, related to conservation, where fundamental constitutional rights of the indigenous people were recognized effectively by addressing their rights and duties related to managing, using, governing and conserving the forests. There has been affirmative transition when it comes to the very definition of “forest-dwellers,” as terms like ‘forest encroachers’ and ‘forest offenders’ were condemned and felt to be derogatory in nature. The primary reason behind it was the recognition of the historical facts related to the indigenous people enjoying forest rights since time immemorial, maintaining harmony between the nature and their prevailing customary laws. The conflicts of the two newly enacted progressive

legislations with that of the archaic Indian Forest Act of 1927 were observed as the latter was framed from a bureaucratic-centric colonial perspective.

COMMUNITY FOREST RESOURCE RIGHTS

When it comes to the forest rights of the indigenous communities, the colonial revenue generating categories related to forest areas as Reserved, Protected and Unclassed forests, took away various democratic rights of the indigenous communities. For example, the rights related to the self-cultivation especially in states where shifting cultivations are prevalent, faced a damaging consequence, as in the name of Reserved and Protected forests many of their self-cultivating rights were curtailed which led to various social transitions in such communities. A typical example in this regard is the trend of switching from the shifting-cultivation to the plantation industries, as the latter were preferred due to financial crisis in such areas. As such the poorer sections within the indigenous communities became vulnerable towards various exploitations in the hands of the plantation owners and their status was reduced from self-cultivators to underpaid labourers. The absence of effective “Community Forest Resource Rights” from the legal scenario and inadequate recognition of “habitat rights” of the vulnerable sections within the indigenous communities, led to various social-economic and political exploitations. The estimation in the recent years revealed that around 200 million scheduled tribes in around 1,70,000 rural areas can be benefitted by recognising 85.6 million acres or 34.6 million hectares of forest areas as CFRs by boosting the collective democratic rights of the forest dwellers.¹

COMMUNITY CONSERVED AREAS

Though India is having a vibrant history of the ideals and concepts related to community conservations where local communities have the rights and duties for conserving the local flora and fauna applying their local knowledge, the lack of proper recognition of the same in the legal scenario led to the infringement of the rights of the forest dwellers as the Joint Forest Management institutions failed due to the corrupt practises on the ground level. The Community Forest Resource Management Committees can be framed so that proper channelization of financial aids can be done through proper-involvement of the local communities upholding the concept of “self-governance.”

¹ Pathak-Broom, N., Ajit, S., Tatpati, M., (2019, May 3), The Indian Forest Act’s proposed amendment is dangerous and fanciful, *Down to Earth*, Retrieved from:<https://www.downtoearth.org.in/>

FROM SETTLEMENT OF RIGHTS TO RECOGNITION OF RIGHTS

The historical injustice which was done with the indigenous communities by not recognizing their habitat rights, rights related to community forest resources and non-inclusion of 'gram sabhas' in the scheduled areas for addressing and redressing their forest related issues, has been highly realized by the intelligentsia. The proper demarcation of such areas through effective mechanisms was recently done by the enactment of PESA to some extent by its inclusion of 'gram sabhas,' where through self-governance, unbiased implementations have been done in this regard. Moreover, the "recognition" of such rights of the indigenous communities led to the rejection of the old colonial concept of 'settlement' and paved the way for its healthy future evolution.

THE CULTURAL TRANSITION AND THE LEGAL RESPONSE

The cultural transition of the indigenous communities can be observed from two perspectives. The first one can be cited as the "legal consequence" where non-recognition of some substantial forest rights led to several cultural transitions. The shift from the shifting cultivation because of shrinking of forest areas due to restrictions in the name of "protected" or "reserved" forests ultimately led to the transition of the trend of "self-cultivation" to the plantation job-oriented approaches. In extreme circumstances such restrictions on forest activities led to the dependence of the vulnerable sections within the indigenous communities on the PDS or public distribution system for food.² Another example of the "legal consequence" can be cited here seeing the non-existence of policies related to the "sustainable-management" of the shifting cultivation. The Bali island of Indonesia implemented "sustainable-management" governmental policies which not only protected the existing forests in those areas, but at the same time boosted the local economy by effective people involvement.³

The second perspective that can be taken into consideration for this cultural transition is the "environmental consequence." It is directly related to the lack of proper industrial strategies which are highly responsible for destroying the ecological balance of such areas, which affected such indigenous communities socially, culturally and economically. Though the era of green litigations through PILs (Public Interest Litigations) during the 80s addressed substantial issues related to the same, but when it comes to the distant and detached regions like that of the North Eastern states of India, where industrialization has not surfaced

² Down to earth, *Trouble in Tripura*, (2015, June 7), Retrieved from: www.downtoearth.org.in

³ Kartasubrata, J., (1993), Sustainable Agriculture and the Environment in the Humid Tropics, *The National Academic Press, Nap, The National Academics of Sciences Engineering Medicine*, Retrieved from: www.nap.edu

effectively, still in the name of plantation-industries and other small industries, crude industrial activities are done, which are responsible not only for its negative impacts on the environmental sphere but also responsible for health related issues due to unscientific handling of hazardous substances. A typical example of rubber plantation can be cited here, as of now 75, 000 hectares of land in Tripura are covered under rubber plantations where basic protections to the workers are not provided while using rubber-latex and other chemicals. For a state having around 60% of its land covered by forests, such plantation activities are also highly responsible for massive deforestation.⁴

There has been mixed legal response when it comes to such issues and welfare legislations like *The Water (Prevention and Control of Pollution) Act, 1974*, *The Air (Prevention and Control of Pollution Act), 1981*, *Environment Protection Act, 1986*, *National Green Tribunal Act, 2010* etc., which are direct outcomes of the United Nations Conference on the Human Environment, 1972 (Stockholm Conference), addressed some of the environmental and forest related rights directly or indirectly, but such legislations could not meet the local demands in an effective way especially in states which are positioned in distant geographical areas.

RECOGNITION OF THE FOREST RIGHTS

When it comes to recognition of Forest rights, the Acts on the Union level like *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006* came into force and upheld the rights of the traditional forest dwellers, protecting their interests when it comes to eviction from such areas, as verification and recognition procedures were recognized substantially, so that such communities may not get deprived from their traditional occupations which they are continuing since time immemorial. Under the Section 5 of this Act, Gram Sabhas in the Scheduled areas have been empowered to make decisions when it comes to regulating the access of community forest resources so that the local flora and fauna and other natural resources may not face the plight of extinction. *'Right to fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act*, which came in the year 2013, upheld the concept of "just and fair compensation" when it comes to land acquisition procedures. In such cases, the consultation with the Gram Sabhas, which were established under the Constitution of India as institutions of local self-government, was made mandatory so that more transparent and participatory procedures could be implemented while taking such measures without infringing the rights of the forest dwellers. In *'Right to fair compensation*

⁴ Thomas, P, (2017, December 1), Tripura Rubber Park Boosting the State's Rubber Industry, Retrieved from: <https://rubberasia.com>

and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', Section 41 talks about such displacement procedures should be taken as a "last resort." Moreover in Section 41, the prior consent of the local-self governing institutions like Gram Sabhas or Autonomous District Councils etc is to be taken, after issuing proper and prior notification. *The Panchayats (Extension to Scheduled Area) Act, 1996* also explicitly talks about consulting such local self governing bodies like Gram Sabhas etc., before implementing developmental activities which can cause displacement of such traditional forest dwellers. In the landmark judgement given by the Supreme Court in *Orissa Mining Corporation Vs. Ministry of Environment and Forest & Ors.*⁵ it was held that the consent of the Gram Sabha is substantial before implementing any developmental projects which can directly and adversely affect the lives of indigenous people. Moreover only after proper consideration by the Gram Sabha, and by passing resolution, such measures can be taken. Thus the Constitutional concept of local self-governance got empowered by bringing more people-involving and people-oriented policies.

Under the *Schedule-V of the Indian Constitution*, the Governor of a state having scheduled areas, has been empowered to impose restriction on the transferring of lands from the indigenous communities and regulating the land allotments of the STs, so that the safeguards to such tribal communities can be ensured during land acquisitions and displacements. Moreover in *The Scheduled castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989*, the enjoyment of land and other premises by such communities has been ensured so that no injustice is caused towards them. This includes forest rights and depriving them from such areas will be considered as an offence under this Act. The Act also talks about the trial of such offences and providing relief to the victims.⁶

When it comes to the local or the state levels, various legislations were enacted by the different State Legislatures. As a case study, the example of the North Eastern state of Tripura can be taken into consideration where due to influx of population which was caused mainly due to the migration of non-indigenous communities after 1947 partition and 1971 Bangladesh liberation war, a tectonic change was observed in the demographic status in this region. One of such consequences was related with the protection of tribal lands, which were shrinking due to demographical changes. The local legislation like *The Tripura Land Revenue and Land Reforms Act, 1960* has brought positive land reforms in the state so that the tribal lands could

⁵ Vide W.P.(c) 180 of 2011

⁶ Delhi, PIB, (2019, July 22), Land Rights of Scheduled Tribes, Retrieved from: <https://pib.gov.in/>

be protected from getting encroached and at the same time the allotment of tribal land properties could be done in an effective and humanistic way. *The Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006* in the recent years contributed along with the local legislations like *The Tripura Land Revenue and Land Reforms Act, 1960* for providing land rights to such deprived communities. More than one lakh families belonging to the indigenous communities were given such land rights in the state of Tripura by applying such legislations in an effective manner.

It should be noted that, under the provisions of the 6th schedule of the Indian Constitution, TTAADC in Tripura was constitutionally established after passing of the *TTAADC Act, 1979* in the Parliament, and since in India we obey the idea of the "Supremacy of the Constitution," its creation was in itself a huge leap. The TTAADC came into being in 1982, on January 15th, and subsequently the 49th Constitutional (Amendment) Act, 1984 upgraded TTAADC under the provision of the 6th Schedule of the Indian Constitution. The cultural and social rights of the indigenous communities of the state are equally safeguarded by including all this in the Executive sphere of the TTAADC. Powers related to the tribal-welfare, village committees, land records and settlement, education etc. were included in its Executive sphere, upholding the land rights of the indigenous communities as well.⁷

It is a matter of fact that from time to time various land rights of the indigenous communities have been infringed due to lack of sound legislations and strategies. Despite having Constitutional safeguards and bunch of legislations, the policies with proper strategies could not be seen in the legal scenario. The need of the hour is implementation of more “people-involving” and “people-oriented” policies where age-old concepts related to self-cultivation will be considered by infusing modern financial strategies in it, which will not only uphold the traditional rights of the indigenous communities, but at the same time will boost the local economies. A simple example of “shifting” or “jhum” cultivation can be cited here. Though there are various scientific-reasons and prejudices involved with such type of cultivation processes, as it was observed that cultivating on the same patches of lands for a longer period of time led to the degradation of the soil-qualities, but it cannot be denied that since ages, such traditional practices are continuing as a “matter of right.” In such case, the modern approaches of sustainable-cultivation, sustainable-management and other scientific methods can be introduced and at the same time, the alternative of such traditional approaches can be introduced, not by starving such traditional cultivation processes, but by introducing innovative

⁷ Tripura Tribal Areas Autonomous District Council, (2019), *The General Powers and Functions of District Council*, Retrieved from: <http://ttaadc.gov.in/>

ideas through proper policies and their implementations, approaches which are more people-involving and people-oriented in nature. One such example is that of Sikkim, where it has been declared as the first organic state.⁸ The accolade received by Sikkim does not remain confined within its declaration as an organic state only, but behind it the self-cultivation approaches with adequate Governmental support paved the way for the spirit of self-governance and democratic forestry through direct people-involving strategies which ultimately led to financial progress in the area. The using of pesticides and other harmful chemicals in agricultural activities, were responsible for the switching towards organic farming strategies. As of now, in Tripura, more than 226 varieties of medicinal plants are found and if through sustainable and scientific strategies this area is addressed properly, not only the tiny North-Eastern state like Tripura will gain its uniqueness but at the same time will mark her presence not only in the national picture, but also internationally.⁹ In such cases, not only forest resources will be conserved, but it will give the indigenous communities their rights and duties related to managing, governing and conserving forest lands, ultimately uplifting their living standards socio-culturally and economically.

CONCLUSION

The Forest Rights of the indigenous communities though remained scarcely addressed in the past both legally and socially despite having Constitutional support in this regard, but in the recent years, by the implementation of sound legislations, forest rights have become a continuous and ever-evolving sphere especially from the Constitutional perspective. The rise of monopolized financial aggression from the side of the plantation-owners, though have increased in the recent years and it also caused massive deforestation at the same time, but such legislations emanating directly from the Constitutional values are not only safeguarding the various rights of the indigenous people but also at the same time empowering them to gravitate towards a more self-sufficient society. The change in the prevalent narrative of the “forest dwellers” not as ‘forest offenders’ or ‘forest encroachers,’ brought significant change from the social perspective. Despite substantial progress in the field of forest rights, the plight of the indigenous people in the remote areas seems to be appalling as still in states like Tripura 330 habitations approximately are not getting access to purified water and the tribal communities of such areas are getting vulnerable to various water-borne diseases.¹⁰ By joint collaboration

⁸ Masucci, M., (2018, November 14), A 100% organic world is possible. The Indian state of Sikkim shows us how, *Life Gate*, Retrieved from: <https://www.lifegate.com/>

⁹ IBEF, Indian Brand Equity Foundation, *Tripura State Report*, (2019, September), Retrieved from: <https://www.ibef.org/states/tripura.aspx>

¹⁰ Bhattacharjee, Biswendu, (2013, September), Water: A Review of Tripura, *India Water Portal*, Retrieved from: www.indiawaterportal.org

of all the welfare legislations through effective implementations, making “Forest Rights” as a substantial “umbrella term,” such issues can be addressed. Forest Rights includes all aspects related to the lifestyle of the indigenous communities as their existence with that of their surrounding nature can never be ignored. As such the rights especially the Fundamental Rights enshrined in the Part-III of the Indian Constitution, which includes the Golden Triangle i.e., Right to Equality (Article 14), Freedom of Speech and Expression (Article 19) and Right to Life (Article 21), can be made worthwhile only by ensuring the “Constitutional Spirit” especially in the local level by upholding the idea of Self-Governance.

