

**DE JURE NEXUS LAW JOURNAL**

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3<sup>rd</sup> Year, B.A. LL.B. (Hons.)**TRIBAL AND ENVIRONMENTAL CONSERVATION IN INDIA****INTRODUCTION**

Various surveys which have been done in the past tell us that there are about 67 million tribal people who live in India and majority of them reside in the hilly and forest areas. The reason behind staying in such conditions is that they maintain close to negligible interaction with the outside society and also that they depend mostly on the forest resources like fuel, fodder, timber and other non-timber produce. The life of these tribals and non-tribal forest dwellers is deeply intertwined with the forests in terms of their livelihood and survival. They also have a deep cultural and spiritual nexus with the forests. Tribals have been regarded as the guardians of the forests for their association with forests has existed since time immemorial.

These tribes have been living in the forest areas from even before the British started controlling the forest lands in India. The tribals are also often called the 'ecosystem people' for their bio-cultural knowledge which is deep and has helped them in surviving till date. It goes without saying that tribals being the earliest inhabitants of forest areas have the best traditional knowledge on how to conserve the forests and the environment because that is how they have survived i.e. by building a relationship of mutual respect and honor between themselves and the environment. The conflict between the tribals and the state authorities can be traced back to the reign of the British. Due to the minimal connection between the societies the negative perception of the outsiders towards the tribals has strengthened and legitimized the government policies which now adversely affect the tribals' rights and has now also puts their survival in question.

This project aims to highlight the conflicts they face as regards the various laws and policies formulated by the government for the conservation and protection of forests and how the coming  
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of these laws have brought their survival into question. These laws though provide for protection of the tribal and forest dwellers rights but seldom find any implementation.

### **TRIBALS AND THE ENVIRONMENT**

Forests are the most essential part of the lives of the tribals and the only means for them to make their livelihood these days. Their lives are interrelated and interdependent on forests. With the



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growing industrialization and commercialization, there is evidence that the tribals and the non-tribal gentry alike are now being pushed further into the forests and hills for survival. Thus, most of these tribals have become 'unrecorded tenants or laborers' in the less fertile highlands or have become bonded or semi-bonded laborers in the fertile lowlands.

### **ROLE OF FORESTS IN THE SOCIO-ECONOMIC LIFE OF THE TRIBALS**

The tribal culture and economy is totally dependent on forests. Their life style has been molded according to the forests because forests have been tending to their needs at all points in time.

Their life mainly depends on natural resources which include the primitive methods of agriculture and collection of forest produce. It can be safely said that their social, economic and religious structure revolves around forests primarily. They build their houses using the forest produce and earn their living by selling the small forest products like honey, wax, lac etc. thereby making collection of forest resources one of their main economic activities.

The tribals enjoyed the right to collect minor food produce by tradition and custom. According to a report by the national commission on agriculture, Minor forest produce included bamboo, cones, oil seeds, raisins among other products. Traditionally, and in earlier times the tribes used to be dependent on the collection of this Minor forest produce for food as well as a means of supplementary income.

Later, they started collecting minor forest products not only for their consumption but also used it for barter in exchange for other things with the bordering non-tribal communities. This practice of barter gave rise to a new sense of competition between the communities to now acquire more and more forest produce. As one thing leads to another, the traders stepped in and now started giving cash in exchange for the forest produce as it was extremely valuable in the urban markets. The amount which was given by the traders to the tribals was meagre.

As part of their culture the tribals believed that the spirits of their ancestors lived in the forests and so this was another motivation for them to protect the forests. We have a clear picture on how the entire life of tribals and their identity is dependent on the forest areas but this symbiotic relationship has gotten transformed owing to the introduction of the forest policies India. The limitation or withdrawal of tribal rights over forests and the conversion of forest lands to reserves and protected forest areas has played a major role in the degradation of forests.

## **FOREST POLICIES OF INDIA AND THEIR IMPACT ON TRIBALS**

The forest policies in India can be categorized into two phases, namely pre-colonial and post-colonial. The British majorly aimed at commercializing the forests for the development of industries and concentrated on profit making. Unfortunately, even after independence, the policies did not change much. Instead of rejecting this idea of the existing policies and bringing into force more environmental friendly laws, the post-independence era embraced the British policies.

In the 19th century, lured by the wealth of the forests, people from outside started to move into the forest and consequently the British government extended its authority over these forest lands in the name of scientific management and ever since then the “Conservation” of forests started.

Next came the Forest Act of 1865 which was enacted to regulate the exploitation of forests and encourage their conservation. This was the first time an attempt was made to regulate the collection of small forest produce by the tribals and other forest dwellers. The government thought it was essential to increase control over the forests lands and following the Act of 1865, a new act was passed in 1878. This Act was much more comprehensive as compared to the previous one. All the forest areas of the country were classified as reserve forests, protected forests and village forests. Under this new regime the tribals and forest dwellers were allowed to maintain and practice their traditional rights.

The Act of 1878 was succeeded by five Acts and the of these five which was the Indian Forest act of 1927 dealt elaborately with various aspects of people’s rights and forest management.

Post-independence, there was some reconsideration and debates which led to the issue of the National Forest Policy in 1952. Under this policy the government decided that importance would be accorded to national needs. The destruction and felling of forests for developmental projects was sanctioned and justified in the name of ‘national interest’ and the tribals and forest dwellers were discouraged from accessing or making use of the forests. This policy was heavily criticized and was termed as a mere extension of the government’s control over the forests which was resulting in the deterioration of the lives of tribals and their economy.

Then in 1988 another Forest Act was given effect and its main objectives were the maintenance of environmental stability, Catering to national needs and heritage, increase of tree cover, fulfilling the needs of the tribals and forest dwellers, encouraging efficient use of small forest produce and 'afforestation programs'. Going by the objectives of this policy, it leaned more towards people and their rights though it also had the element of state ownership of forests and mentioned the industrial needs to be national interest.

The Forest Act of 2006 was a pleasant change and has been a landmark Act in the evolution of the state's attitudes on rights of the tribal people and the forest dwellers. It has attempted not only to correct a historic injustice committed towards these tribals by the colonial and post – colonial rulers but has also vested the forest communities with a major role in sustaining forest ecosystems. The question now is how effective has this Act been?

#### IMPACT OF POLICIES ON TRIBALS

The Forest Laws enacted in the 19th and 20th century saw the tribals and the forest dwellers and their traditional practices such as shifting cultivation as a massive threat to forests. The policies of the British were aimed at supplying raw material to the British industries and this consequently led to the commercial exploitation forests which also had lasting impact on the tribals and their rights.

The problem of encroachment, deforestation and forest degradation came to be associated with the activities of the tribals and the forest dwellers with the advent of the various laws instead of the real reason which was the control of the state on the forests and the expulsion of tribals.

These laws were enacted by the British to serve their profit oriented needs but were followed with full vigor by the government of the independent India. The government viewed the well – being of the forests and the forest dwellers as two different and mutually exclusive things. This was because the authorities thought that the forests could be protected well if the human

interaction with these areas was minimized and so the tribals should be restricted from using the forests for their needs.

This thinking went on in full vigor and the greed of industrial development led to the displacement of millions of peasants and tribals and subsequently also the destruction of forest. Naturally now they have become 'ecological refugees' and are turning to alternate sources of livelihood like labor etc. Due to this exclusion and expulsion of the tribals from their native lands the quality of forests has been impacted even though these forests remained under state control.

### **ECONOMIC DEVELOPMENT**

Articles 275(1) and 339(2) of the Indian constitution deal with the provisions relating to the economic development of Scheduled Tribes.

#### **ARTICLE 275(1)**

The first proviso of Article 275(1) states grants-in-aid in order to meet the cost of schemes of development as may be undertaken by a state with the approval of the government of India. The purpose of the schemes is to raise the level of administration of the rest of the areas of the state and to promote welfare of its Scheduled Tribes. In addition to this, provisions of special central assistance has been made for the states having Scheduled Tribe population. The grant is to be made against such specific schemes which are necessary for the welfare of the Scheduled Tribes. These schemes have to be undertaken with the prior approval of Union Government. But this procedure is not followed and the grants are released without specific schemes.

#### **ARTICLE 339(2)**

This article aims at welfare of the Scheduled Tribes in the state as it empowers Union Executive to issue directives to a state as to the drawing up and execution of schemes specified in the directive. Although, these powers have not been utilized till now in spite of the poor performance by State Governments and no directive has been issued.

In order to preserve the tribal culture, the traditional customs and laws can be divided into three categories:

- A. The laws and customs protecting the economic interests of tribals and empower them.
- B. The laws and customs which are not in favor of the tribals and are against the spirit of progressive law of the land and
- C. The laws and customs hindering the benefit of development programs to tribals.

#### PROBLEM SOLVING MODEL

One needs to comprehend that the presence of poor people among groups which are described by traits which suggest basic statutory or social-benefit is no contention against protecting the less advantaged groups from disparity and abuse. With respect to the desired unity of the poor-tribal and non-tribal-there is much scope (as opposed to force) unity:

- A. low wages paid for procuring minor forest produce (tendu leaf, and gum, for instance).
- B. lack of access to the forest land and other forest produce like timber and grazing.
- C. corrupt and oppressive practices of the revenue and tribal welfare officials as well as forest officials.
- D. low wages that are paid for the casual labour in the forest development corporation's depots.

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These common problems have united the tribal and non-tribal people together in a joint struggle against oppressive forces and the state under the CPI(ML) leadership. State's monopoly over forest produce as well as over forest land and confiscation of the lands of non-tribal landlords in the scheduled areas are going a long way in order to solve problems of tribals as well as non-tribal poor. In this process the state pits the interest of the tribal population against small non-tribal landlords and this is the truth which the state does not want the people to know.

Dalits, tribals and marginal farmers does not have access to kerosene and cooking gas and even if they have access to it they won't be able to afford it. These people need wood for basic daily needs. Thus, it is really the marginal farmers, tribals and Dalits who are going to be benefitted from forest conservation and afforestation. Housing material like aluminum and cement is

expensive and out of their reach. Thus, the minor forest produces is not only a source of income for these people but to a large extent it determines their health status. There is a symbiotic relationship between tribals and the jungle. Without the co-operation of these people, afforestation programs can never succeed.

It is becoming frighteningly obvious that the contemporary industrial development model is economically unstable, environmentally unsustainable and a cause of social disintegration. It is generally assumed that the present developmental system is better than the tribal way of living but this view is being challenged now. These days, if some organisations or individuals try to make the tribals aware of their rights and ensure them social justice then they are treated as Goondas and criminals by our 'democratic welfare' and the state machinery is not the only one to suppress such democratic activities. Certain sections of the press have referred these people as 'gangs of criminals and Naxalites'.

#### **DRAWING OF LINE BETWEEN DEVELOPMENT AND DISPLACEMENT**

With the introduction of Forest Laws the tribals have become invaders in their own land which is preventing them from earning minor forest produce. Tribals are living in economically deplorable conditions as they are being alienated from their lands and people. Tribals who were cultivators have turned into agricultural laborers in many parts of India. The position of the tribals is being eroded. The landlords, police, nexus or politicians lobby is creating devastation in the country. The police supposed to help the people are unleashing terror on common people in many parts of the country. It is exactly like the "fence eating away the field." This vandalism by the state machinery should not be tolerated anymore.

The impact of development model of India has been such that resources have been transferred from the weaker sections to more privileged ones in the society. The tribals are the main victims of the mega dam project who never share the gain of these projects. The bigger the project, the greater the centralized control over it. This centralization is prejudiced in favour of rich family engineers, politicians, large landlords and bureaucrats in today's contemporary world scenario. We can infer that the development projects have done nothing to ease existing social inequalities. On the other hand, they have favored the already economically, politically and socially powerful.

Here's a list of some of the prominent court judgements which suggests that the land rights and adivasi rights have been taken seriously by the courts. In *Sri Manchegowda v. State of Karnataka* and *Lingappa Pochanna v. State of Maharashtra*, Supreme Court favoured the adivasi lands. The Supreme Court in the former case nullified private purchases of adivasi land and in the latter case it allowed the state to enact legislation which aimed at restoration of lands to adivasis. In the case of *P Rami Reddy v. State of Andhra Pradesh*, Supreme Court ruled that "prohibitions against the transfer of adivasi land to the persons who were not adivasis was necessary given the poor economic status of the adivasis." When the adivasi rights are brought together with development concerns, the rights of the adivasis are often limited or redefined. There are so many cases where the protection of pristine nature resulted in limits placed on rights of use to natural resources such as fisheries and forests.

In *Dahanu Taluka Environment Protection Group v. Bombay Suburban Electric Supply Ltd Case*, Environmental Appraisal Committee brought Supreme Court to notice that power project was located in an area which was ecologically fragile. The Supreme Court ignored the report and argued that the center made use of state expert committee's report which permitted the project. The Supreme Court should have called for reviewing the same.

For the survival of the tribals the model which has to be constructed has to be based on social-welfare state. Development by choking the rights of the tribal population is incorrect. In a democracy human resources and human rights are of major importance and should not be ignored. The motto should be "economic progress coupled with preservation of tribal culture" and one should keep this in mind.

## **CONCLUSION**

Before the coming of laws there was an era where the forests belonged to the tribals and they were free to use the forests to fulfill their needs. The pristine relation they shared with the nature was that of mutual respect where they not only used the forests to meet their demands but also helped immensely in their sustenance. They understood the importance and value of the forests. To exclude tribals and expel them from their native lands in the name of conservation was a majorly derailed decision which was dependent on the ill-conceived notion that the forests could be conserved only if their interaction with humans was as less as possible.

The concept of 'conservation' was born only after humans commercially exploited forests for their needs in the name of industrial development. The laws and policies were traced in the first half of the project and they tell us how laws became liberal from being absolutely rigid in the beginning, latest being the law of 2006 which closely looks at the rights of the tribals and forest dwellers. Though the notion of exclusion of tribals still persists, it is essential to understand that their importance and how they are the ones who can maintain an ecological balance and help the most in conservation of forests.

The rights of the tribal should be recognized in order to collect the forest produce and sell it, this has a potential of increasing the income of the tribals and improving the standard of living. This will also ensure the protection of the forest as the tribals will be dependent on it. In this manner, the tribals will be protected from businessmen who buy the valuable produce at throw away prices from the tribals and reap huge profits out of it. The major problems that the tribals face are the lack of knowledge of their own rights. They are not aware of the rights which are vested into them. There is a lack of specific legislation which specifies the rights of the tribals with respect to the environmental laws. Tribals worship the forests from time immemorial and they protect it from various hazards but in return they have been suppressed by several powerful sects of the society in different manners. The advantage of protecting the rights of the tribals is not only limited to them but it comes down to the protection of the environment as the tribal people are the best protector of the environment who serves the nature without fulfilling their own selfish interest.