



## AN ASSESSMENT OF THE LEGAL FRAMEWORK PROTECTING INDIGENOUS PEOPLE WITH A FOCUS ON INDIAN FOREST POLICY

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*The forest occupants or forest residents are peoples generally resides in the forests, and are in true sense the true custodians of the forest lands. They are fully reliant on forest produce for their livelihoods and have been conferred certain rights in the forest resources, by almost all the governments all-around the world. but despite these rights these people are marginalized more or less everywhere. So far, India is concerned, the Forest inhabitants continues to be considered marginalized even after India gained Independence from British colonial rule and despite the fact that many laws and policy were evolved to safeguard their rights by the state of India time to time. The parliament of India passed a legislation in 2006 named as 'The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006<sup>1</sup>. The objective of passing this law was to recognize and grant certain rights of Forest Dwellers or the Schedule Tribes (as they are commonly known) and others. It is claimed that this law provides them all those basic rights as granted to other citizens of the country like right to vote and right to contest elections and other rights along with entitlements to education and health. The Constitution of India also recognizes their rights in the form of fundamental rights and puts Governments under a legal obligation to make special provisions for their upliftment. At international plane also Various International conventions and treaties have provisions in favour of 'indigenous people' who are considered as protectors and preservers of the forests and environment the world over. Many principles like the 'Public Trust Doctrine' and the international environmental law also seeks to protect these people against arbitrariness and mismanagement of essential forest lands. The goal of this research is basically to critically analyse the international and National laws, policies, and case studies related to forest lands, with its impact on the very basic human rights of the people who are the true guardians of these lands.*

**KEYWORDS:** - *Indigenous People, Fundamental Rights, Human Rights, Forest Laws, Land Acquisitions Laws, Forest Dependents*

<sup>1</sup> The Forest Rights Act 2006 (Act no. 2 Of 2007)

## I. INTRODUCTION

### A. OVERVIEW OF FOREST RESIDENTS AND THEIR RIGHTS

Forest residents are members of a community of Tribes that are recognised as Scheduled Tribes in an area under Indian law, it includes other Traditional Forest Occupiers also and all of them have the right to claim rights under the Forest Rights Act<sup>2</sup>. Other Traditional Forest Dwellers are individuals or group of people who have lived on forest land successively for at least three generations i.e. seventy five years prior to 13-12-2005 and trust on it for their livelihood<sup>3</sup>. Forest inhabitants who are also known by many other names such as forest-dependent communities (FDC), tribal communities, or indigenous peoples, have traditionally lived in forests and were dependent on forest produce<sup>4</sup> for their survival since ages<sup>5</sup>. These indigenous people accustomed to inhabit, produce, graze their cattle, and earn their livelihood from forest products without any constraints or impediments. Many of their festivals and cultural practices depicts importance of forest and their social identity is also dependent on forests<sup>6</sup>. They took various measures and have developed intricate knowledge and undertake various sustainable practices that contribute to forest conservation, biodiversity preservation and overall environmental protection.<sup>7</sup> Forest dwellers have distinct cultural identities and practices that are intimately connected to their forests. But now with the passage of time the government is interfering in the forests and encroaching upon their natural habitats by passing the horrendous law which takes away their fundamental right to live in forests which has given birth to controversy.<sup>8</sup> the indigenous people are in direct fight with the government in order to protect their culture and natural habitats. These people who make up 8.2 percent of India's entire population, according to the census of 2011<sup>9</sup>, have been subjected to cruelty, and are seen with criminality by the government.

As a result, these people and their unique cultural and social heritage must be legally safeguarded. Owing to that, the forest rights<sup>10</sup> of forest dwellers have been acknowledged and protected by various international agreements, national legislation, and human rights frameworks. Forest dwellers often have customary or traditional rights to use and access the land and resources within the forests they inhabit. These rights recognize the importance of cultural heritage and the intrinsic value of indigenous and local knowledge. These rights may consist of the right to cultivate, gather non-timber forest products (NTFPs), hunt, and engage in other subsistence activities necessary for their livelihoods. They should have the right to participate in decision-making processes that affect their lands, resources, and overall well-being. Various international measures like The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and International Labour Organization Convention No. 169 were passed in order to recognize and emphasize the rights of indigenous and tribal peoples, including forest dwellers. Additionally, many countries have enacted laws and policies to recognize and safeguard the rights of forest-dependent communities, such as the Forest Rights Act (2006) in India.

However, despite these legal provisions, forest dwellers often face challenges in the realization and implementation of their rights. Encroachment, land conflicts, unsustainable resource extraction, large-scale development projects, and inadequate recognition of customary rights are some of the issues that threaten the rights and well-being of forest dwellers. Efforts are being made globally to promote the rights of forest dwellers, ensure their active participation in decision-making processes, and create mechanisms for sustainable forest management that respects their knowledge, traditions, and way of life. The recognition of their rights not only contributes to social justice but also supports biodiversity conservation, climate change mitigation, and the sustainable use of forest resource

<sup>2</sup> Id sec 2(c)

<sup>3</sup> Available at <https://tribal.nic.in/FRA/data/FAQ.pdf>

<sup>4</sup> Sec 2 (I), The Forest Right Act, 2006

<sup>5</sup> Bandi, M. (2014). forest rights act: towards the end of struggle for tribals (Vol. 42). social scientist. Retrieved from: <https://www.jstor.org/stable/24372999>

<sup>6</sup> Bandi, M. (2014). The forest rights act: towards the end of struggle for tribals (Vol. 42). social scientist. Retrieved from: <https://www.jstor.org/stable/24372999>

<sup>7</sup> Bandi, M. (2014). the forest rights act: towards the end of struggle for tribals (Vol. 42). social scientist. Retrieved from: <https://www.jstor.org/stable/24372999>

<sup>8</sup> Manju Arora Relan, The Forest Right Act 2006: Victory and Betrayal, JILI, Vol 52 No3/4, July-December 2010

<sup>9</sup> Bandi, M. (2014). forest rights act: towards the end of struggle for tribals (Vol. 42). social scientist. Retrieved from: <https://www.jstor.org/stable/24372999>

<sup>10</sup> Supra note 1 Art. 3(1)(e)

## B. OVERVIEW OF FOREST LAND ACQUISITION BY THE GOVERNMENT

Forest land acquisition by the government refers to the process through which the government acquires forest land for various purposes, such as infrastructure development, industrial projects, conservation initiatives, creating special economic zones,<sup>11</sup> resettlement programs<sup>12</sup>. This process involves the transfer of ownership or control of forest land from the existing owners, which may include indigenous and local communities, to the government or other entities authorized by the government. The reasons for forest land acquisition by the government vary depending on the specific context and objectives like Governments may acquire forest land for “public purposes”<sup>13</sup>, like the construction of roads, railways, dams, power plants, or other public infrastructure projects<sup>14</sup>.

The procedure for land acquisition by the state authorities may vary depending on the need and circumstances of that particular area. Before snatching the land of forest occupants the state authorities must take into account certain requirements of laws and also consider the vulnerable conditions of those occupants. It is also very much clear that before taking control over the land the local administration must satisfy themselves by conducting Surveys and assessments, and thereafter only planning processes should be started to make this determination<sup>15</sup>.

As is clear that implements Authorities does not do this without any authority and they might be having special laws or ordinances for acquiring of land, especially forest land. One such legal instrument that gives the state the right to acquire land is Land acquisition (amendment) Act of 1984<sup>16</sup>, this act was always seen with suspicion by the forest dweller's especially because it gives the government wide power to snatch the land without providing due compensation to the owner of land on the name of development. The aforementioned laws provide out the legal structure, processes, and compensatory methods for obtaining land. The authorities must inform aggrieved landowners as well including forest residents and community members, of the government's plan to acquire the land. Dialogue methods may be undertaken to elicit their opinions, concerns, and contributions. Compensation procedures are put into effect to give landowners with adequate and equitable reimbursement for the confiscated land.

It should be noted that the procedure of acquiring forest land can be controversial and problematic, especially when it includes the relocation of aboriginal and local groups or undermines their entitlements and subsistence. Balancing the need for development with the protection of forest residents' rights and well-being is a complicated task that necessitates meticulous preparation, participation of stakeholders, and respect to laws and regulations and international standards for indigenous peoples' rights and land tenure.

## C. GOAL OF THE RESEARCH

Democracy has no meaning if the marginalised section of the nation is not taken care of by the state. The purpose of this paper is to gain a comprehensive understanding of the complex issues and dynamics surrounding this subject and to evaluate the legal rights of the forest dwellers in the context of various national and international laws and also to analyse the redressal mechanism for the redressal of the grievances of the forest dwellers and also to understand the impact of displacement of the forest dwellers on the environment and livelihood of them. This Research would contribute to the generation of knowledge and insights into the legal, socio-economic, and environmental aspects of forest land acquisition and its impact on forest dwellers' rights. It helps to uncover the underlying causes, consequences, and patterns associated with these processes, thereby deepening our understanding of the topic.

The research can inform the development of evidence-based policies, legal frameworks, and strategies that aim to protect and promote the rights of forest dwellers. Research can help highlight legal gaps, inconsistencies, and opportunities for reform, contributing to the development of legal strategies and interventions. It can contribute to raising awareness and fostering public discourse around forest land acquisition and the rights of forest dwellers. Outcome of this research may be relevant to the broader agenda of sustainable development and conservation. It

<sup>11</sup> Supra note 8 at p.485

<sup>12</sup> Land Acquisition Act, 2013

<sup>13</sup> Smt. Somvanti and Others. AIR, 1962

<sup>14</sup> Supra note 8

<sup>15</sup> Sec 12 The Land Acquisition (amendment) Act, 2013

<sup>16</sup> Act No 68, 1984

would highlight the need to strike a balance between development goals, conservation imperatives, and the rights and well-being of forest-dwelling communities.

## II. LEGAL FRAMEWORK FOR FOREST DWELLERS' RIGHTS

### A. INTERNATIONAL LEGAL FRAMEWORK FOR FOREST DWELLERS' RIGHTS

Several international legal instruments have been developed to recognize and protect the rights of forest dwellers, indigenous peoples, and local communities. These instruments emphasize the importance of their land, resource, and cultural rights. Here are some key international legal instruments that provide for forest dwellers' rights are as under.

- a. **The Indigenous and tribal population convention (ILO) 1957<sup>17</sup>** - It is a global convention convened by ILO, instrument no 107 in the form of mandate to countries that takes care of the rights of the tribals, semi-tribals and indigenous people among the independent nations of the world. India too have ratified the convention. This convention may be invoked by the persons belonging to the above group for restoration and implementation of their rights if their government try to take away their rights in lands but the problem with this convention was that it had so many flaws due to which it was not fulfilling the dreams and aspirations of the indigenous people and one such technical flaw of this was that it was not legally binding on the signatory parties.<sup>18</sup>
- b. **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),2007<sup>19</sup>** - It is a detailed international treaty that establishes indigenous peoples' individual and communal rights, including the rights of forest inhabitants. Forest dwellers can use the provisions of the UN Convention on the Rights of the Indigenous Peoples (UNDRIP) to exercise their rights to land, resources, cultural legacy, and self-determination. It has the potential to function as a normative framework for holding governments accountable for violations of indigenous rights. UNDRIP was adopted by the General Assembly on September 13, 2007, with 144 states voting in favour, four voting against (Australia, Canada, New Zealand, and the United States), and 11 abstaining.
- c. **International Human Rights Treaties:** Forest dwellers can rely on various international human rights treaties to seek protection for their rights. Treaties such as the International Covenant on Civil and Political Rights (ICCPR)<sup>20</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>21</sup> recognize fundamental rights, including the right to land, culture, and livelihood. Forest dwellers can file complaints or communications before relevant treaty bodies, such as the Human Rights Committee or the Committee on Economic, Social and Cultural Rights, alleging violations of their rights by the government.
- d. **International Labour Organization (ILO) Conventions:** The ILO has adopted several conventions that specifically address the rights of indigenous and tribal peoples. Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries provides a framework for protecting their rights, including their rights to land, resources, and participation in decision-making processes. Forest dwellers can refer to these conventions to assert their rights and seek remedies for violations.
- e. **Regional Human Rights Systems:** Depending on the region, forest dwellers may have access to regional human rights systems that provide additional avenues for seeking redress. For example, the Inter-American Commission on Human Rights (IACHR) and the African Commission on Human and Peoples' Rights (ACHPR) have mandates to protect and promote the rights of indigenous peoples. Forest dwellers can submit petitions or complaints to these regional bodies, alleging violations of their rights in the context of forest land acquisition.
- f. **International Environmental Agreements:** Forest dwellers can also benefit from international environmental treaties that recognise the significance of indigenous peoples' rights in environmental conservation and sustainable development. The Convention on Biological Diversity (CBD)<sup>22</sup> and the United Nations Framework Convention on Climate Change (UNFCCC)<sup>23</sup>, for example, recognise the critical role of indigenous peoples

<sup>17</sup> <https://www.culturalsurvival.org/news/after-30-years-only-23-countries-have-ratified-indigenous-and-tribal-peoples-convention-ilo>

<sup>18</sup> Id

<sup>19</sup> <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples#:~:text=The%20United%20Nations%20Declaration%20on,%2C%20Bangladesh%2C%20Bhutan%2C%20Burundi%21>

<sup>20</sup> Adopted in 1966

<sup>21</sup> Id

<sup>22</sup> 5<sup>th</sup> June 1992

<sup>23</sup> Id

and local communities in natural resource protection and management. Forest dwellers can participate in these procedures and argue for their rights to be taken into account and respected.

- g. NGOs, or Indigenous rights organization:** There are many international organisations that take up the cause of the indigenous people in their fight against injustices and atrocities committed on them by the state and corporations. One such NGO is *Survival International* which is based in London supporting the cause of indigenous people all around the globe in the restoration of their rights which has been taken by the governments.<sup>24</sup> It works for the people by educating and awaking them of their legal and constitutional rights, it provides them free legal aid and provide them platform to address their grievance to the world at large.

## B. NATIONAL LEGAL FRAMEWORK FOR FOREST DWELLERS' RIGHTS

In India, the legal regimes for forest dwellers' rights primarily revolve around two key legislations, the first is the Forest Rights Act (2006) or also known as the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, commonly known as the Forest Rights Act or FRA or second is the constitution of India, 1950

### a. THE FOREST RIGHTS ACT, 2006

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, also known as forest rights act, 2006 was enacted to undo the "historical injustice" done to communities living or dependent on the forest resources of India<sup>25</sup>. The act for the first time recognized customary rights of indigenous forest-dwelling communities over the forest. The underlined idea was to achieve inclusive development, where the most marginalized community can have a say in the process of development<sup>26</sup>. The Forest Rights Act (FRA) of 2006<sup>27</sup>, which is also known as the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, is an important piece of legislation in India aimed at recognizing and protecting the rights of forest-dwelling communities, including Scheduled Tribes and Other Traditional Forest Dwellers (OTFDs)<sup>28</sup>.

It is the primary legislation that takes care of the rights of the forest dwellers. it provides a legal framework for the recognition and vesting of forest rights to eligible forest-dwelling communities<sup>29</sup>. It recognizes the rights of forest dwellers like to manage and protect forests as well as traditional knowledge<sup>30</sup> to right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other<sup>31</sup> and to receive developmental facilities such as education, health, proper and nutritious food, shelter and employment<sup>32</sup>. The Act is an attempt to redress the historical injustices faced by these communities and seeks to rectify them by granting them legal recognition and rights over their traditional forest lands and resources. The ministry of tribal affairs would be the nodal agency to look after the implementations of the law<sup>33</sup>. Here is an overview of the key provisions of the Forest Rights Act

- The act recognizes individual and community rights over forest land, including the right to possess and to live on the land, cultivate forest land for livelihood purposes<sup>34</sup>, and access forest resources such as non-timber forest produce<sup>35</sup>.
- The act specifically recognizes and protects the rights of Scheduled Tribes, including their cultural and habitat rights. It acknowledges their rights to use, protect, and conserve community forests and customary rights of dwelling and land use<sup>36</sup>.

<sup>24</sup> Supra note 18 at 673

<sup>25</sup> Supra note at p.508

<sup>26</sup> Jai Ram Singh Samal, Inclusive Development and Forest Right Act 2006- A Critical Look, Journal Of Public Affairs, Vol.21, 2021.

<sup>27</sup> Forest Rights Act, (Act no 2 of 2007)

<sup>28</sup> Id Sec 2(c) and 2 (o)

<sup>29</sup> Id Sec 4(8)

<sup>30</sup> Rosencranz, Armin. "The Forest Rights Act 2006: High Aspirations, Low Realization." Journal of the Indian Law Institute 50, no. 4 (2008): 656–77. <http://www.jstor.org/stable/43952183>.

<sup>31</sup> Art. 3(1)(a)

<sup>32</sup> Supra note 17

<sup>33</sup> The forest Right Act, 2006

<sup>34</sup> Sec. 3(1)(a) The Forest Right Act. 2006

<sup>35</sup> Id

<sup>36</sup> Id

- Rights for renovation of Pattas<sup>37</sup> issued by any local authority or any State Government on forest lands to titles<sup>38</sup>.
- The right to safeguard, redevelop, maintain or manage any community forest resource that they have historically protected and conserved for long-term usage.<sup>39</sup>
- In addition to Scheduled Tribes, the act also extends recognition and protection to other forest dwellers who have been living in forests for generations.
- The act lay down a process of recognition and settlement of forest rights. Forest dwellers can submit claims for acknowledgement of their rights, which are verified and decided upon by the Gram Sabha's and other statutory bodies<sup>40</sup>.
- The act includes provisions for the upkeep and protection of wildlife, biodiversity, and ecological values of forests while recognizing the rights of forest dwellers.
- The act constitutes gram Sabha and delegate it all the power with regard to recognition of rights of a particular person or community rights as a whole for people living in that village and in granting of those rights.
- One of the most striking feature of the law is that it constitutes the *gram Sabha* for each village and that *gram Sabha* has been invested with wide powers right from recognising the forest rights of the dwellers till that rights is being redressed as per the act.<sup>41</sup>

Thus, the Forest Rights Act has played a crucial role in empowering forest dwellers, giving them legal recognition and rights over forest lands and resources. The holders of any forest right under this Act are also having certain duties to fulfil like he is empowered to protect the wild life, forest and biodiversity<sup>42</sup>, it ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected<sup>43</sup>. Authorities constituted under the act are also duty bound to act legally and try not to contravene any provision of this act, failure of which may bind them legally guilty which is a punishable offence under the act<sup>44</sup>. interestingly, court shall not take cognizance of any offence unless any forest dwelling Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded in pursuance to such authority<sup>45</sup>.

## b. CONSTITUTIONAL REMEDIES

Many countries have constitutional provisions that protect fundamental rights, including the rights of indigenous peoples and forest dwellers. India too have many provisions that directly or indirectly come for their help in case govt. try to take away their lands without their permissions. Articles of Indian constitution that may be of help to forest dwellers include Art.14,19, 32, 226. Art. 21 which guarantee to very citizen of the country the right of livelihood. The Indian Constitution attempts to defend tribal interests, including independence and land rights<sup>46</sup>. So the forest dwellers can invoke Art 21 in case their rights related to land rights, cultural rights, and the right to livelihood are affected by the policy of the government to seek redress for those violations. They can file constitutional petitions or writs before the appropriate court, arguing that their rights have been violated and seeking appropriate remedies. Indian constitution also protects the right of self-determination of the tribe's communities<sup>47</sup>

Besides the above two remedies the forest dwellers can also redress their grievances by invoking other administrative and Judicial process. As in case of India, the rights of forest dwellers or tribals are specially protected by the panchayat act which si otherwise deemed as extension of Indian constitution and mandates to the state government that while interfering with the scheduled areas as prescribed in the constitution and which may affect the community rights of the Adivasi's, the government must consult with the gram Sabha who has the sole power

<sup>37</sup> It is a temporary grant of few rights given over a piece of land and the government may take it away whenever it wishes.

<sup>38</sup> Sec 3(1), The Forest Right Act. 2006

<sup>39</sup> Id

<sup>40</sup> Id

<sup>41</sup> Id

<sup>42</sup> Sec 5(a)

<sup>43</sup> Id sec 5(b)

<sup>44</sup> Id sec 7

<sup>45</sup> Id sec 8; sec 7

<sup>46</sup> Article 244 and Schedule 5 & 6 of Indian constitution

<sup>47</sup> Part X Indian constitution

to manage communities resources and violation of which is unconstitutional but despite the law all the state governments have ignored the mandate and took away the land on one or the other pretext.<sup>48</sup> Forest dwellers can challenge the decisions and actions of government authorities through administrative and judicial review processes. They can seek a review of decisions related to land acquisition, forest management, or development projects that affect their rights.

### III. CHALLENGES IN IMPLEMENTATION AND ENFORCEMENT OF THESE LEGAL INSTRUMENTS

The implementation and enforcement of legal instruments and regimes dealing with forest dwellers' rights faces several challenges. These challenges can vary across different countries and contexts, but some common issues may be summed up here.

1. Generally, the forest residents, are uneducated and live in disadvantaged and isolated areas and may be unaware of their entitlements and the legal options available to them.
2. Secondly, these are laymen and does not have formal knowledge of laws and regulations affecting them and thus are unable to defend their rights when their land is being snatched by the government.
3. Because these people are generally poor and are dependent on forest produce for their livelihood and have no money with them so whenever their rights are being encroached upon by the state authorities they cannot afford the fees of the lawyers and also they do not understand the legal systems.
4. There is no institutional set-up providing protection to these indigenous people and in case when their rights are being encroached upon by anyone no one come for their help and they have to pay the prices.
5. Inadequate staff, lack of scientific knowledge, and funding issues may hamper these legal provisions.
6. The lack of insufficient fund and shortage of staff also brings problem to them because it lacks in proper coordination between the authorities created for the protection of these people.
7. Last but not the least, the guilty are not punished by the court because of lacunae in laws and reluctance of the government authorities in investigation of offences done against hem by the guilty.

Resolving these obstacles will necessitate strong and sincere endeavours on the part of administrations, nongovernmental organizations, and other players with a stake in such issues.

### IV. JUSTIFICATION FOR LAND ACQUISITION

Every government of each state has a legal and valid justification for acquisition of private land of its citizens. Some of those are identified and may be summed up as below-

- a. States often acquire individual's lands as per the laws in the country. These acts establish the legal structure and procedures for the government to acquire land through proper procedure, which frequently includes notification, reimbursement, and rehabilitation initiatives. Good examples include the Land Acquisition Act 1894<sup>49</sup> in India and the Land Acquisition Act in Malaysia 1960.
- b. States could acquire forest land for ecological preservation so that initiatives like establishment of national parks, wildlife asylums, or additional wildlife reserves could be done. These laws may also include payment allowances for harmed property owners and groups.
- c. States may acquire forest land for Infrastructure expansion such as to build structures like highways, railroads, reservoirs, power stations, and other utilities for the public. These laws typically outline the processes for compensating, relocating, and rehabilitating impacted property owners and groups.
- d. States acquire forest land for purpose of mining or extracting mineral resources. The mining process and extraction of minerals laws typically provide the legal foundation for acquiring land that contains mineral assets or other useful resources from the earth.

<sup>48</sup> Supra note 8

<sup>49</sup> Act no 1 of 1985

## V. IMPLICATIONS OF FOREST LAND ACQUISITION BY THE GOVERNMENT

### A. SOCIO-ECONOMIC IMPACT OF ACQUISITIONS ON FOREST DWELLER'S RIGHTS

The socioeconomic impact of forest land acquisition on forest residents can be large and diverse. Among the biggest and most frequently encountered social and economic effects noticed while the course of the study are the following: Forest grabbing usually ends in the relocation of forest residents away from their native areas and a breakdown of their economic lives. Lack of accessibility to the forests and resources from nature can severely limit their ability to generate income and sustain their communities. Since they have strong social and spiritual connections to the forests, when their properties are acquired, their distinctive culture and centuries-old customs may be lost. If not saved, their distinctive knowledge and practices in management of forests, herbal remedies, and centuries-old crafts face extinction. They may lose utilization of forest resources, and they often encounter higher poverty rates and marginalization. They may have difficulty finding alternate jobs, particularly if they do not have an academic background or relevant expertise. Insufficient nutrition, decreased availability of medical care and schooling, and a higher likelihood of ending up in situations of poverty may all come from the loss of their main source of earnings. Acquisition of forest land may lead to social disruption and clash among forest-dwelling groups. The collapse of forest-dependent employment can have a detrimental effect on the physical and mental well-being of forest the residents.

### B. IMPACT ON MENTAL HEALTH OF FOREST DWELLER'S

The disappearance of social, cultural, and economic support networks linked to forest residing can have a detrimental effect on these indigenous tribes peoples' psychological and emotional health. Lack of Access to healthy foods, conventional drugs, and safe drinking water can all contribute to health issues and disease fragility. In decision-making forums, a lack of representation and voice can further marginalize them and limit their ability to advocate for their rights and interests. This has a negative impact on forest dwellers' overall well-being. Extreme induced poverty as a result of forced land acquisition by state authorities and psychological bullying depresses them and their ethical principles; this is exacerbated by the lack of job security and a reimbursement, which resulted in trauma and injuries on their psychological health. Overall the lives they have been compelled to live is full of negativity and no hope of light to get back to mainstream life survive in their mind.

## V. CASE STUDIES AND THE ROLE OF THE JUDICIARY IN PROTECTING FOREST DWELLERS' RIGHTS

Legal battles and court rulings regarding forest land acquisition have been instrumental in shaping the discourse around the rights of forest dwellers and the balance between conservation and development. There have been several specific cases of forest land acquisition by governments that have significantly impacted the rights of forest dwellers. courts has always been very kind to the forest dwellers rights and there are catena of cases in the jurisprudence of forest dwellers justice where by going through them one can easily infer the role played by courts. One such glaring example is *fatesang gimba vasava v. state of Gujarat*<sup>50</sup> where the apex court set aside the Gujrat government's order putting ban on transport of bamboo by Adivasi's for sale as illegal and unwarranted and held that it does not violate the forest act ,1927<sup>51</sup>. Similarly, in the case of *Lingappa Pochhana v. state of Maharashtra*<sup>52</sup> and *Manchegowda V. State Of Karnataka*<sup>53</sup> the court ruled in favour of tribals. In the former case the court upheld the state legislation restoring lands to Adivasi's and in the latter nullified the purchase of Adivasi land by private players. likewise, in *samatha's case*<sup>54</sup> and in *p. rami reddy v. state of Andhra Pradesh*<sup>55</sup> which are a very popular case where the court ruled that prohibitions put up by government on transfer of land of Adivasi's to non-Adivasi's is just and legal in order to protect the economic status of them. Generally, the court stand is clear and court upheld the rights of tribals if these are not in violations of greater common goods and against the very fundamental principle of sustainable principle.<sup>56</sup>

<sup>50</sup> AIR 1987. Guj.9

<sup>51</sup> P. Leelakrishnan, Environmental Law Case Book (Lexis-Nexis, New Delhi, 2005)

<sup>52</sup> AIR 1984, SC 1151

<sup>53</sup> AIR 1985, SC 389

<sup>54</sup> Samatha V. State of Andhra Pradesh and Others., AIR 1987, SC 3297

<sup>55</sup> AIR 1988, SC 3297

<sup>56</sup> Supra note 18.

Again in the *Narmada Valley Project* of India which involves the construction of large dams and reservoirs, resulting in the displacement of numerous forest-dwelling communities and in which the acquisition of forest land for the project led to the loss of livelihoods, and cultural heritage, and the disruption of community structures. The court however ruled harmoniously in favour of the projects and also recognised the rights of indigenous and tribal communities directing the governments to take immediate steps before acquiring their lands to distribute fair compensation and settle their rehabilitation issues first. Likewise, in a landmark case of Niyamgiri<sup>57</sup> the *Dongoria Kondhs*, a particularly vulnerable tribal group (PVTG) from Rayagada in Odisha won the legal case against the Vedanta group in which the issue was of bauxite mining projects in their ancestral lands.<sup>58</sup> The apex Court of India recognized the rights of indigenous groups in the hills and upheld not only the importance of free, prior, and informed consent (FPIC) but also stated that local inhabitants have a decisive say in projects touching upon their customary lands and the court further recognised their cultural, religious and spiritual rights on the Hill while rejecting Vedanta Company's claim to exploit the hills for bauxite.<sup>59</sup>

There are examples where the Adivasi's movement got a setback from courts also one such good example is of Jagatsinghpur, Orissa, where a steel manufacture company of the south Korean Pohang steel corporation (POSCO) was setting up a steel plant over the forest dwellers' land and for this purpose subsidies were given to the corporation by the government of India, however, this move of the state government was heavily opposed by the POSCO partirodh sangram samite formed by Adivasi's who blocked the proposed steel plant site preventing the authorities taking away their land which resulted in the violence.<sup>60</sup> The samite got huge support from all over the country but when the matter reached to the supreme court and the court constituted a special environmental bench to deal with the matter, unfortunately the court decided in favour of the POSCO company and gave them green signal to move ahead allotting 1253 hectares of forest land.<sup>61</sup> The court view was that the developmental activity are must amid rising needs of the country and every act of development should be weighed in the national interest, thus cleared the way to the government for acquiring land for developmental projects rejecting the bonafide claim of forest dweller's.

These legal disputes and court judgements thus underline the importance of legal systems and the critical role of Indian courts in protecting the rights of forest residents and indigenous people, as far the case is of forest land acquisition and rights of forest dweller's. These decisions established key precedents and affected national policies and legislation, highlighting the necessity to protect forest residents' rights while striking a balance between conservation and development. These emphasise the significance of strong legal frameworks, efficient consultation processes, fair compensation, and suitable rehabilitation methods in protecting and promoting forest inhabitants' rights in the context of land acquisition.

## VI. CONCLUSION AND RECOMMENDATIONS

### A. CONCLUSIONS

1. Forest dwellers, particularly indigenous and tribal communities, have historically inhabited and relied upon forest ecosystems for their livelihoods, cultural practices, and identity.
2. Forest land acquisition by governments often poses significant challenges to the rights and well-being of forest dwellers. It can lead to displacement, loss of access to natural resources, cultural disruption, and impacts on livelihoods.
3. International legal instruments, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and various human rights treaties that recognise forest dwellers' rights and provide opportunities for seeking redress for violations, are not implemented by state governments when acquiring forest lands and are generally ignored by them.
4. National legal systems such as constitutional provisions, forest rights acts, and indigenous rights legislation may differ from country to country in protecting and promoting forest dwellers' rights, but each country has hurdles in implementing and enforcing those laws. Forest land acquisition can have a profound impact on forest dwellers' rights, including their land tenure, resource access, cultural practices, and self-governance.

<sup>57</sup> The Orissa Mining Corporation Ltd V. Ministry of Environment & Forest Case, 2013

<sup>58</sup> Available at <https://www.downtoearth.org.in/blog/governance/niyamgiri-10-years-since-india-s-first-environmental-referendum-88850>

<sup>59</sup> Id

<sup>60</sup> Supra note 18 at p 669

<sup>61</sup> Id

5. Rehabilitation and compensation issues are frequently overlooked by the state when seizing indigenous people's land, or if addressed, are not done with honesty, causing dissatisfaction among them.
6. The depletion of forests can also have far-reaching environmental consequences, jeopardising biodiversity protection and ecosystem services.
7. These findings contribute to a greater knowledge of the difficulties that forest inhabitants experience in the context of forest land acquisition, as well as insights into potential remedies and legislative measures for safeguarding and promoting their rights.

## **B. RECOMMENDATIONS FOR POLICY MAKERS OR LEGISLATORS**

Following are the suggestions that can be taken care of by policy makers or legislators while framing policies and laws regarding acquisitions of land particularly of forest dwellers or of tribals. These may be summarised as under-

1. Forest dwellers can take access to international legal remedies as mentioned above that can help protect and promote their rights whenever the state attempts to acquire their land.
2. Forest dwellers may have access to UNDRIP which is a special and comprehensive international instrument that sets out the individual and collective rights of indigenous peoples including the rights of tribals. It can serve as a normative framework to hold governments accountable for violations of indigenous rights.
3. Forest dwellers should invoke various international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which recognise fundamental rights such as the right to land, culture, and livelihood.
4. Forest dwellers can make complaints or contacts with appropriate treaty bodies, such as the Human Rights Committee or the Committee on Economic, Social, and Cultural Rights, claiming that the government has violated their rights.
5. Provisions like urgency clause should be deleted from the land acquisition laws because it gives wide powers to the state to capture the land of indigenous or tribal people.<sup>62</sup>
6. Forest dwellers can take access to the ILO Convention No. 169 concerning Indigenous and Tribal Peoples which provides a framework for protecting their rights, including their rights to land, resources, and participation in decision-making processes. Forest dwellers can refer to these conventions to assert their rights and seek remedies for violations.
7. Forest dwellers may have access to regional human rights systems like the Inter-American Commission on Human Rights (IACHR) and the African Commission on Human and Peoples' Rights (ACHPR) where Forest dwellers can submit petitions or complaints to these regional bodies, alleging violations of their rights in the context of forest land acquisition.
8. Forest dwellers can also draw on international environmental agreements like, the Convention on Biological Diversity (CBD) and the United Nations Framework Convention on Climate Change (UNFCCC) which also acknowledges the crucial role of indigenous peoples and local communities in the conservation and management of natural resources.
9. Governments should recognize and protect the land rights of forest dwellers, particularly indigenous and tribal communities, through legislation or constitutional provisions recognizing and respecting customary land tenure systems and ensuring secure land rights for forest dwellers.
10. Governments should adopt and implement the principle of FPIC, ensuring that forest dwellers have the right to give or withhold their consent to any decision or project that may affect their lands, resources, or rights.
11. Governments should ensure that forest dwellers affected by land acquisition receive fair and adequate compensation for the loss of their lands, resources, and livelihoods.
12. Rehabilitation and resettlement plans should be developed in consultation with forest dwellers to address their socio-economic and cultural needs, providing support for alternative livelihoods and preserving their cultural heritage.
13. Governments should review and strengthen their legal frameworks by enacting or amending laws that explicitly recognize and protect indigenous and forest dwellers' rights,
14. Governments should invest in capacity-building programs to empower forest dwellers and their representative organizations, providing them with knowledge and skills to participate effectively in decision-making processes.

<sup>62</sup> Sec 17 Of The Land Acquisition Act, 1894

15. Awareness campaigns should also be conducted to educate government officials, policymakers, and the general public about the rights, culture, and contributions of forest dwellers.
16. Civil society or NGO's should constantly have a check and vigil of the implementation of the laws that gives the power to the government to take away the land and must anticipate the process that is derogatory to laws.
17. NGO's and civil society must be informed in all decisions relating to acquisition of tribals land and during the vesting or granting of rights of them because their role is very important in maintaining the rights of the forest dwellers.
18. Bureaucratic or forest department officials should be punished for not performing their duties as per law
19. In order to reconcile environmental conservation with the socioeconomic demands of forest inhabitants and to avoid dissatisfaction among them, forest land acquisition should be governed by principles of conservation and sustainable development, ensuring that the rights and livelihoods of forest dwellers are recognised and maintained.
20. Governments should establish robust monitoring and accountability mechanisms to ensure compliance with laws, policies, and international commitments related to forest dwellers' rights.
21. These policy recommendations aim to create a conducive environment for the protection and promotion of forest dwellers' rights in the context of forest land acquisition, sustainable development, social justice, and the preservation of culture.
22. No one should be replaced or ousted from their natural abode of place till the government compensate and rehabilitate them or the process of recognising forest right is not complete. i.e., the forest dwellers. India has kept this provision in their recent laws<sup>63</sup>.
23. Forest departments and authorities should not be given wide powers in case of the matter involve acquisition of land of forest dwellers or of indigenous people rather there should be a double monitoring system of governments and NGO's working for the cause of forest dwellers before taking away of any forest lands of them.
24. Last but not least, it is imperative to resolve the issue of rehabilitation and adequate compensation as soon as possible when purchasing land belonging to forest dwellers in particular.

Overall it can be said that the law is an honest attempt to fulfil the aspirations of the tribal peoples who have been historically victimised systematically in order to grab their lands and rights. The law to a greater extent has achieved the purpose, however, a lot more is still to be done. There are many people who criticise the law but it happens everywhere because they might be having their own agenda which could not be fulfilled till the law is in existence. So we must ignore them and rather focus on the positive side of the law. No doubt every law has certain flaws and shortcomings and faces challenges but hopefully these all would be sorted out in the coming future and the forest dwellers could live happily in their world.

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<sup>63</sup> Sec 4(2) (a) The Forest Act Right, 2006