

Tribes and Forest: The Constitutional and Legislative Safeguards For the Protection of Scheduled Tribes in India.

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Abstract

Every individual even if they are in the minorities have the right to live with basic human rights and human dignity. India is a home for millions of tribes or indigenous communities of the world with approx. 8.6% of Indian population. The tribal community faces many difficulties as they are the marginalized section and distinct culture of the society. This research paper discusses about the major issues faced by these communities and also highlights about the struggles faced by them in asserting their forest rights. The paper will discuss about the constitutional and statutory provisions made for the protection of tribal communities and their rights as they constitute. The research paper will begin by highlighting the historical context of colonial and post-colonial forest policies which has overlooked the tribal communities. Further, the paper will examine how the interpretation and implementation of laws by the Indian Constitution and statutes have often fails to safeguard the tribal forest rights. Additionally, it explores the role of other forest protecting laws, whose interests clashes with the tribal communities, lead to dispossession and displacement from tribal lands and forests. The paper will also discuss the role of judiciary for protecting the rights of the tribes in India. This paper through a critical review of existing literature discusses the role of FRA and its implications in the tribal areas. Furthermore, the paper analyses the socio-economic implications of land disputes on tribal communities, emphasizing issues of livelihood security, cultural identity, and overall well-being. It highlights the adverse impacts of displacement and loss of traditional land on the socio-cultural fabric of tribal societies, often leading to heightened poverty and social exclusion. The research emphasizes on the urgent need for reforms in statutory provisions and will of the central and state government to effectively work on the FRA so that forest rights of the tribal communities can be secured. It advocates for a participatory approach that empowers tribal communities in decision-making processes regarding the use of forests and resource management.

Key words: Constitutional provision, Forest Rights Act, recognition of forest rights, forest policies. forest dwelling scheduled tribes.

1. Introduction

India is the home to the largest population of indigenous peoples of any country in the world. The Constitution of India aims to ensure social and economic justice, equality of status and opportunity, and the dignity of individuals for all its citizens.¹ All rights granted to Indian citizens whether enshrined in the Constitution, established by law, or provided through government orders are equally applicable to Scheduled Tribes. To ensure these rights the government has passed the forest right Act. In the context of India's economic growth, Scheduled Tribes (STs) and forest dwellers, who are often marginalized, encounter significant challenges. However the government, particularly through the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA), has tried to improve economic growth and social justice for forest dwellers by recognizing their rights to forest resources and land, ensuring their livelihoods and participation in development.

Development of any section of the society is important for the growth of the nation. Tribal possess with approx. 8.6% of Indian population. And they have their dependency on the forest produce is very high. According to Forests and Tribal Review Committee which was established in 1982 observed that forest provide food, medicinal plants, fodder and fuel to the tribal.² During drought and adverse conditions, the tribal households live only on edible forest products.³ Knowing the importance of forest in their lives, they prevent destruction of forest and animals. They used to take the initiatives to protect the forest from any sorts of deforestation caused by human beings. And thus contribute to conserve the environment as well.⁴ Their relationship has also been witnessed in 'Chipko Movement' of the foothills of the Himalayas,⁵ where tribal women were hugging the trees in order to protect it from the contractors and timber merchants. So the use of forest products by tribes was never at the cost of forest regeneration.⁶ So it can be seen that tribes and forests are protector of each other and are aware of the importance of forest to their lives.

¹ D.D Basu, *Constitution Of India*, 21(LexisNexis, VOL.1 14TH EDITION 2013).

² Government of India, Report: *Committee on Forests and Tribals in India* (Ministry of Home Affairs, Tribal Development Division, New Delhi 1982).

³ Amal Datta and Mowsume Bose Roy, "Forest Conservation and The Tribal : A Study In Manatu Village Under Ranchi District of Bihar", 14(4) *JHE*271(2003).

⁴ Ibid

⁵ Shobita Jain, Standing up for trees: Women's role in the Chipko Movement, *available at:* <https://www.fao.org/4/r0465e/r0465e03.htm> (last visited on 2nd sept, 2025)

⁶ Biplab Dasgupta, "India's Tribal population: An Overview", 32 (2) *JIAS*, 105 (1997).

In ancient period there wasn't any conflict between the humans and the forest. Human used to enjoy their dominance on the forest and natural resources and this situation remained as it is until British came and for their own use they tried to control forest⁷ and ignored the people who were residing in and utilizing forest for their bonafide livelihood need. The FRA 2006 itself states about the historical injustice done to the tribal whose lands were taken during the colonial period.⁸ However, the Forest Act of 1864 superseded customary laws upon the arrival of British administration.⁹ A more extensive Indian Forest Act of 1878 took its place, strengthening government authority over the woods.¹⁰ Lastly, the Forest Act of 1927 established guidelines for how forest resources could be used for commercial and industrial purposes.

After independence, no effective steps were taken by the state to address the rights of the forest inhabitants after the government designated the former Princely States as Reserve Forests¹¹ and took all the control over the forest as it was done by the British government. National Forest Policy which led to the denial of customary rights for forest dwellers. These forest-dwelling communities face severe limitations on their rights in sanctuaries and the loss of their customary rights in national parks.¹² These groups have faced eviction after being classified as encroachers in several states.¹³ It led to future disputes between tribal communities, non-tribes, and the government over forest area. The present paper aims to examine the role of Forest Rights Act, 2006 in India with reference to tribal problems and to examine how the constitution has played an important role to recognise the rights of the tribes and highlights the relevance and validity of Forest Rights Act, 2006. It also highlights to assess the major challenges in the execution of Forest Rights Act, 2006 in India. The paper also highlights the role of judiciary for implementing the provisions of the Forest Rights Act, 2006. The methodology which has been adopted is doctrinal. The present study has used the secondary data which has been collected from the government records, including Legal analysis, historical, legal, and socio-economic dimensions of the issue related with the tribal communities which has been collected from the ministry of tribal affairs, ministry of law and justice legislative department, ministry of environment and forests, ministry of human resource department, various publication on environmental.

The first section of the paper highlights the historical aspect of the rights of the forest dweller and their position in India from ancient period to present scenario. Further the second section deals with the analyses of the constitutional provisions for the protection of the forest dwelling scheduled tribes of India. The third section critically examines the FRA 2006, whether the Act is able to achieve its objectives or not. The fifth section examines the role of judiciary for implementing the provisions of FRA 2006. The concluding section argues that the roles of administration and institutions under the said Act is not enough to fulfil the purpose of the Act and also suggests some solutions for effective implementation of the Act.

2. Historical Context of Tribal Land Alienation and Forest Rights

Tribal communities in India are traditionally relied upon the forests as it was their ancestral land for generations. They maintain a sacred and symbolic relationship with the forest from ancient time. In ancient India, forests were inhabited by numerous tribal populations forest were sacred to them.¹⁴ The Vedic people were nature worshipers, which has the traces in Vedic literature.¹⁵ In the post vedic period also the specifically at the time of Emperor Ashoka tribes have enjoyed significant protection.¹⁶ Though Forests were often considered as the domain of kings but still the tribal rights were often recognized by the ruling authorities.

Tribes used to enjoy the supremacy upon the forest until the beginning of the medieval period but later they started facing harassment from Muslim rulers, leading to a gradual loss of their autonomous status.¹⁷ But the Mughal rulers faced challenges in establishing political control over forest-dependent tribal communities.¹⁸ The reason behind was that the Mughals did not make any efforts towards forest conservation, possibly as they did not recognize its necessity.¹⁹

⁷ Madhu Sarin, "Democratizing India's Forests through Tenure and Governance Reforms" 60 *SOCIAL ACTION* 106 (2011).

⁸ Manshi Asher, "Evolution of the Forest Rights Act: A Historical Perspective" 80 *IJSW* 405(2019)

⁹ Sanjoy Patnaik, PESA, the Forest Rights Act, and Tribal Rights in India, available at: <https://lib.icimod.org/record/13139/files/4946.pdf> (last visited on 3rd sept, 2025)

¹⁰ The Forest Act of 1878, available at: <https://cmsadmin.amritmahotsav.nic.in/district-repository-detail.htm?25146> (last visited on 3rd sept, 2025)

¹¹ Supra note 9.

¹² Antoine Lasgorceix and Ashish Kothari, "Displacement and relocation of protected areas: An analysis of case studies" 44(49) *Economic and Political Weekly* 39 (2009)

¹³ Historical Injustice through the Indian Forest Rights Act 2006: A Historical-Institutional Analysis of Contemporary Forest Rights Reform, available at: <https://www.researchgate.net/publication/242140105> (last visited 9th sept, 2025).

¹⁴ Environment in early India: A Historical Perspective, 2020, available at: https://www.researchgate.net/publication/343547680_ENVIRONMENT_IN_EARLY_INDIA_A_HISTORICAL_PERSPECTIVE (Visited on 4th sept, 2025)

¹⁵ Ibid

¹⁶ P Vidyarthi and B K Rai, *The Tribal culture of India*, 30(concept publication company, New Delhi, 1st edn. 1979)

¹⁷ Ibid

¹⁸ Participatory Forest Management in India, An Analysis of Policy Trends amid 'Management Change, available at: https://www.iges.or.jp/en/publication_documents/pub/policyreport/en/180/07_India.pdf (Visited on 5th sept, 2025)

¹⁹ N. Mondal, Forest in Ancient and Modern Period (2013). (Doctoral Dissertation, University of Burdwan, Burdwan, India) available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/121482/10/10_chapter%202.pdf (Visited on 4th sept, 2025)

Even though, forest laws had minimum state interventions in pre-British era. The forests were safeguarded by the local population, particularly the tribal communities (forest dwellers)²⁰ although they were not codified like British era. Under British rule forest were exploited in different parts of the world.²¹ The British forest conservation idea was not really aimed at protecting forests and wildlife but at meeting the future needs of the empire.²² For them forests were main source of revenue so they ignored the tribal rights with in the forests. The British sought to control all the land they ignored the fact that tribal communities had long functioned as independent groups and imposed new rules on them which caused conflicts between the Britishers and the tribes.²³ In response to such attitude of British administration, tribal communities initiated a series of armed revolts against them from 1767 to 1887 movements.²⁴

After Independence Government declared the lands of former Princely States and zamindars (large landholders with some governmental responsibilities) as Reserve Forests, but no effective measures were taken to settle rights of the forest dwellers²⁵ and village common lands were also designated as protected forests. This led to the deprivation of customary rights for forest dwellers as they were facing persistent neglect. In numerous states, these communities have been labelled as encroachers and subsequently subjected to eviction²⁶. Further central government by enacting Forest Conservation Act of 1980 and wildlife protection Act centralized control over forests. Their traditional rights in national parks and significant restrictions on their rights in sanctuaries were also affected.²⁷

However, National Forest Policy of 1988 marked a significant step where the needs of rural and tribal people and their rights were recognized. The policy aimed to ensure environmental stability and ecological balance. Unfortunately, these guidelines remained only on paper, and were not translated into implementation. In 1995, a PIL was filed in the Godavarman case before the Supreme Court which highlighted more issues on forest and the rights of the tribes.²⁸ All this led to social movements by the forest users nationwide, inspiring them to protest against the infringement of democratic rights to life and livelihoods for the extensive tribal population. This resulted in the creation of a new legislation known as the Scheduled Tribes and Other Traditional Forest Dwellers Act, commonly referred to as the Forest Rights Act (FRA). This Act was passed in December 2006 and became effective on January 1, 2008.²⁹

3. Constitutional Provisions Related to Tribes

In the Constitution there are several provisions to prevent discrimination against the people belonging to scheduled tribes and to protect their rights as there are approx. 700 Scheduled Tribe in 17 states which were declared by the President of India under Article 342 clause 9 (i) of the Constitution. So there was a need to provide certain rights these tribal people for their welfare and development and so they have provided special safeguards which may be summed up as follows:-

According to Article 366(25)³⁰ “Scheduled Tribes” means such tribes or tribal communities or parts of groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this constitution.

Article 342 of the Constitution; further prescribe procedure which should be followed in the matters of specification of scheduled tribes and tribal communities which have been declared as such by the President through a public notification. In fact in the case of **State of Kerala v. Chandra Mohanan**³¹ The Supreme Court held that he may remain member of tribe if he continues to

²⁰ S.K. Nanda, *Environment Law*, 9(Central Law Publication, 2007)

²¹ V. Saravanan, *Environmental History and Tribals in Modern India*, 1(palgrave macmillan 2018)

²² *Ibid*

²³ Tribal Movement in India, *available at:*

India https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000001AN/P001117/M013283/ET/145794602224ET.pdf (Visited on 7th sept, 2025)

²⁴ P Vidyarthi and B K Rai, *The Tribal culture of India*, 36 (concept publication company, new delhi, 1st edn. 1979)

²⁵ PESA, the Forest Rights Act, and Tribal Rights in India, *available at:* <https://lib.icimod.org/record/13139/files/4946.pdf> (Visited on 6th sept, 2025)

²⁶ Redressing ‘Historical Injustice’ through the Indian Forest Rights Act 2006: A Historical-Institutional Analysis of Contemporary Forest Rights Reform, *available at:* <https://www.researchgate.net/publication/242140105> (last visited 9th sept, 2025).

²⁷ Antoine Lasgorceix and Ashish Kothari, “Displacement and relocation of protected areas: an analysis of case studie” 44(49) *Economic and Political Weekly* 39(2009).

²⁸ Mr. Praveen Singh, Dr. Arun Kumar Sharma, “Critical Appraisal of Indian Forest right Act, 2006 and situation of tribal’s in India” 5(8) *IRJMST* 170(2014)

²⁹ SAMARTHAN - Centre for Development Support, “Report on recognition of forest rights under community rights under forest rights Act in Madya Pradesh and Chattisgarh” (2011)

³⁰ *Supra* note 1.

³¹ AIR 2004 SC 1672

follow tribal traits and customs. Even though he changes his religion but continues to follow the tribal traits and customs. But will seize to a tribe if he will be unable to follow the customs and rituals and other traits, which are required to be followed by the members of the Tribe. In the case of **Lingappa Pochanna v. State of Maharashtra**³² The Supreme Court upheld state legislation aimed to restoring land to Adivasi. The court upheld the constitutional validity of the laws that barred alienation of tribal lands to the non tribes, and facilitated restoration of such lands to the tribes.

3.1 Rights guaranteed under the Constitution of India for the protection of tribes

There are certain fundamental, social, economic, cultural and political rights which have been guaranteed by the constitution of India for the protection of tribal communities. The constitution also directs the state government to make special provision for the upliftment of these tribal communities which will be given below.

3.1.1. Fundamental Rights to the tribal communities.

Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the laws to all individuals within India's territory, encompassing class legislation, including Scheduled Tribes, thereby ensuring equal rights and opportunities for all citizens.³³ Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. This provision holds particular importance as tribal communities have historically faced prejudice based on their religion, race, and place of birth. Article 16(3) authorizes states to implement special provisions for reserving appointments or posts in favour of Scheduled Tribes (ST). Article 16(4A) permits states to provide reservations in promotions for Scheduled Castes (SC) and Scheduled Tribes (ST) if they are underrepresented in state services. Article 16(4B) clarifies that backlog vacancies should not be included with current year vacancies when determining the 50 percent reservation limit. Articles 19 to 22 of the Indian Constitution safeguard the fundamental freedoms of citizens. These essential rights empower every Indian citizen to achieve personal growth and development. Further there are many rights which has been guaranteed from any kind of exploitation like Article 23 of the Constitution guarantees protection against all forms of exploitation, affirming the right to be free from such practices. This constitutional safeguard has been instrumental in curbing the exploitation of tribal communities.³⁴ Article 29 protects the cultural and educational rights of minorities, including tribal communities, which are culturally significant as one of the nation's minority group.

3.1.2. Political Rights For Tribal Community In India

Constitution of India mandates for the appointment of an independent Minister for Tribal Welfare and Development in the Cabinets of states with significant tribal populations.³⁵ A distinct system has been set up for governing tribal areas, and a Tribal Advisory Board is appointed to advise the Governor on matters related to tribal welfare in states with significant tribal populations.³⁶ Further the Indian Constitution also mandates the reservation of seats in the Lok Sabha through reserved constituencies for Scheduled Tribes.³⁷ Similarly, there are reservation of seats for Scheduled Tribes in the State Legislative Assemblies.³⁸ The proportion of seats reserved for Scheduled Tribes in a State Legislative Assembly must correspond to their proportion in the state's total population or a specific area. Under these provisions, Lok Sabha seats are reserved for Scheduled Tribes across the country. Article 334 imposes a time limit on the reservation for Scheduled Tribes in the Lok Sabha and state assemblies, while Article 335 ensures that the claims of Scheduled Tribes for government services and positions are considered, without compromising the efficiency of administration. These provisions strengthen the role of tribal communities in the law making institutions.

3.1.3. Certain Economic Rights for the Tribes in India

the Constitution ensures that government policies balance growth, equity, and legality of the tribal community. So ensure that Constitution guaranteed specific economic rights **to the tribal communities** and various laws to protect their livelihoods, land, and resources. It provides Grants-in-Aid to states listed under the Fifth and Sixth Schedules,³⁹ with a focus on supporting Scheduled Tribes. In *BanwasiSewa Ashram v. State of U.P.*⁴⁰, the case revolves around a petition filed by the Ashram seeking the right to livelihood and habitat within a forest, part of which had been designated as a reserved area, while the rest was acquired for the establishment of an NTPC thermal power plant. Although the Court did not directly address Article 21, it issued directions to protect the interests of the adivasis. So these rights aim to secure the rights of the tribal people while promoting equitable economic development and safeguarding them from exploitation.

³² AIR 1985 SC 389

³³ Constitution of India, Article 14

³⁴ Telore Babasaheb Haridas and Aasim Shahzad, "Political and Constitutional Rights of Tribal Communities in Indian Constitution", 6(9) *JSSH* 173(2024).

³⁵ *Supra* note 1, art. 164.

³⁶ *Ibid* at, art. 244

³⁷ *Ibid* at, art. 330

³⁸ *Ibid* at, art. 332

³⁹ *Ibid* at, art. 275

⁴⁰ AIR 1987 SC 374.

3.2. Directive Principles of State Policy (DPSP)

Constitution contains certain directives which should be followed by the state while performing their duties towards the upliftment of the tribal communities. Articles 36 to 51 of Chapter V of the Indian Constitution outline the guiding principles of state policy, covering economic, social, political, judicial, and foreign relations aspects. Among the social principles, the Constitution mandates that the government prioritize the educational and economic welfare of the Scheduled Tribes, and other weaker sections of society, ensuring their protection from injustice and exploitation. Specifically Article 41 of the Indian Constitution states that no acquisition of land shall be made in the Scheduled Areas and that displaced families should be resettled "preferably in the same Scheduled Area so that they can retain their ethnic, linguistic and cultural identity." Additionally, Article 46 obligates the state to promote the education and economic welfare of weaker sections, especially Scheduled Tribes (STs), while safeguarding them from social injustice and all forms of exploitation. Additionally, Article 48-A mandates the protection and enhancement of the environment, as well as the preservation of the country's forests and wildlife.

3.3. Fifth and Sixth Schedules

Fifth Schedule and Sixth Schedule of the constitution further act as a protective shield for the tribal people of the country. It allows administrative as well as financial measures for economic development without undermining tribal autonomy. The Fifth Schedule designates 'Scheduled Areas' as regions that the President may declare as such through an order, after consulting with the Governor and the State Government of the respective state. The President also holds the authority to modify, expand, reduce, include new areas, or revoke any orders pertaining to 'Scheduled Areas'.⁴¹ The Sixth Schedule to the Constitution applies to the administration of certain 'tribal areas' in the states of Assam, Meghalaya, Tripura and Mizoram. These areas are governed by Autonomous Districts, Autonomous Regions and also have District Councils, Autonomous Councils and Regional Councils [Article 244(2)].⁴²

3.4. Constitutional Amendment for the protection of tribes in India

Time to time there are certain constitutional amendments also. In addition to development programs, many constitutional amendments have been passed to uplift and improve the standard of living for tribal populations. Forty-Second Amendment Act of 1975 which moved Forests to the concurrent list reflects the growing importance and the need for a standardized national strategy. 51st Constitutional Amendment Act provided for the reservation of seats in the Lok Sabha, so that the tribal communities can raise their concern in the parliament also. There were reserved seats for the STs in the Legislative Assemblies.⁴³ Establishment of a multi-member National Commission⁴⁴ The Constitution (Seventy-Third Amendment) Act, 1992, has strengthened the forest conservation and enhanced the role of village panchayats or local governance. Further the 93rd amendment empowered the state to make special provisions in aided or unaided educational institutions by the state for the socially and educationally backward classes.

Despite all the rights specifically defined in the constitution the tribal communities still lack.

So all these provisions show that how the constitution has protected the interest of the tribal communities in India. It can be stated that these laws serve as a powerful instrument for upliftment of the tribal communities. But despite all these efforts the tribal communities continue to face social injustice, highlighting the need for sustained action and social awareness alongside legal protections.

4. The Forest Rights Act, 2006: An Overview

Forests, as an ecosystem have been much in discussion all over the world, for mitigation of negative impacts of climate change, biodiversity conservation and sustainable development goals. Foresters and Scientists have started talking on managing the forest resources not as isolated natural resource, but at a broader interactive landscape level. Recent developments in the field of international environment law have also provided a healthy global framework to preserve forest resources sustainably.⁴⁵ The Forest Rights Act, 2006 is an important legislation in the history of forest administration in India. It is an important instrument in enhancing the income and quality of life of beneficiaries, enabling tribal women, and empowering Gram Sabhas to manage forest resources.

4.1. Objectives and scope of FRA

The Forest Rights Act (FRA) is a first in its kind aimed at addressing the "historical injustice" inflicted upon tribals and forest-dwellers. FRA had the potential to radically transform the governance and conservation of forests by shifting the control from the states to the communities.⁴⁶ Though long overdue, it represents a crucial and positive step forward. The Act seeks to acknowledge the customary rights of both scheduled and non-scheduled tribal communities who inhabit or depend on forests.⁴⁷

⁴¹ J.N. Pandey, *Constitution Law of India*, 650 (Central Law Agency, 51st Edition 2014)

⁴² *Ibid.*

⁴³ 57th Constitutional Amendment Act of 1987

⁴⁴ 65th Constitutional Amendment Act, 1990

⁴⁵ Ashutosh Samant Singhar, *Indian Forest Act 1927 and Forests in India*, 43 (Notion Press Media Pvt Ltd, 1st ed. 2021).

⁴⁶ A FOREST RIGHTS ACT, available on:

<https://landportal.org/library/resources/independent-people%E2%80%99s-tribunal-inquiry-status-implementation-forest-rights-act> (Visited on 12th Sept, 2025)

⁴⁷ Forest Rights Act (FRA) of 2006, available on:

4.2. Forest Rights Recognised under FOREST RIGHTS ACT, 2006

4.2.1 Individual and community rights

At the individual level, the FRA acknowledges the right of claimants to possess a portion of forest land for cultivation, common occupations, or habitation to support their livelihoods. At the community level, the FRA also acknowledges the rights of claimants to access Minor Forest Produce (MFP), excluding commercial timber, as well as fish and other resources from water bodies. Additionally, the FRA recognizes the rights of pastoral communities to use resources for livestock grazing and community forests, including rights over biodiversity resources for livelihoods and intellectual property rights related to traditional knowledge and cultural diversity.

4.2.2. Rights to minor forest produce

Tribal communities rely entirely on forests for their survival. Judiciary in its decisions on some points taking effective majors to stop the use of minor forest produce to some people who are not able to prove their rights to take forest produce. The reservation of forests has significantly impacted tribal communities, particularly in relation to their traditional livelihoods. The High Court, however, upheld the rights of the tribal communities, affirming that they are entitled to rely on forest resources for their livelihood and that forest authorities cannot obstruct this lawful dependence,⁴⁸

4.2.3. Right to protect and manage forests

The Act empowers forest rights holders to protect, conserve, and manage forests and their resources through their respective Gram Sabhas and village-level institutions. Tribes can regulate access to community forest resources and prevent activities which are harmful to the environment or their cultural heritage. It can mandate the preservation of catchment areas, water sources, and other ecologically sensitive zones. Furthermore, right holders are authorised to implement Gram Sabha decisions to regulate access to community forest resources and to prevent activities that may adversely affect wildlife, forests, or biodiversity.⁴⁹ In **Orissa Mining Corporation vs. Union of India and Ors** .⁵⁰ has The Supreme Court observed “we have realised that forests have the best chance to survive if communities participate in their conservation and regeneration measures.” So this provision reinforces both ecological protection and tribal self-determination by shifting forest governance towards community-based management

4.2.4 Role of Gram Sabha

The Gram Sabha is the designated authority responsible for initiating the process of inviting, verifying, and consolidating claims for rights, as well as preparing a map that outlines the area for each recommended claim. This is a crucial, though somewhat weakened, provision of the Act, aimed at providing a democratic, accessible, and transparent platform for claiming rights, in contrast to the typical practice of vesting such authority in distant and unaccountable officials. Once the Gram Sabha approves the verified claims through a resolution, these are then forwarded to the Sub-Divisional Level Committee for further processing.⁵¹ Section 2(g) which states “Gram Sabha” means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women.⁵² the Act also empowers Gram Sabhas to claim community forest rights, allowing for the collection of usufructs and non-timber forest products for commercial purposes.⁵³ The Supreme Court has emphasized the importance of the Gram Sabha in safeguarding the other rights of the forest dwellers like, their religious and customary rights. The importance of the consent of the gram sabha was also reinforced in the case of **Vedanta Resources Plc v. Union of India (2018)**⁵⁴ and rejected the mining project in Odisha’s tribal lands.

4.2.5 Eligibility criteria and documentation

Eligibility for rights under the Forest Rights Act, 2006 (FRA) is for forest dependent communities. The word claimant has also been defined under the Act which includes an individual, group of individuals, family or community making a claim for recognition and vesting of rights listed in the Act.⁵⁵ So the beneficiaries include two primary groups “Forest dwelling Scheduled Tribes” and “other traditional forest dwellers” but they are determined by specific criteria set out in the Act. *“forest dwelling*

<https://tribal.nic.in> (Visited on 6th sept, 2025)

⁴⁸ Fatesang Gimba Vasava v State of Gujrat AIR 1987 Guj 9

⁴⁹ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Section 5.

⁵⁰ (2013) 6 SCC 476.

⁵¹ Madhu Sarin with Oliver Springate-Baginski, “India’s Forest Rights Act -The anatomy of a necessary but not sufficient institutional reform” ,available at:

<https://assets.publishing.service.gov.uk/media/57a08b0be5274a27b2000909/dp45.pdf> (Visited on 6th sept, 2025)

⁵² *Supra* note 49, s. 2(g) 2006.

⁵³ Brij Kishore Singh , *FOREST RIGHTS ACT ACCELERATED DEFORESTATION*,3 (Notion Press 1st edn.2021)

⁵⁴ AIR 2018 DEL 2402.

⁵⁵ *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012, rule 2(c)*

Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities;⁵⁶

"other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.⁵⁷

Explanation.-For the purpose of this clause, "generation" means a period comprising of twenty-five years;

Supreme Court in various interim orders has stated the relevance of Forest Dwelling Scheduled Tribes (FDSTs) and Other Traditional Forest Dwellers (OTFDs) in forest conservation.⁵⁸ It has also been stated by the court that the people who does not belong to scheduled tribes but reside in forest area and doing any business which do not show any dependency upon the forests cannot claim any rights under the FRA 2006.⁵⁹

"bonafide livelihood needs"

"Bonafide livelihood" generally refers to activities carried out not primarily for commercial profit or monetary gain but for survival. But According to the Rules of the Act, livelihood needs encompass the sale of crops grown on the land, the sale of Minor Forest Produce (MFP) collected from the forest, and income derived from water bodies and grazing.⁶⁰

In order to claim rights as a forest dwelling scheduled tribes, the claimant needs to attach ST certificate.⁶¹ The recognition of rights under the Act takes precedence over all existing laws.⁶² The rights shall be inheritable but not transferable or assignable. They shall be registered jointly in the names of both spouses for married individuals and in the name of the single head for households led by a single person.⁶³

In determining forest rights, the Gram Sabha, Sub-Divisional Level Committee (SDLC), and District Level Committee (DLC) are required to consider multiple forms of evidence⁶⁴. These evidences may include public documents, government records, physical attributes, traditional structures, and statements from community elders, among others.⁶⁵

5. An Analysis of Forest Rights Act

The Act seeks to acknowledge the customary rights of both scheduled and non-scheduled tribal communities who inhabit or depend on forests, many years after laws for wildlife protection, ecosystem conservation, and forest preservation were implemented.⁶⁶ However, the influential urban wildlife conservationist lobby used its power not only to delay the notification of the rules but also to shape their final form and content. As a result, the rules are vague and, in some instances, silent on key procedural matters.⁶⁷ The Act does not adequately clarify the requirement to "reside in forests or forest land," which applies to both categories of beneficiaries.⁶⁸ This could be interpreted to mean living in areas officially designated as forest land, while in reality, many forest dwellers inhabit areas classified as revenue land, cultivating forest land and utilizing its resources.

5.1. Legal and Constitutional Validity: The Supreme Court is assessing the constitutional validity of the Forest Rights Act 2006. The Ministry of Tribal Affairs (2019) also clarified its position that the FRA only recognises pre-existing rights which are already being exercised by eligible persons; other than securing tenure, no new rights are being created that would affect ecologically sensitive areas.⁶⁹

⁵⁶ *Supra* note 49, s. 2 (c) and sec 2 (o).

⁵⁷ *Ibid* s.2 (o).

⁵⁸ TN Godavarman Thirumulpad v. Union of India (On going case) 1996

⁵⁹ Ishwar Chandra Gupta etc. vs. State of UP & Ors. AIR 2011 ALL 88

⁶⁰ *Supra* note 49, s. 2 (c) and sec 2 (o)

⁶¹ *Supra* note 55, ANNEXURE – I ,FORM- A

⁶² *Supra* note 49, s. 4.

⁶³ *Ibid*, s.4(4).

⁶⁴ *Supra* note 55.

⁶⁵ *Supra* note 55 , rule 8.

⁶⁶ *Supra* note 49.

⁶⁷ India's Forest Rights Act -The anatomy of a necessary but not sufficient institutional reform ,*available at:*

<https://assets.publishing.service.gov.uk/media/57a08b0be5274a27b2000909/dp45.pdf> (Visited on 6th sept, 2025)

⁶⁸ Lovleen Bhullar, "The Indian Forest Rights Act 2006: A Critical Appraisal", 4/1 *LEDJ* 20 (2008).

⁶⁹ FRA, *available at:*

https://tribal.nic.in/downloads/FRA/FAQ/FAQ%20ENGLISH_Approved_compressed.pdf (Visited on 6th sept, 2025)

In the case of *Wildlife First v Union of India*, it is argued that the Act is a colourable piece of legislation that is outside the legislative competence of the Parliament as it falls under the State List, and therefore, ultra vires the Constitution⁷⁰ and the case is still pending. In March 2008, a writ petition was filed before the Supreme Court of India by Wildlife First, Nature Conservation Society, Tiger Research and Conservation Trust, and other conservationists, challenging the legality and constitutional validity of the Act on the grounds that the Act was violative of the petitioners' fundamental rights guaranteed under Article 14 and 21 read with Articles 48A and 51A(g) of the Constitution of India.⁷¹

A broad interpretation might include individuals with no substantial traditional connection to forests, while a narrow interpretation risks excluding many traditionally forest-dependent people who may not live within or near forests but still rely on them.⁷² To ensure fairness, eligibility should prioritize those with a significant traditional connection to forests and substantial dependence on them for survival and basic livelihood.

5.2. Implementation Challenges: The interpretation of the bonafide livelihood needs suggests that the exercise of rights recognized exclusively under Sections 3(1)(a), (b), and (d) is intended to meet genuine livelihood needs. Moreover, the rights specified in Sections 3(1)(b) and (d) pertain to usufruct community rights and rights over non-timber forest products (NTFPs), neither of which involve 'self-cultivation.' In practice, government officials in several states have used this interpretation to deny claims by individuals who already own some revenue land, earn income from a job or business, or even receive a pension, arguing that they are not reliant on the claimed land to meet their 'sustenance needs.'⁷³

According to the Forest Department the implementation process is almost over. But the supporters of tribal rights claim that the Department is overlooking the genuine claims of the tribal people. In this though the Ministry is implementing agency but the lands claimed are under its jurisdiction of forest department. So it is difficult to attain the titles easily.⁷⁴ Both sides present a mixed situation on the ground.

5.3. Lack of awareness among beneficiaries: The definition of forest dwelling scheduled tribes given in the Act is again problematic. This provision risks excluding a significant portion of the tribal poor who may not live directly *in* the forest but rely heavily on its resources for their livelihoods. Restricting eligibility to "Scheduled Tribes" could leave out nearly 50% of tribal groups that have not been formally recognized as such through the constitutional process. The phrase "who primarily reside in and depend on the forest" plays a critical role in determining eligibility. The replacement of "or" with "and" in this clause just before the bill's passage in parliament could, if interpreted narrowly during implementation, inadvertently exclude many rightful claimants, despite aiming to prevent land grabbing.⁷⁵

The definition of "Other Traditional Forest Dwellers" is even more stringent, requiring proof of residence for three generations (25 years each), potentially disqualifying Scheduled Tribes who have been forced to relocate outside their traditionally designated areas.⁷⁶

5.4. Gram Sabha's Authority Undermined:

To effectively carry out its role, it must not be too large or heterogeneous, making the definition of the village, whose Gram Sabha is the responsible authority, particularly important. The concerns remain about whether forest-dwelling tribals and non-tribals will be able to uphold the decisions made by the Gram Sabhas once the matter reaches the Divisional and District Level Committees.⁷⁷

⁷⁰ The Road so Far: Forest Rights Act and Constitutionality, available at: <https://practiceconnect.azimpremjiuniversity.edu.in/the-road-so-far-forest-rights-act-and-constitutionality/#:~:text=The%20Preamble%20of%20the%20Act,dwelling%20Scheduled%20Tribes%20and%20other> (Visited on 10th sept, 2025).

⁷¹ *Ibid.*

⁷² *Supra* note 70.

⁷³ *Supra* note 69.

⁷⁴ December 23, 2021, The Hindu

⁷⁵ *Redressing 'Historical Injustice' through the Indian Forest Rights Act 2006: A Historical-Institutional Analysis of Contemporary Forest Rights Reform*, available at: <https://www.researchgate.net/publication/242140105> (last visited 9th sept, 2025).

⁷⁶ *Ibid.*

⁷⁷ C.R Bijoy, Shankar Gopalakrishnan and Shomona Khanna, *INDIA AND THE RIGHTS OF INDIGENOUS PEOPLES*, 81(Asia Indigenous People's Pact, 1st ed.2010)

5.5. Conflict with other laws

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) is an Act which deals with the legal issues regarding the forest rights, customary rights on forests were not recognised by the previous legislations dealing with forest conservation, wildlife and biodiversity. So now the conflict has arisen which focus on the protection of wildlife, forest and bio-diversity.

The Indian Forest Act of 1927 includes provisions to establish rules and regulations for the protection of forests as well as for provisions for compensation to individuals or communities with legally recognized rights to forest land or forest products. But according to many historians these policies were exploitative and not meant for Indian interest. Protection for few large wild animals was provided, under the Act, mainly for hunting and pleasure, but surely not for biodiversity conservation.⁷⁸ According to The Indian Forest Act of 1927, common lands inhabited by forest communities are government property and the definitions provided for 'forest produce' and 'tree' given under section 2 of the Act, are economically driven, listing only those forest products and plants with commercial value which indicates that the dependents of forest traditional user became criminal.⁷⁹ The 1927 Act, has nowhere mentioned about the rights of forest communities to live in the forest and meet their livelihood needs.⁸⁰ Another important policy change was the abolition of zamindari in all Indian states, which resulted in a large proportion of private forests becoming the property of the government.⁸¹ There were reserved forest the Act prohibits certain activities like clearing forests for cultivation, trespassing or grazing cattle in the forest, causing damage, cutting trees or dragging timber including quarrying stone or removing any forest produce and hunting⁸² and violation of these activities were punishable. Even after the independence the Act was followed by the Indian government which led many conflict with the interest of the tribal community.

The another legislation was Wildlife Protection Act, 1972 (WLPA), which aimed to protect the wildlife and preserve biodiversity by creating and managing the protected areas such as sanctuaries and national parks and tiger reserves. The recognition of rights in wildlife sanctuaries and national parks was among the most argumentative provisions of the Forest rights Act. However, this also led to clashes with the habitat rights and livelihood rights which often led to relocation of forest dwellers whose rights are protected under forest rights Act 2006. Though The WLPA 1972 also states about the settlement of rights⁸³ but for these provisions also demands the proofs from the tribal forest dependents regarding their customary rights in the sanctuaries and also restrict the traditional livelihood activities inside the sanctuary,⁸⁴ which was difficult for the illiterate people to produce. But FRA mandates the recognition of all rights within wildlife sanctuaries and national parks. Section 4(2) Forest Rights Act (FRA), 2006 overrides the WLPA wherever there is conflict regarding the rights of forest-dwelling Scheduled Tribes and other Traditional Forest Dwellers (OTFDs).

Though The Forest (Conservation) Act of 1980 made a significant effort in forest protection which was enacted to conserve forests and curb deforestation, yet both the state and central governments failed to take adequate measures for forest protection and conservation. Forests serve as the primary habitat for wildlife and a home for Scheduled Tribes and other traditional forest dwellers but nowhere in the Act has specifically talked about the rights of these communities. The Act was introduced to prevent the conversion of forest land for projects such as roads, dams, and buildings. However, the Ministry of Environment and Forests (MOEF) struggled to fully implement its decisions, partly due to the enactment of the FCA 1980. The 1988 amendment to the FCA brought all forest land under the jurisdiction of the forest department. Despite these efforts, the Act has not been effectively implemented to benefit forest-dwelling Scheduled Tribes and other traditional forest dwellers across the country. So the need arises for the protection of forest dwelling communities as their interest was fully ignored by the government. Further there are several provisions in the conservation rule 2022 also, which has raised serious concerns for violation and ignorance of rights under FOREST RIGHTS ACT, 2006. The consent of Gram Sabha is again ignored by the Act and its rule. This leads to a serious concern of the statutory and constitutional rights of tribal and forest-dwelling communities and threatening tribal sovereignty, forest control, and environmental justice.

6. Role of Judiciary

In India the judiciary holds a strong and independent position. Being an impartial and autonomous judicial system it safeguard individual rights and deliver justice without fear or bias. In India, tribal communities have faced many social and economic and political exclusion since ancient times. Despite constitutional safeguards and legislative measures, they continue to struggle for basic rights, including land ownership, education, and self-governance. So the role of the judiciary particularly in India affirms and enforces the legal and constitutional rights of forest-dependent communities. Furthermore, Public Interest Litigations (PILs) have broadened the judiciary's scope in addressing social concerns, enabling the courts to initiate *suo motu* proceedings to

⁷⁸ Ashotosh Samant Singhar, *Indian Forest Act 1927 and Forests in India*, 8 (Notion Press 1st edn.2021)

⁷⁹ *Ibid*.

⁸⁰ History of Conflict over Forests in India: A Market Based Resolution, *available at*:

http://www.libertyindia.org/policy_reports/forest_conflict_2002.pdf. (last visited 9th sept, 2025).

⁸¹ Nilav Ranjan Bora, P. Kumar *et al.*, "Journey of Indian Forestry and Its Development from Past to Modern Era" 8 *IJZAB*, 69 (2023).

⁸² The Indian Forest Act, 1927, Section 26.

⁸³ Wildlife Protection Act, 1972 s. 19, 20, 21, 25.

⁸⁴ *Ibid*, s. 33.

safeguard the rights of Scheduled Tribes (ST) communities. This development has reinforced the judiciary's position as a defender of marginalized groups and a custodian of the rule of law.⁸⁵

The Supreme Court in the case of *Orissa Mining Corporation*⁸⁶ acknowledged and recognised the crucial role played by the forest-dwelling communities in the protection, preservation, and management of its natural resources. Therefrom, it can be summarised that the enactment of the FRA reflect the State's effort to protect and improve the environment and to safeguard the forests and wildlife of the country This construction also supports the legislative intent to protect the fundamental rights of the forest-dwelling tribes of India.

In the case of **Keshab Behera & Ors. vs. State of Odisha & Ors**⁸⁷ the High Court , while emphasizing the continued necessity of vigilant monitoring to ensure the long-term protection of forest areas from future encroachments. The court found that the State Government has been actively working to safeguard forest lands from illegal occupation. The Court considered the definitions of "forest dwelling Scheduled Tribe" and "other traditional forest dweller" under the FRA. In another case of **Podium Devaiah & Ors. vs. Government of India & Ors**,⁸⁸ the petitioners filed the writ petition asserting their status as Scheduled Tribes and sought protection under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA). They also requested proper disposal of their applications for recognition of forest rights and protection from dispossession. There are many cases where the statutory authorities has failed to implement the provisions of the Act, but the Court has directed the competent authorities under the FRA to consider such applications by setting the limited time period, provided they comply with the procedural requirements under the Act, the Forest Rights Rules, or relevant notifications and the same must be communicated to the respective applicant.⁸⁹

The Supreme Court in many cases has also highlighted the need for gradual integration of tribal communities in to the mainstream society which lead to progress and improvement in their lives. The court states that the rehabilitation efforts at the new locations improved the living conditions of the displaced and also the new facilities were superior to those available in the tribal villages.⁹⁰ In the case of **Ajmal Khan vs. State of Madhya Pradesh**⁹¹, the writ petition was filed in December 2005, seeking a direction for the respondents to remove encroachments from forest land located in specific forest compartments within District Satna. Subsequently, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) came into force. It was contended that since the FRA was enacted after the petition was filed, the State Government should first conclude the proceedings under the FRA before taking any action against individuals who may be protected under the Act. However, there is no bar on proceeding against those who are not entitled to protection under the FRA. The Court directed that the petitioner is at liberty to submit a representation to the concerned authorities, requesting action against unauthorized structures and encroachments that do not fall within the purview of the FRA. The competent authorities may then conduct the necessary inquiry and bring it to a logical conclusion within a stipulated timeframe.

In the case of **M Prabhaker Reddy v. Andhra Pradesh**⁹², the court reviewed the arguments presented by the state, which highlighted the exploitation of tribal communities by non-tribals. These tribal groups traditionally inhabited forested and hilly regions within Scheduled Areas, where they practiced shifting cultivation and collected forest produce for their livelihood. However, they became vulnerable to exploitation by non-tribal individuals, who initially provided them with loans but eventually took control over their lands. Taking advantage of the tribal people's lack of awareness, the non-tribals managed to occupy tribal lands unlawfully. The situation grew increasingly tense, leading some tribal groups to align with revolutionary movements calling for resistance against such exploitation. To restore peace and justice in the region, it became essential to return alienated tribal lands to their rightful owners. This objective formed the basis for the enactment of the regulation relevant to the case.

So the judiciary has also many times compelled governments to enforce laws, which are beneficial to STs, ensuring that their rights are not ignored in the name of development.

In the case of **Kalpavriksh & Ors. v. Union of India & Ors.**,⁹³ The case was filed by Kalpavriksh, an environmental and social justice NGO, along with other civil society organizations and individuals, who approached the Delhi High Court seeking implementation of the **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA)**. Because of non-implementation of the Act across several states, and thousands of forest dwellers faced eviction or denial of their rights due to administrative apathy, procedural irregularities, and lack of awareness. In its judgment, the Delhi High Court upheld the primacy of the Forest Rights Act, 2006 (FRA) over older, colonial-era forest legislations such as the Indian Forest Act, 1927. The court emphasized that no forest-dwelling Scheduled Tribes (FDSTs) or Other Traditional Forest Dwellers (OTFDs) could be evicted from forest land without the completion of the recognition and verification process under the FRA. It was further stated that before any eviction Due process under FRA is mandatory. Forest dwellers cannot be removed merely on the basis of rejection of claims, especially if those rejections did not follow the due procedure laid down in the Act. The Court reaffirmed the central role of the Gram Sabha in the FRA process, especially in initiating the claim recognition process, verifying and

⁸⁵ Public Interest Litigation in India: Empowering the Voiceless, *available at*: <https://edzorblaw.com/2024/09/09/public-interest-litigation-in-india-empowering-the-voiceless/> (last visited 11th sept, 2025).

⁸⁶ (2013) 6 SCC 476.

⁸⁷ 2014 SCC, ORI 113.

⁸⁸ WP 2133 OF 2009 HIGH COURT OF ANDHRA PRADESH 18.04.2011.

⁸⁹ Digeer Murmu & Anr. vs. Union of India , (WPIC) NO: 7403 OF 2008 HIGH COURT OF ORISSA 23.07.2008

⁹⁰ Narmada Bachao Andolan v Union of India, AIR 2000 SC 3751

⁹¹ 2014 SCC(ONLINE) MP 2999

⁹² AIR 1988 SC 1626

⁹³ Writ Petition (Civil) No. 2025 of 2007.

recommending claims, preventing fraudulent or high-handed rejections by administrative authorities. The court further stated that the state government should implement the provisions FRA effectively and ensure that the rights of vulnerable forest communities are fully realized.

7. Conclusion

The constitution of India gives equal chance to every section of the society to represent them and fight for the security of their rights. Forest rights act, 2006 is one of the important legislation which serves the constitutional mandate by securing the rights tribal communities in India. Forest rights act, 2006 need to be implemented effectively in all the states. Empowering the Gram Sabhas is important for the successful implementation of FRA. It is suggested that Gram Sabhas should be strengthened and its decisions should be give importance while passing the claims at higher levels. There should be harmonious relations between the state revenue department, forest department and tribal departments. There should be the co-ordination between these departments with the panchayats, so that effective implementation can be there. For redressal of the grievance of the claimant better data transparency should be provided.

The FRA represents political as well as forest reform governance by recognising the forest rights of the forest-dependent communities in the forest lands, though its implement is very slow. Instead of all the efforts by the government forest reservation unsurprisingly gave rise to intense conflict. As the forest are important sources of both livelihoods of the disadvantaged forest-dependent communities and for the national income of the country. So it can be stated from the above findings that more efforts are needed to make the Act effective only then it will be able to sever its real purpose.

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