

# Constitution of India and Environmental Governance: Administrative and Adjudicatory Process

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Lecture -7

## Forest Rights and CAMPA Introduction to Forest Rights Act, 2006

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### I. FOREST RIGHTS ACT, 2006



- 1. **OBJECTS:** TO RIGHT HISTORICAL INJUSTICE ; TO ADDRESS THE LONG STANDING INSECURITY OF TENURIAL AND ACCESS RIGHTS AND TO INSULATE FROM FORCED DISPLACEMENT RESULTING FROM STATE DEVELOPMENT INTERVENTIONS; - TO RECOGNIZE AND VEST FOREST RIGHTS, INCLUDING OCCUPATION, IN FOREST DWELLING SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (- FOR 3 GENERATIONS)\*; TO PROVIDE A FRAMEWORK FOR RECORDING FOREST RIGHTS ; TO RECOGNIZE THEM AS INTEGRAL TO THE VERY SURVIVAL AND SUSTAINABILITY OF FOREST ECO-SYSTEM
- 2. **RIGHTS :** (A). CATALOGUE OF RIGHTS: (i) RESIDENCE- INCLUDING COMMUNITY TENURES OF HABITAT & HABITATION OF PRIMITIVE TRIBAL GROUPS AND PRE-AGRICULTURAL COMMUNITIES. (ii) CULTIVATION- (INDIVIDUAL & COMMUNITY)-FOR LIVELIHOOD (- INCLUDING CUSTOMARY RIGHTS LIKE "NISTAR") (iii) OWNERSHIP – TRADITIONAL RIGHTS-OVER MFP (NTFP)- COLLECTION, USE, DISPOSAL; FISHING; GRAZING;



A new law was made in the year 2006 called the Forest Rights Act by Government of India. What is its objective? Its objective was very clear that the ever since the Indian Forest law came into existence, then entire operation with regard to the forests, its management, its use is entirely at the whim and fancy of the state and state agencies that have a complete monopoly over the forests. People did not matter in the whole scheme of things.

It is understandable that the British could have that kind of an attitude because the power rested with, vested with the crown in England, but for the people, they were only the subjects of the law, they were only the objects of law, they were not the masters of their destiny. Even though many of them were living within the forest area or were dependent on the forest, living in its periphery, they had no right at all. They had only concessions.

This is considered to be a historical injustice caused by the British Raj and perpetrated even in independent India even after 50 odd years of our independence. The Government of India took upon itself the responsibility of writing this historical injustice. It wanted to address the

long standing insecurity of tenure and access right and to provide the kind of protection of communities of people who are justly displaced, who were living within the forest area without any kind of remedy for them by the State Department for the developmental purposes, recognize or invest in these groups of people, certain rights, including right of occupation.

And for that purpose, a new law was made, a law for protection of the rights of the forest dwellers, scheduled tribes and scheduled people who were living within the forest area and other people who are living within the forest area whose rights were jeopardized because of the working of the forest law, forest Rights Act of 2006. The law said that this is a right that is available for forest dwelling scheduled tribe people and all other traditional forest dwellers. They cannot be tribal people, but they have been living in the forest area, For how long? for at least to three generations.

Under this law, one generation is supposed to be 25 years and so if you are able to establish by the year 2006, because that is when the law came into existence. That for the last 75 years, that your family have been living there, then you will get a right of, certain kinds of rights which you have been enjoying in the forest area. And so, this is a law, which provides a framework for recording forest rights were recognized as integral for the very survival and sustainability of forest ecosystem.

So, the symbiotic relationship between the people and the forest is thought to be re-established through this particular law. Let us have a quick look at the rights. The following rights are the ones that are recognized, that if you have these rights, please remember these are rights which are recognized. This law does not create any new rights. You have been traditionally, customarily enjoying these rights, but has been actually marginalized for a lot of time. Now, you are going to reassert that.

What is that right, if you are residing there, including tenures of habitat and habitation of primitive tribal groups and pre agricultural communities living there, you have a right to this You are also not only residing there, but are you engaged in cultivation, well that cultivation right, of an individual or a group of people for your livelihood, right like NISTAR, that is something that is practiced in Maharashtra, traditional right. In fact, Maharashtra is one of those exceptional cases where under that law this NISTAR right is recognized even in the

forest, in that particular state and the same gets amplified here.

The third one is ownership right over minor forest produce is no longer a concession, if you have been getting this forest produce all the while like fishing, grazing of forest land, collection and use of certain forest minor property, well, you can continue to have that, you have ownership right.

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PROTECTION, REGENERATION, CONSERVATION OR MMT. OF ANY COMMUNITY FOREST RESOURCE (-TRADITIONAL RTS. OF HUNTING/ TRAPPING, EXCLUDED)  
(iv) CONVERSION (-PATTAS/ LEASES/ GRANTS) TO TITLES (v) RIGHT OF SETTLEMENT AND CONVERSION OF FOREST VILLAGES INTO REVENUE VILLAGES (vi) CONTINUATION OF STATUTORILY RECOGNIZED CUSTOMARY/ TRADITIONAL RIGHTS (vii) ACCESS TO BD & COMMUNITY RIGHT TO IP & TRADITIONAL KNOWLEDGE RELATED BIO- & CULTURAL DIVERSITY (viii) INSITU REHABILITATION, INCLUDING RIGHT TO ALTERNATIVE LAND, WHEN ILLEGALLY EVICTED  
(B) RIGHT TO BASIC CIVIC AMENITIES: C.G SHALL PROVIDE FOR LIMITED DIVERSION OF FOREST LAND (-UPON RECOMMENDATION OF GRAMA SABHA) TO MAKE PROVISION FOR SCHOOLS, HOSPITALS, ROADS, TANKS ETC.  
(C) NATURE, EXTENT & LIMITS : (i) HERITABLE BUT INALIENABLE (ii) DISPLACEMENT ONLY AFTER ENSURING TOTAL REHABILITATION



So, you have these rights and entitlements, but these rights and entitlements that you have, are subject to one restriction. And that instruction is that these rights should not come in the way of protection, should not come in the way of regeneration, should not come in the way of conservation, should not come in that we have a proper scientific management of forest resources. Supposing in exercising these rights, these aspects were an integral aspect of your existence there, continue.

But supposing it came in the way of that, even if you had this traditional right, you can no longer exercise because it is against forest conservation. So, the idea is, forests have to be conserved and in conserving the forest, if communities of people who are depended on the forest had certain kinds of people over there, it can be there, as long as it will not come into way of these particular kinds of non-negotiable conservation ethics.

And so, if there was prohibition right of hunting, trapping of animals or anything like that, completely excluded, because it would actually harm, injure and even kill animals. And that

is an offence under this law. Right of conversion into titles, see, you had right of residence, right of settlement and we would like to give you the same kind of rights, as you would have in revenue villages.

In revenue villages, people had settlement rights and you will have the same settlement right here also, access to biological diversity and committed right to intellectual property and traditional knowledge related to bio and cultural diversity will rest with you, that is recognized for you. You have the right to be rehabilitated, if you have to be moved out of this area for any reason, either for forest development or for any other development activity, you have a right to be rehabilitated within the forest area to continue to exercise the rights.

Or if it is inevitable that you have to be relocated from here and put elsewhere, there you have a right to an alternative land when you are being illegally evicted. You have a right to basic civic amenities, in addition to the rights that you enjoy traditionally, you have modern rights of civic communities and that the central government should provide for limited diversion of the forest land, upon the recommendation of the Grama Sabha to make provision for schools, hospitals, roads and tanks, etc.

Even the forest dwelling people have these kinds of entitlements, as the civilized people would have as citizens of India, and they should not be denied any such kind of a claim. So, civic amenities also should be provided to them. In nature, extent and limits of this right is that you as a forest dweller, you as a forest dependent community, you have this right as long as you live there. The moment you want to move out of the forest area, the right gets extinguished.

If your progenies are there in that forest area, it is a heritable right, but this is not something that you can transfer to anyone. You have to enjoy it, your children have to enjoy it, your progeny will be able to enjoy it, the successive generations will enjoy while still being within a forest area. The moment you take a decision of having a permanent residence elsewhere, then your right gets extinguished.

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(iii) CAP OF 4 HECTARES FOR ACTUAL AREA OF OCCUPATION / CULTIVATION  
 (iv) EACH RIGHT COUPLED WITH A DUTY TO PROTECT WILDLIFE, CATCHMENT AREAS OF WATER SOURCES, CULTURAL & NATURAL HERITAGES  
 3. CRITICAL WILDLIFE HABITAT : S.2 (b)-Definition and description ; S.4 (2)- Displacement only upon completion of the process of resettlement  
 4. ADMINISTRATIVE ARCHITECTURE AND PROCESS:  
 G.S.- TO INITIATE THE PROCESS- PASS RESOLUTION-PETITION AGAINST ITS RESOLUTION WOULD LIE WITH S.D.L.C, WHOSE DECISION CAN BE CHALLENGED BEFORE D.L.C - S.D.L.C- EXAMINE G.S RESOLUTIONS AND PREPARE A RECORD OF RIGHTS - D.L.C.- DECIDE ON RECORD OF RIGHTS-FINAL & BINDING - S.L.M.C.- MONITORS THE PROCESS OF RECOGNITION AND VESTING OF RIGHTS  
 5. EFFECT:- s.4(a) s.4 (c)- OVER RIDING EFFECT



And supposing you have to be moved out, you have to be displaced; only after rehabilitation it can be done. But supposing you had vast expanse of forest land for your family, for your community, for occupation or for cultivation. Now, the law is clear. Since the practices have been different in different regions of India, we have a cap, a maximum of 4 hectares of actual area of occupation or cultivation and not more, even if you had more although your own, only this much is available for your family.

Each right is coupled with the duty to protect wildlife, taking care of the catchment areas of Water Resources, and taking care of cultural and natural heritages. There is also a provision made under this law of creating what are called as critical wildlife habitats. Within the forest area, there may be certain areas which are having certain kinds of wildlife, which are endemic, but these are found only there. For the survive survival sustenance and flourish, they should be left without any disturbance.

But supposing there is a tribal settlement or some forest dwelling community having certain rights as has being described under this law are also there. Then even it is established, once again upon the recommendation of the Wildlife Department, that it is inevitable that these people will have to be moved out of that, because leaving them alone is critical to the very survival of the wildlife., is why it is called as critical wildlife habitat, then they can be displaced.

But the law is very clear, there is a provision here which says that they have to be displaced, they can only be displaced upon completion of the process of resettlement. So, you have to

give them an alternative land, you have to resettle them, then only you can take over, that this is an exclusive area meant only for protection of wildlife and no humans can exercise the right over there.

But in the process, whereby the rights are going to be determined, rights are going to be recorded and these rights are going to be replicated, for that it is a simple procedure. Within every Panchayat, there is a general body called as the Gramsabha. And it is this Gramsabha which would initiate this process, it would identify those very people in that particular area who had some right or the other traditionally over them and this Gramsabha would pass a resolution.

And in this resolution, they will identify the people, they will identify the community, they will identify those rights that they should have and will come up with a resolution and true that resolution it will go to what is called as the sub divisional level committee SDLC.

Which will peruse this particular recommendation of the Gram Sabha and then match it with the revenue record that are available, look for evidences and whatever that has been supplied to it, on the basis of which it will take a call of either recognizing whatever that has been claimed through that resolution or recognition subject to certain limitations and restrictions or not recognizing them when there is no sufficient evidence to support it. And this decision of the sub divisional level committee is final and binding.

And it is only through that it will be put into records. And once it is put in the revenue records, a record of right is being created thereby. This particular decision and determination by the subdivision level committee can only be challenged before the district level committee as an appeal and the district level committee will decide on that. And on the record of rights as decided in appeal by the district level committee is final and binding and that will go to the record of rights.

To whomever sees the implementation of this, there is a state level monitoring committee which oversees the process of recognition and vesting of rights. Initially, the power of overseeing the working of this law was wasted with the Tribal Affairs Ministry and to be transferred to the Forest Department once as a transitional measure all these are put in the position. And then the forest and the wildlife authorities would administer the

implementation of this law. What is this law in terms of its effect?

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*(b) s.13 – PROVISIONS, IN ADDITION TO AND NOT IN DEROGATION OF PROVISIONS OF ANY OTHER LAW IN FORCE*

*\* OUTSTANDING PROBLEMS:- INCOMPATIBILITY AMONG DIFFERENT LAWS- LACK OF HARMONY ; MULTIPLICITY OF AUTHORITIES ; PROBLEM OF CHARACTERIZATION OF RIGHTS AND PROBLEM OF INCLUSION & EXCLUSION ; GRAMA SABHA-MARGINALISED ROLE ; PROBLEMS POSED BY THE CREATION OF CRITICAL WILDLIFE HABITATS*



By and large, all the rights recognized here are binding and they override all other laws which come in conflict with this law, subject to one condition that other than declaration of rights and entitlements, the working of this law is in addition to and not in opposition to any of the laws that are in operation in India. What is the reality check upon the working of this law? This law was made in the year 2006. And if you take the developments in the last 14 years, there is a large degree of success in the implementation of the law in some of the states like Chattisgarh and a few others.

Especially, when it comes to the settlement of the rights of the recognition of the scheduled tribe. The tribal peoples rights are protected all over India, by and large under this law, but the non tribal who are forest dwellers, as to the determination and settlement of their claims, things are not that final. That is mainly because of competing claims between different departments of government.

The tribal welfare ministry is only interested in the tribal welfare, and it is not bothered about the non-tribal people living in the forest area and so there is no one to take care of their trust. And there are a number of authorities, the tribal welfare ministry is there to put forth the claims of tribal people, there is no one to put forth the case of non-tribal people, and so that they are made to fend for themselves. In determining his rights, it is the revenue authorities who should be engaged in transferring these rights in their favor and vesting them with them, it is the forest and the wildlife departments that have to be one.



So, there are problems of characterization of rights, there are local politics of the Panchayat, all these have actually not given complete effect to the working of this law. There are problems of inclusions and exclusions and Gramsabha being a very, very minor entity in the whole scheme of governance, it has a very simple, minimalistic role in the entire process, although that is supposed to be the one which will ensure the process.

And there is also the problem that there is an exaggerated claim being made by the Wildlife Department of creating critical wildlife habitats, especially where there are rights of these communities are recognized, so as to evict them. And the claims of these people are still being prosecuted in courts of law. And so, the law is in still a fluid state of implementation. Good ideas create purposes which the government wanted to reclaim the last right of the communities of people. It is still a law being worked, not to its fullest, but over a period of time it is being still done.

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## **II. The Compensatory Afforestation Fund Act, 2016 (CAMPA, 2016)**



- *Compensatory Afforestation refers to afforestation activities and regeneration of forest to compensate for the forest land converted into non-forestry purposes. The 'non-forest purpose' refers to clearing or breaking up of any forest area for the following purposes: (i) Cultivation of tea, spices, Coffee, palms, rubber, horticulture crops or for medicinal use, etc., or (ii) any purpose other than afforestation*
- *Compensatory Afforestation is a major step of the Central Government to make up for authorised acts of de-reserving or diversion of forest land for the non-forest purpose.*
- *Around the time the law was contemplated, a huge sum of money got accumulated, estimated to be around Rs.40000 crores, as a result of use the decision of use of forest land for " non-forest purpose". The law , indeed, is designed as the mechanism for ploughing back the amount so collected and carry out compensatory afforestation activities.*



There is this Compensatory Afforestation Fund Act. The idea was that through various means and mechanisms, a lot of funds got collected and the means and mechanisms whereby these funds are so collected that have been mentioned as to how these funds were collected. Utilization of it for afforestation was not something that was always happening because there were no guidelines; there were no clear instructions under the forest law.

And so, the need for a new law, for number one, whatever that is so accumulated, a huge sum of money, running to around 40,000 crores of flowing it back for afforestation purposes, a

law was created called the Compensatory Afforestation Fund Act. This law was made for regeneration of forest, to compensate for the forest land lost and converted into non-forestry purpose so to have forest to be created in those areas and things like that.

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*Under the Act, all such amounts would get into a Fund meant for the purpose. An expert committee, under the Act, is constituted to calculate and determine the Net Present Value (NPV) of the forest land diverted for non-forest purpose.*

- It is claimed that the Act has been structured to fulfil the requirement of the orders of the Supreme Court in T.N. Godavaran Thirumulpod v. Union of India and others, (- that required, creation of compensatory afforestation fund based on an expert determination of the net present value of the diverted forest land, penal compensatory afforestation and additional compensatory afforestation).*
- Although, it is a little too early to draw any final conclusion as to the working of the law, it has been observed that in the few instances where the funds have been put into application, results are not to the level and extent as desired under the Act and that the local communities neither had a role nor derived any benefit from such a measure.*



And there are several cases, which actually made the government to think of coming up with a set of guidelines and that has been provided under this law, these two strides, very briefly describe, what is law is about that, for what purpose it should be used, how it should be used, what should be the method and manner of determination of the value of the forest land, there is some arithmetical calculations that have been done, of determining the net present value the forest land, so as to get the compensation for that to be put in the fund, and how it has to be put to use, have been put together in this.

It is too early to try a final conclusion as to how this law is working. But there are a few instances where the fund has been put into clear application. And since it has been made only just four years back, the results and the level of accomplishment of the objectives of this law, are yet to be ascertained with great degree of clarity. And so, it is too early to judge this law. But it is good that at least a mechanism has been evolved, at least now of something that was not done for well over 80 years of the working of the forest law in India.

To give to the forest for the purpose of conservation, something that people would own, for having put the forest through so much of destruction, to compensate for the forest loss, to use that money so collected for the purpose of the regeneration of the forest area, that is the

objective. This comes to a closure of our discussion on the entire law concerning forest, forest conservation, forest management and forest rights. In the next segment, the last part of our discussion in forestry and wildlife law is going to be the inquiry on the wildlife protection and its management and that will be done in the next session of our discussion in this particular area of law.