

FOREST DWELLERS AS DEEMED HOMELESS

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Forest dwellers, for several reasons have been called “deemed homeless.” The Forest Rights Act, 2006 stated that a person would be covered by the legislation if he/she had been residing primarily in forests or forest land; and was dependent on forests or forest lands for livelihood. The lack of a comprehensive definition of the term ‘forest’¹ makes the people vulnerable to the vagaries of semantic juggling so often resorted to by governments to exclude people from claiming their rights. Further, in order to prove that a person qualifies as a forest dweller, in the event of him/her not being a member of a scheduled tribe, s/he must be able to show continuous residence in a forest for a period of 75 years. There is high improbability of any forest dweller having any such record. These along with many other loopholes disable many forest dwellers from claiming their rightful benefits, illustrating a case of throwing the baby out with the bathwater. Though the Forest Rights Act makes community protection of forests legal, the provision is duly subverted by the forest bureaucracy. Some of the most backward regions in India are those enmeshed in the Maoist insurgency areas which coincidentally provide shelter to many tribes. The lack of interest shown by the Government in ascertaining the number of forest dwellers indicates towards its highly dislodged perspective on the issue. Logically, a good governance policy highlighting the government’s political ambitions would look to tap into the benefit that this large number could provide in terms of a vote bank. Moreover forest dwellers gain importance as they serve as the key to save forests from deforestation and prevent illegal timber cutting and mining. Despite the various advantages that forest dwellers help to reap, they are ignored

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¹ The definition of ‘forest’ is still nebulous in India. According to the Godavarman PIL, the definition of “forest” is as per the dictionary definition of the word.

by the policy makers who are unwilling to bear the political and economic costs of enforcing the rights of forest dwellers. An inclusive approach towards forest dwellers is thus essential to help creating a better economy and environment and lead to an optimal governance policy. The present paper charts the forest-dweller and adivasi-exclusionary policies of the state in the past and the present. The author seeks to show that forest dwellers have in effect, been rendered homeless through these policies; hence the term “deemed homeless.” The paper highlights how the policies of first the British and later the Indian government have usurped the rights of forest dwellers and adivasis over natural resources and how recent developments such as REDD have proved to be exclusionary and violative in nature.

I. FOREST DWELLERS- ARE THEY “DEEMED HOMELESS”?

The year 2011 was not only the year of the forest² but also the year that marked the 150th birth anniversary of Shri Rabindranath Tagore. In his essay *Tapovan*, Tagore writes:

*“Indian civilisation has been distinctive in locating its source of regeneration, material and intellectual, in the forest, not the city. India’s best ideas have come where man was in communion with trees and rivers and lakes, away from the crowds. The peace of the forest has helped the intellectual evolution of man. The culture of the forest has fuelled the culture of Indian society. The culture that has arisen from the forest has been influenced by the diverse processes of renewal of life, which are always at play in the forest, varying from species to species, from season to season, in sight and sound and smell. The unifying principle of life in diversity, of democratic pluralism, thus became the principle of Indian civilization.”*³

² See International Year of Forests, 2011, <http://www.un.org/en/events/iyof2011/> (last visited Jan. 2, 2012).

³ Vandana Shiva, *Women in the Forest* in ETHICAL PERSPECTIVES ON ENVIRONMENTAL ISSUES IN INDIA 73 (George Alfred James ed., 1999).

Thus, the philosophy of the forest was applied to the philosophy of a wholesome life.

The religious texts such as Aranyakas, Upanishad and Smritis contain descriptions on the uses and management of forests and speak of its sustainability. Certain trees and shrubs were considered as sacred because of their medicinal, aesthetic and natural qualities, and also for their association with certain deities.⁴ The British viewed forests as crown lands and sought to make them a subject of property rights.⁵ The motive behind the Britishers interest in 'governing' the "criminal-infested forests"⁶ was to exploit the richness of teak and other lumber locked up in them, and transform them into raw material for being used in defence, railways etc.⁷

The first of a string of laws used by the British to gain control over forest land was the Indian Forest Act passed in the year 1865. This Act was intended to bring certain tracts of land under State control in accordance with its requirement without making any provision regarding the rights of users.⁸ This law was amended in 1878 and gave the State direct control over the forests. The Act of

⁴ B.M. Kumar, *Forestry in Ancient India: Some Literary Evidences on Productive and Protective Aspects*, 12 ASIAN AGRI-HISTORY 299, 299 (2008), available at <http://re.indiaenvironmentportal.org.in/files/Forestry%20in%20ancient%20India.pdf>.

⁵ Dr. N.C. Saxena, *Tenurial Issues in Forestry in India*, PLANNING COMMISSION OF INDIA, available at http://planningcommission.nic.in/reports/articles/ncsxn/ar_forestry1.htm (last visited Mar. 8, 2012).

⁶ The British believed that forests were 'infested' with 'born-criminal' tribes who had the genetic trait of criminality in them; and indulged in thuggee and dacoity. See MEENA RADHAKRISHNA, DISHONOURD BY HISTORY: CRIMINAL TRIBES AND BRITISH COLONIAL POLICY 1-2 (2001).

⁷ Sanjoy Patnaik, *Rights Against All Odds: How Sacrosanct is Tribal Forest Rights?* 2-5, http://iasc2008.glos.ac.uk/conference%20papers/papers/P/Patnaik_130901.pdf (last visited Mar. 8, 2012); Arnab Kumar Hazra, *History of the Conflict over Forests in India: A Market Based Resolution* 4,6 (Julian Simon Ctr. for Policy Research, Working paper no. 04/2002), available at http://www.libertyindia.org/policy_reports/forest_conflict_2002.pdf.

⁸ Antara Roy & Sroyon Mukherjee, *The Forest Rights Act 2006: Settling Land, Unsettling Conservationists*, 1 NUJS L. REV. 293,296(2008).

1878 thus allowed forest-produce from British India to be taxed by local governments, enabling the British government to earn revenue from the forests, over and above the concessions granted to the people in the form of rights over forests that could be withdrawn at will for the exchequer.⁹

By 1894, the British government had declared the first Forest Policy Resolution that focussed on state control and commercialization of forests especially for the conservation of forests that were being depleted due to indiscriminate use.¹⁰ An intriguing feature in this context as seen in 19th Century India was the mass intrusion of non-*adivasis* into the *adivasi* land, especially in central India and the clearance of large tracts of forests between the 1840s and 1940s for the creation of agricultural land for non-*adivasis*.¹¹

The National Forest Policy introduced in 1952 refused to recognize the claims of local people to forests and forest produce. It categorically stated that the notion “*neighbouring areas are entitled to a prior claim over a forest and its produce?*” was destructive to national interest; and that the accident of a village being situated close to a forest did not prejudice the right of the country as a whole to receive the benefits of a national asset”.¹² Elwin Verrier describes this state of affairs in the following words:

“Thus the tribal who regarded himself as the lord of the forests, was through a deliberate process turned into a subject

⁹ Kinsuk Mitra & Radhika Gupta, *Indigenous Peoples' Forest Tenure in India* in LAND AND CULTURAL SURVIVAL: THE COMMUNAL LAND RIGHTS OF INDIGENOUS PEOPLES IN ASIA 195 (Jayantha Perera ed., 2009); Ketan Mukhija & Yugank Goyal, *Disarticulation of Indigenous People: Can the Judiciary Saviour Them?*, 7-8 Centre for Civil Society (New Delhi, 2005) (2005), available at http://ccsindia.org/ccsindia/interns2005/1.%20DISARTICULATION%20OF%20INDIGENOUS%20PEOPLE_Ketan_Yugank.pdf.

¹⁰ Roy & Mukherjee, *supra* note 8, at 296.

¹¹ Subrat Kumar Sahu, *The Taming of the Wilds*, INFOCHANGE INDIA (Mar. 2010), <http://infochangeindia.org/Environment/Community-forests-of-Orissa/The-taming-of-the-wilds.html>.

¹² T. Parekh, *Keepers of Forests: Foresters or Forest Dwellers?* 8-10 (CCS-ARCH Briefing Paper, March 2003).

*and placed under the Forest Department. Tribal villages were no longer an essential part of the forests but were there merely on sufferance. The traditional rights of the tribals were no longer recognized as rights. In 1894 they became "rights and privileges" and in 1952 they became "rights and concessions". Now they are regarded as "concessions"."*¹³

The government of India through this move ratified the colonial policy and made the State the custodian of forests¹⁴ effectually making the entire tribal population squatters on their own land. The government's policy not only denied them their traditional rights to forest produce but also and criminalized their whole way of life.¹⁵

The 42nd amendment to the Constitution transferred 'forests' from the state list to the concurrent list while the Forest Conservation Act of 1980 made it mandatory for the state governments to seek the permission of the central government to de-reserve any part of a reserved forest. It was the National Forest Policy of 1988 that recognised the rights of the forest dwellers for the first time. It spelled out that meeting the needs of the local population dependent on the forest eco-system for survival was the first charge on the forests.¹⁶ Thus forests were held to not be exploited to meet the demands of raw material by industry or to be used for earning revenue by the state at the cost of the forest-dwelling people. However, rules to implement this policy were not put in place until much later, thereby leaving considerable leeway and time for the state governments to reduce the scope, extent and the number of traditional rights of the forest dwellers.¹⁷

¹³ NADEEM HASNAIN, *TRIBAL INDIA* 48-49 (N. K. Vaid ed., 2009).

¹⁴ Arundhati Roy, *Walking with the Comrades*, *THE OUTLOOK* (Mar. 29, 2010), <http://www.outlookindia.com/article.aspx?264738>.

¹⁵ *Id.*

¹⁶ See generally Ketan Mukhija & Yugank Goyal, *Disarticulation of Indigenous People: Can the Judiciary Saviour Them?*, 8 CENTRE FOR CIVIL SOCIETY (New Delhi, 2005).

¹⁷ Hari Mohan Mathur, *Tribal Land Issues in India: Communal Management, Rights, and Displacement* in *SOCIAL CHANGE* 174 (2006).

In 1995, the Supreme Court passed several orders in the case of *T N Godavarman Thirumulpad v. Union of India*.¹⁸ The orders mandated that no indiscriminate encroachments of forest land could be sanctioned by the central government without the court's permission. This led to the realization that a legislation to protect tribals and traditional forest dwellers was needed on an urgent basis.¹⁹ The Ministry for Tribal Affairs was created in 1999 with the task of bringing forth the said legislation. In 2005, the Scheduled Tribes (Recognition of Forest Rights) Bill was placed before the Parliament. Thus came about the most recent of laws recognizing the rights of forest dwellers- the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (*hereinafter* FRA). The Act aimed to correct the 'historical injustice' done to forest dwelling peoples due to the antipathy of policies and laws during the colonial and post- Independence periods.²⁰

The FRA recognizes among others, the rights of the forest dwelling scheduled tribes (*hereinafter* STs) and other traditional forest dwellers (*hereinafter* OTFDs) to hold and live in the forests under individual or common occupation, to indulge in self-cultivation for livelihood; to access, collect and use minor forest produce and to protect and conserve any forest resource which they have been traditionally protecting and conserving.²¹ The Act further empowers the Gram Sabhas to protect wildlife, forests and biodiversity, and to ensure that their habitat is preserved from destructive practices.²² Thus, the FRA indicates a clear diversion from earlier exclusionary principles adopted for achieving conservation of forests.

¹⁸ T. N. Godavarman Thirumulpad v. Union of India, W.P. (C) No. 202 of 1995, decided on 13th February, 2012, *available at* <http://www.indiankanoon.org/doc/187293069/>.

¹⁹ *Id.*

²⁰ See Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

²¹ *Id.*, §3.

²² *Id.*, §5.

The FRA is seen as an instrument to hopefully usher in a new era in forest management. By integrating the livelihood needs of forest inhabiting and forest dependent tribal and non-tribal communities into overall forest management and governance strategies, and by making peoples' participation mandatory in forest management, this law brings in the much needed democratisation in the field of forest governance.²³ However, there are several hurdles that can be gauged by looking at the law even before examining its efficacy in implementation. The restrictive definition of both the STs and OTFDs eligible for claiming rights under the Act will cause a sizeable population of forest dwellers to be excluded from the Act's ambit.²⁴ Restricting eligibility to only 'scheduled' tribes and that too only in the areas where they are declared as STs, may exclude nearly half of the tribal groups who have, to their misfortune, not been scheduled under the constitutional process.²⁵ The lack of a definition of 'forest'²⁶ in India further makes the position of forest dwellers vulnerable. Communities which have been living on the fringes of forests or those who have been driven out of forests and living elsewhere could easily be excluded from the purview of the FRA on the argument that they have not been living in a 'forest'. Also the many 'criminal tribes' who have not been scheduled and are now living a stigmatised life as 'denotified tribes' of our country are left outside the purview of the legislation.²⁷ Tribals and forest dwellers are not permitted to get their rights to forest land automatically. The FRA envisages a three-step process before the grant of forest rights is made- initiation of claim for individual or community forest rights, the verification of claim,

²³ Archana Vaidya, *What Plagues Implementation of Forest Rights Act 2006?*, Think to Sustain (Mar. 5, 2011), <http://www.thinktotosustain.com/ContentPageViewPoint.aspx?id=+792>.

²⁴ Madhu Sarin, *India's Forest Rights Act- The Anatomy of a Necessary but Not Sufficient Institutional Reform*, 23-24 (Insti. for Pro-Poor Growth, Paper No. 45, 2010).

²⁵ *Id.*

²⁶ The definition of 'forest' is still nebulous in India. According to the *Godavarman* PIL, the definition of "forest" is as per the dictionary definition of the word.

²⁷ See MEENA RADHAKRISHNA, *DISHONOURED BY HISTORY: CRIMINAL TRIBES AND BRITISH COLONIAL POLICY* 1-2 (2001).

and vesting of claim upon verification.²⁸ The rules require ST claimants to attach a certificate of their ST status, which many are unable to obtain from the concerned official agencies.²⁹

The requirement of proof of residence for 75 years in the case of OTFDs seems an impractical stringency adopted by the Act.³⁰ Most state governments demand that the claimants produce documentary evidence proving 75 years of residence despite the rules permitting oral evidence of an elder as one of the two evidences required.³¹ Also, in some states such as Uttar Pradesh, vast numbers of tribals have never been scheduled, thereby making them OTFDs as per law and burdening them with the above onerous responsibility³² Displacement is another issue that works against rightful claimants under the FRA: for example, in states such as Odisha, there are large numbers of OTFDs displaced by dams and other developmental projects and their claims are rejected due to their inability of residing therein due to forcible displacement less than 75 years ago.³³ In this manner, the 'curse' of development has not only pushed them out of their homes in the past; but still follows them to keep them from entering their homes in the present.

Moreover, awareness about the FRA is a major problem in most areas- ranging at best, from total confusion to at worst, total ignorance. Since the FRA deals with illiterate people who live in remote parts of the country, the State is to make drastic efforts to

²⁸ Vaidya, *supra* note 23.

²⁹ Sanhati Debasree De, *Tribals and Green Governance: Forest Rights Act 2006*, Sanhati, (Oct. 16, 2012), available at <http://sanhati.com/excerpted/4252/>.

³⁰ Muralidhara Khajane, *No Land Rights for Forest Dwellers Without Residence Proof*, The Hindu, Aug. 5, 2008, available at <http://www.hindu.com/2008/08/05/stories/2008080553940500.htm>.

³¹ *Report on the National Seminar on the Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006: Problems Encountered in Implementation and Ways to Overcome Them* 10-12 Council for Social Development.

³² Sarin, *supra* note 24, at 23.

³³ Sarin, *supra* note 24, at 24.

reach out to these people and create awareness about the law; a strategy implemented in only a few rare cases.³⁴ Further, the present 'land-lordish' mind-set of the forest bureaucracy seems unconvinced of the fact that the forest dwellers are part of the forest ecosystem,³⁵ with the timber mafia neither allowing for the proper nor the peaceful handover of rights to the forest dwellers.³⁶

Thus, for over a century and a half, forest dwellers have been put through a process of continuous alienation and displacement. In spite of the passing of the FRA, the State is not ready to accept the primacy of rights of the forest dwellers. In fact, the government seems to treat forest rights like a bitter pill, the swallowing of which is optional depending upon the stakes on the table. Thus, one could see an open flouting of the rules by the government in its own game in the case of the POSCO project being given a go ahead by the environment ministry in spite of widespread protests and criticism against it.³⁷ Hence, the above extrapolation on the forest policy and governance methods with respect to forest dwellers are sufficient evidence to call them 'deemed homeless'.

II. FOREST DWELLERS AND GOOD GOVERNANCE

Of the billion people who inhabit India, seventy million or 8.6% of the total population consists of tribals.³⁸ They are scattered throughout India, but most live in two contiguous areas- the forested hills and mountains of the northeast, and the broad belt of hilly, forested country across north-central India from Gujarat and Rajasthan in the West, through Madhya Pradesh and Chhattisgarh, to Jharkhand and Odisha in the East.³⁹

³⁴ Vaidya, *supra* note 23.

³⁵ Vaidya, *supra* note 23.

³⁶ Subrat Kumar Sahu, *What Difference has the Forest Rights Act Made?*, INFOCHANGE INDIA (Mar. 2010), <http://infochangeindia.org/Environment/Community-forests-of-Orissa/What-difference-has-the-Forest-Rights-Act-made.html>.

³⁷ Pradeep Baisakh, *Is the Forest Rights Act Working?*, INDIA TOGETHER (May 17, 2011), <http://www.indiatogether.org/2011/may/env-fra.html>.

³⁸ Mathur, *supra* note 17, at 164.

³⁹ See HASNAIN, *supra* note 13, at 41-50.

Though the definition of the word “tribe” has been discussed extensively by various anthropologists yet there is no single accepted definition.⁴⁰ The Indian Constitution lists Schedule Tribes but does not define the term tribe.⁴¹ Various features for identification of tribals have been suggested at varied forums. The common themes that run through these recommendations are: isolation from urban population, tracing of origin to oldest sections of population, place of residence confined to scheduled areas, kinship ties, joint ownership, absence of internecine strife, separate dialects that usually do not have scripts, primitive and animist religious beliefs.⁴² Also, tribal people and other forest dwellers display the tendency to be deeply attached to their ancestral lands and forests which provide for their livelihood and have, over time, become ways of their life.⁴³

Historically, forest lands have been collectively and communally looked after by the forest dwellers.⁴⁴ It was first the British and then the successive governments of India that decided that the tribal way of life was ‘unscientific’ and ‘destructive’; and hence took to ‘conservationism’ in the 1950s and ‘60s and social forestry in the 1980s in the name of extracting substantial revenues from the forest produce.⁴⁵ Slowly, the forest dwelling communities realized that community forest management that translated to protection of their forests was the only way out. It was such realization in the forest dwellers of Odisha that made them take up protection drives to save their forests, and thus they began planting saplings.⁴⁶ This drive which successfully resurrected devastated forests was noticed by the government.⁴⁷

⁴⁰ See HASNAIN, *supra* note 13, at 32-39.

⁴¹ INDIA CONST., art. 342 (This article declares that the scheduled tribes are “tribes or the tribal communities or parts of or groups within tribes or tribal communities” that the President may specify by public notification).

⁴² See generally D. N. MAJUMDAR & T. N. MADAN, AN INTRODUCTION TO SOCIAL ANTHROPOLOGY (1967).

⁴³ HASNAIN, *supra* note 13, at 172.

⁴⁴ Mathur, *supra* note 17, at 168; HASNAIN, *supra* note 13, at 211.

⁴⁵ Sahu, *supra* note 36.

⁴⁶ Sahu, *supra* note 36.

⁴⁷ Sahu, *supra* note 36.

Further, the inseparability of the forest dwellers with their forests was recognized in 1988 through the National Forest Policy. Consequently, the ministry of environment started the Joint Forest Management (*hereinafter* JFM) programme.⁴⁸ However, the JFM also accomplished little. Conceptually, it suffered from various deficiencies: unequal partnership in matters of rights, power and authority between the participating communities and forest administration, lack of legal and statutory support to the policy and inadequate benefit-sharing.⁴⁹ On the implementation front the JFM lacked the enthusiasm of forest officials which was reflected by the actual area covered under the programme.⁵⁰ A greater problem was that the community forest management (*hereinafter* CFM) initiative of the forest dwellers and the JFM did not go hand-in-hand.⁵¹ The JFM mandated the setting up of a Van Suraksha Samiti (*hereinafter* VSS), controlled by the forest departments, even in areas where forest protection committees of the CFM movement existed.⁵² The JFM programme though had monetary backing but it lacked requisite knowledge in forestry. Trees such as eucalyptus which were alien to the forests and notorious for making the soil unfit for other plants were grown as part of JFM because of their profitable nature.⁵³ Thus, the joint forest management programme that was meant to be a partnership between the forest dwellers and forest department turned out to be a lesson in mismanagement of forests. If the money that was pumped into the JFM programme had been used for sustainable methods of management by taking into account the age-old wisdom of the forest dwellers, instead of being driven by profit motives, it could have been highly beneficial in terms of increasing and utilizing the area under forest cover as well as its quality. Thus, a truly inclusive principle of growth and governance could have been born out of the joint forest

⁴⁸ Sahu, *supra* note 36.

⁴⁹ PAREKH, *supra* note 12, at 9.

⁵⁰ PAREKH, *supra* note 12, at 9.

⁵¹ Sahu, *supra* note 36.

⁵² Sahu, *supra* note 36.

⁵³ Sahu, *supra* note 36.

management policy, had it not been for the governments' arrogance and lackadaisical attitude.

The new mechanism envisaged for the management of tribal forest land is based on the joint functioning of the FRA and the Panchayats Extension to Scheduled Areas Act, 1996 (*hereinafter* PESA).⁵⁴ The FRA envisages that the Gram Sabha has the final word on whether the State can take away the forest land for the purposes provided for in the Act, and determine the nature and extent of individual or community rights in areas that are marked out.⁵⁵

The PESA is a law meant to usher in tribal self-governance.⁵⁶ The law was made to enable the Gram Sabha- consisting of the village adults and gram panchayats, to exercise control over their lives and livelihood.⁵⁷ It seeks to empower villages to protect community resources, control social sector functionaries, own minor forest produce, manage water bodies, give recommendations for mining leases, be consulted for land acquisition and have a decisive say in all developmental projects in the villages.⁵⁸ Though the law came in force in 1996, the failure of the State Governments to form rules in conformance with the spirit of law⁵⁹ impeded its successful and smooth implementation.⁶⁰

⁵⁴ Mitra & Gupta, *supra* note 9, at 200.

⁵⁵ Mukhija & Goyal *supra* note 16, at 18.

⁵⁶ Sanjay Upadhyay, *Tribal Self-Rule Law and Common Property Resources in Scheduled Areas of India- A New Paradigm Shift or another Ineffective Sop?*, <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN021306.pdf>.

⁵⁷ AGRAGAMEE, GOVERNANCE IN TRIBAL AREA: MYTHS AND REALITIES 4-20 (2005).

⁵⁸ See text of the Panchayat (Extension to Scheduled Areas) Act 1996, Statement of Objects and Reasons; No. 40, Act of Parliament 1996.

⁵⁹ Sudarshan Chhotaray, *Tribal Self-Rule through PESA Still an Unfinished Agenda*, THE PIONEER (Oct. 24, 2011), <http://www.dailypioneer.com/state-editions/bhubaneswar/15662-tribal-self-rule-through-pesa-still-an-unfinished-agenda.html>.

⁶⁰ Saroj Kumar Dash, *PESA- Conformity and Operational Issues: A Case Study of Orissa*, ORI. REV. 41,43-44 (Feb - Mar 2011), available at <http://orissa.gov.in/e-magazine/Orissareview/2011/Feb-Mar/engpdf/42-46.pdf>.

Although the law on paper grants the Gram Sabhas competence to safeguard and preserve their community resources yet the MoUs for mining and industrialization seek to wipe out large tracts of primary forests forever⁶¹ are almost always signed between the government and MNCs with no participation or knowledge of the affected tribal people or the Gram Sabhas that represent the,⁶² despite the theoretical interpretation of the law that mandates consultation with the Gram Sabhas, and not the armed police as is presently witnessed, before any acquisition of land for scheduled development projects is made.⁶³ The requirement of participatory justice in the decision making processes for developmental projects is circumvented by the information deficit on matters involving the dates of holding the gram sabha or by proxy decisions.⁶⁴ Thus, a framework for governance consisting of two legislations hailed as historic for their potential are in fact doing little at the stage of implementation to uphold the encomiums heaped upon them. The Vedanta project has shown blatant disregard towards the decisions emanating from tribal self-rule. Recently, at the Adivasi Mahasabha held in Chhattisgarh, it was pointed out that the violation of 'lesser-known' laws FRA and PESA is a matter of routine; but a more appalling state of affairs is the violation of the constitutional provisions of reservation for adivasis in government jobs.⁶⁵

Tribals and forest dwellers have always been dependent on bio-diversity in natural eco-systems for their survival. Deforestation and degradation of land deprives them of their resource base and hence their means of sustenance. The National Commission for Rural Labour spells out four reasons for resource deprivation.⁶⁶

⁶¹ Sirisha Naidu, *Forest Rights in Neo-Liberal Environments* 12-13 (Wright State University Working Paper Group, 2011).

⁶² AGRAGAMEE, *supra* note 57, at 4-5.

⁶³ AGRAGAMEE, *supra* note 57, at 7.

⁶⁴ AGRAGAMEE, *supra* note 57, at 14.

⁶⁵ Supriya Sharma, *Adivasi Predicament in Chhattisgarh* 47(2) ECO. & POL. WKLY. 19,20 (Jan. 10, 2012), available at http://www.epw.in/system/files/pdf/2012_47/02/Adivasi_Predicament_in_Chhattisgarh.pdf.

⁶⁶ *Id.*

First, absolute depletion of resource due to over-exploitation by external elements including the State and to some extent, practices such as shifting cultivation. Secondly, conversion of natural resources on which people have been traditionally dependent into commercial ventures for meeting the needs of the modern economy, including the conversion of forests into monocultures. And third, while displacement in itself is a problem for the land-attached tribals, the inadequate monetary compensation and the non-rehabilitation of the displaced tribals pose threats of greater magnitude and accentuate poverty.

Resource poverty is also caused because of the continuous process of tribal exclusion by pushing them away and cordoning off their homelands as national parks, sanctuaries and reserve forests.⁶⁷ Thus deprived, the tribal population are forced to seek wage-employment by migrating to urban and semi-urban areas and working mostly as domestic help, construction workers or menial labour.⁶⁸ Their alienation from their lands causes a sense of loss, emotionally and psychologically; and leaves the previously self sufficient forest dwellers bound by the shackles of the wage contract as wage labourers, and incapable of attaining self-sufficiency in the forests.⁶⁹ The rights of the forest dwellers to sell minor forest produce which contribute majorly to the growth of the economy barely ever translate to half their income⁷⁰ Thus, tendu leaf pickers still earn an extremely low

⁶⁷ See Asmita Kabra, *Preservation via Dislocation 2*, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=9&ct=1331472794169&ved=0CIA B E B Y w C A & u r l = h t t p % 3 A % 2 F % 2 F w w w . e n v i r o n m e n t p o r t a l . i n % 2 F f i l e s % 2 F P r e s e r v a t i o n % 2 5 2 0 v i a % 2 5 2 0 d i s l o c a t i o n . d o c & e i = J 6 h c T 6 - r D o X S r Q e O 9 K i e D A & u s g = A F Q j C N G 7 L y 9 z K 2 x H Q 9 d d _ K q B U O R 0 0 I e G 9 g & s i g 2 = J B D P F 7 e E - r A B 5 _ n h x w I m F Q .

⁶⁸ See Report of the National Commission on Rural Labour, 1991, *available at* <http://www.indialabourarchives.org/usr/local/gsdll/cgi-bin/library?e=d-000-00-0ncl-ncl%2caituc%2chemant%2cindrani%2cwet%2coral%2cbms%2ctexah-01-0-0-0prompt-14-Document-0-11-1-en-50-20-about-001-001-1-0isoZz-8859Zz-1-0&a=d&c=ncl&cl=CL1.5>.

⁶⁹ *Id.*

⁷⁰ *Id.*

income.⁷¹ A similar example is that of the harvesters of sal seeds which are extensively used for obtaining the taste of cocoa in Indian chocolate.⁷² Recently, though the Centre has declared bamboo to be a major source of forest revenue as minor forest produce and allowed forest dwellers to harvest it⁷³ yet it has not granted them permission to peacefully use that product for supplementing their meagre incomes.⁷⁴

The government of India in 2009 agreed for the inclusion of afforestation programmes under the Reduced Emission through Deforestation and Degradation policy (*hereinafter* REDD).⁷⁵ Under REDD, governments essentially allow companies to take over forests for a process of carbon sequestration in exchange of money that should ideally be shared with forest dwellers.⁷⁶ However, civil society organizations and researchers are apprehensive about the impact of REDD on the lives of indigenous peoples as they see it as a masked opportunity for massive land grab.⁷⁷ This apprehension is not

⁷¹ N. C. Saxena, *Livelihood Diversification and Non-Timber Forest Products in Orissa: Wider Lessons on the Scope for Policy Change?*, 8-9 (Overseas Development Institute, Working Paper 223, Aug. 2003).

⁷² Mahesh Rangarajan, *Food and Forests the Key*, INDIA TODAY (Jul 25, 2011), <http://indiatoday.intoday.in/story/food-and-forests-reform-bills-are-the-key/1/146038.html>.

⁷³ Ankur Paliwal, *Bamboo Now a Minor Forest Produce*, DOWN TO EARTH (Apr. 15, 2011), <http://www.downtoearth.org.in/content/bamboo-now-minor-forest-produce>.

⁷⁴ Pradip Prabhu, *Inclusion in Law and Exclusion in Praxis: The Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006*, 6 SOCIO LEGAL REV. 120,134 (2010).

⁷⁵ *See generally* Is India ready to implement REDD Plus? *A preliminary assessment*, The Energy Resources Institute (2009), <http://www.teriin.org/events/CoP15/Forests.pdf>.

⁷⁶ Chetan Chauhan, *REDD Alert for India's Forest-Dwellers*, HINDUSTAN TIMES (Nov. 30, 2010), <http://www.hindustantimes.com/India-news/NewDelhi/REDD-alert-for-India-s-forest-dwellers/Article1-632874.aspx>.

⁷⁷ Campaign for Survival and Dignity, *REDD: A New Danger for Adivasis and Forest Dwellers* (Sept. 25, 2011), <http://www.forestrightsact.com/climate-change/item/download/36>.

unsupported as the situations in Indonesia and the Congo show that REDD has in fact led to the displacement of local, indigenous groups.⁷⁸

The REDD could be described as ‘neo-liberal restructuring’.⁷⁹ As a concept, REDD fulfils the criteria of ‘capital’s neo-liberal agenda’ as conceptualised by Heynen and Robbins displaying governance: the institutional political compromises through which capitalist societies are negotiated; privatization: where natural resources are turned over to firms and individuals; enclosure: the capture of common resources and the exclusion of the communities to which they are linked; and valuation: the process through which invaluable and complex ecosystems are reduced to commodities through pricing.⁸⁰ Further criticism against REDD could be the fact that a number of technical questions such as how emission reductions from forests are to be measured, and how it is to be ensured that REDD results directly in emission reductions that are ‘real and additional’ and the more crucial issue of ensuring that REDD does not adversely impact and violate the rights and livelihoods of forest-dependent people have not yet found answers.⁸¹ It is believed that implementing REDD would effectively undo any empowerment that the FRA has enabled; and thus also any chance of forest dwellers in inclusive models of governance of their forests.⁸²

⁷⁸ See World Growth, *How REDD Will Impoverish the Developing World and Reduce Biodiversity: An Indonesian Case Study* (Apr., 2011), <http://worldgrowth.org/2011/03/how-redd-will-impoverish-the-developing-world-and-reduce-biodiversity-an-indonesian-case-study/>; see also Chris Lang, Redd- Monitor, *Land Grabs, Logging and Carbon in South Sudan* (Jun. 10, 2011), <http://www.redd-monitor.org/2011/06/10/land-grabs-logging-and-carbon-credits-in-south-sudan/>.

⁷⁹ See generally HEYNEN, MCCARTHY, PRUDHAM & ROBBINS, NEO-LIBERAL ENVIRONMENTS: FALSE PROMISES AND UNNATURAL CONSEQUENCES (2007).

⁸⁰ *Id.*

⁸¹ World Resources Institute, *Forests, Climate Change and the Challenge of REDD* (Mar. 9, 2010), <http://www.wri.org/stories/2010/03/forests-climate-change-and-challenge-redd>.

⁸² Sahu, *supra* note 36.

III. CONCLUSION

Forest dwellers have been deliberately put through a process of marginalization by successive governments dating back to the British Raj, to the extent that today they have become aliens in their own lands. Laws that have been enacted for their benefit have rarely come to their aid due to problems caused by the egotistical forest bureaucracy that refuses to acknowledge the command that the forest dwellers have in terms of knowledge pertaining to the forest which must be tapped into for inclusive methods of forest governance. Tribals and forest dwellers must be allowed their space to protect and preserve their culture, traditions, rituals and ways of life. Some argue that protecting their identity continues to isolate them from the fruits of modern technology and that they have to be integrated into the urban 'mainstream'.⁸³ This is a primarily faulty argument as the tribal people are not forced to live away from this mainstream. This appears to be not only a façade to encroach upon the tribal lands; but a deeply engrained colonial notion of 'taming the savage'.

The role of the forest dwellers as the 'keepers of forests' must be recognized and cherished. Though the environmentalists and conservationists are up in arms against the FRA by claiming that widespread environmental degradation will occur if tribals are allowed to live in forests, what is overlooked is the fact that the magnitude of this degradation and pollution is very less and close to nil.

Laws once made for the forest dwellers must not be violated, especially by the government itself as is the case now in Posco plant issue in Odisha. Violations of rights to their homes for the exchange of promises of jobs in the factories that are to be constructed in their very homelands serve little purpose. Karl Marx, while writing on Indian tribals, has very sharply and rightly commented that "in the process of industrialization, he loses his original world but cannot derive any benefit from the 'new world' which only adds an element of agony and melancholy to the whole episode".⁸⁴

⁸³ HASNAIN, *supra* note 13, at 6.

⁸⁴ HASNAIN, *supra* note 13, at 205.

As of now, the government seems to have the protective measures, albeit inadequate ones, streamlined on the right track, at least on paper even if in practice there is much left to be done to assuage the injustice caused over centuries and that which is still ongoing. For one, the FRA allows the political space that is required for a discussion on the affirmative rights of a forest dweller to take stock of her/his destiny as the law recognizes. However, the authorities must hasten and bring a drastic change in their attitude and stop treating forest dwellers as mere flotsam and jetsam dismissed against the tide of inflowing FDI and recently, climate change politics. The government should adopt protective legislation for the benefit of the forest dwellers and not allow the present time and age to become their nemesis in the Armageddon of their diminishing homelands.

