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A Study of the Land Rights of Adivasis in India

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ABSTRACT

The indigenous tribes of India called the Adivasis and a clarion call for their rights and privileges have been echoing for a long time within the country. Land as a social justice concern for the Adivasis has a long historical precedent in rebellions and struggles across India. A claim for land rights is a demand for both unique identity and the material redistribution of resources. Strong laws that guarantee land rights to the Adivasis seem to exist on paper but in reality they have been implemented half-heartedly and even then with much variation between states and even across territories in states. This paper examines the historical background of the Adivasis, their constitutional rights and analyses the legislation that confers land rights to them. Further the paper elucidates on the shortcomings of the legislation and ends with conclusion and suggestions.

I. INTRODUCTION

Adivasis is the collective term used for the many indigenous peoples of India. The word Adivasi is derived from Sanskrit and is a conjunction of two words: Adi meaning ‘original’ and Vasi meaning ‘inhabitant’². The term Adivasi was coined in the 1930’s to forge a sense of identity among the various indigenous peoples of India. Adivasis are not a homogeneous group and vary greatly in ethnicity and culture and also speak more than a hundred languages with varying dialects. There are similarities in their way of life and are generally considered to be part of the oppressed classes of the society. The official census held in 2011 show that the Adivasis constitute 8.6 percentage of the country’s total population which is around 104 million people. Unofficial figures vary significantly but represent a much higher proportion of India’s population. A majority of the Adivasis live in the mountainous and forest regions of the country and their occupation consists primarily of farming, fishing and collecting forest produce.

II. HISTORICAL BACKGROUND

Adivasis or indigenous people are the descendants of those who inhabited the Indian sub-continent since before the time when people of different cultures and ethnicity arrived.

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² Definition of Adivasi, <https://www.lexico.com/definition/adivasi>.

The Indian sub-continent has been home to various Adivasi communities much before the Aryans arrived around 2000-1500 BC. The Aryan and Adivasi communities continued to have different ecological, cultural, religious, social and political spaces. The Rigveda and other ancient Hindu scriptures used the word 'asura' to describe Adivasis and they were portrayed to be subservient to the Aryans³. The Adivasis were not integrated into the mainstream Hindu caste society but there were many points of contact. Indigenous religious contained many aspects of Hinduism and vice versa. The settlement of the Aryans and conflicts which arose due to the close contact of the two communities pushed the Adivasis towards the forests and mountainous regions for survival. Throughout history as the Indian Sub- continent witnessed multiple invasions, it was the indigenous community which continued to face the brunt of such invasions and more often than not, the dominant society were not even aware of the existence of some of the Adivasi communities. Anthropology defined and described Adivasis as 'primitive', 'savage', 'uncivilized' and 'jungle' which led to the communities being colonized, marginalized and ostracized⁴.

III. LAND RIGHTS UNDER THE CONSTITUTION

Under the 1950 Constitution, Adivasis along with the so-called 'untouchables', became subject to special protective provisions. The vast majority of indigenous peoples were classified as 'scheduled tribes'. Article 341 authorizes the President of India to specify 'castes, races or tribes which shall for the purposes of this Constitution be deemed to be scheduled tribes'. The Fifth and Sixth Schedules under Article 244 of the Indian Constitution in 1950 provided for self-governance in specified tribal-majority areas. The Fifth Schedule provides for the administration and control of tribal lands termed "Scheduled areas" within eight states of India. The Fifth Schedule provides protection to Adivasi (tribal) people living in Scheduled areas from their lands and natural resources to non-tribals. The governors have been endowed with certain special powers with regard to Fifth Schedule areas. Under the powers conferred by the Fifth Schedule, the governors can not only direct that any particular law or part thereof shall not apply to a Scheduled area, but they can also make regulations for good governance and peace in such areas. The governors can intervene in areas relating to prohibition or restriction on transfer of land by

³ MANISH MEENA, THE BRAHMINICAL AND COLONIAL HISTORY BEHIND ADIVASIS' DEMONISATION AND CRIMINALISATION.

⁴ CHRISTOPHER BINAY NAG, ADIVASIS AND THE INDIAN STATE: STEREOTYPED AS 'PRIMITIVE' AND 'SAVAGE', TRIBAL COMMUNITIES FIGHT FOR RIGHT TO CHOOSE SOCIAL, CULTURAL, LAND-OWNING SYSTEMS, FIRSTPOST, AUGUST 21, 2019.

or among Scheduled Tribe members, regulation of allotment of land in such areas and the regulation of money-lending activities, this is done in consultation with the Tribes Advisory Council.

Since the colonial period the question of land rights has been a crucial one for Indian Adivasis. In India like in Australia, North America and many other places, the concept of land ownership started with the arrival of European colonizers. When the British arrived, they started a huge enterprise of forestry across the country and introduced the idea of property of forest lands resulting in the loss of land ownership for a large number of Adivasis. Attempts to regain lost lands have provoked successive rebellions from 1832 to 1905. As seen earlier the Fifth and Sixth Schedule of the Constitution deal with indigenous peoples' land rights. The Fifth Schedule gives special protection to the 'Scheduled Tribes' that are included within the territory of the 'Scheduled Areas'. The important issue with this provision is that the 'Scheduled Areas' consists of only eight states that the Constitution officially proclaimed as 'Scheduled' and as of now ten states namely, Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana have Fifth Schedule Areas⁵. Thus several states, especially in the south having a sizeable population of Adivasis have not been included in the list of Scheduled Areas, which raises a question on the rights of Adivasis living in such states. The Sixth Schedule of the Constitution provides autonomy to specific tribes of the North East. The Sixth Schedule applies only to the states of Assam, Meghalaya, Tripura and Mizoram. The Sixth Schedule gives certain powers to autonomous bodies called the District Council and the Regional Council and with respect to Adivasi land rights, these bodies are empowered to legislate on the allotment, occupation, use or setting apart of land, the management of forest, the inheritance of property and on the regulation of money-lending⁶.

IV. THE FOREST RIGHTS ACT

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, otherwise known as the Forest Rights Act was passed by the Parliament in 2006. The law gave back to traditional forest dwellers their rights to access, manage and govern forest lands and resources within village boundaries, which had been controlled by the forest department since colonial times. The law also makes the gram sabha the statutory

⁵ Fifth Schedule Areas, <https://vikaspedia.in/social-welfare/scheduled-tribes-welfare/fifth-schedule-areas>.

⁶ Autonomous District Councils, <https://www.drishtiiias.com>.

body for managing forestlands and protecting them. It provides that no activity should be carried out in these forests until individual and community claims over them have been settled⁷. The Forest Rights Act has the potential to address the long standing demand of land rights for the Adivasis. The Forest Rights Act contains a number of radical provisions for both the Adivasis and other forest dwellers who can prove that they inhabited forest land prior to the 2005 cut off date and includes rights for both cultivation and homestead, rights over non-timber forest products and community land tenures. It is pertinent to note that the preamble to the Act signifies that the Forest Rights Act is an antidote to the historical injustices committed against the Adivasis in relation to the dispossession and non-recognition of their land rights. The act will ensure that the Adivasi people get to manage their forest on their own which will regulate exploitation of forest resources by officials, forest governance and management as well as tribal rights etc.

V. SHORTCOMINGS OF THE FOREST RIGHTS ACT

The Forest Rights Act certainly has appreciable provisions relating to giving land rights to the Adivasis which are long overdue, but there are some major shortcomings in the implementation of the Act. It is to be noted that the implementation of the provisions of the Forest Rights Act and the recognition of community land rights has taken place in a substantial way only in a few states like, Maharashtra, Odisha, and Gujarat. In other states and areas the effective implementation of the and in particular its radical community provisions have been hindered and constrained by the opposition of powerful vested interests in the forest bureaucracy. For example in rural Uttar Pradesh, a community of landless Adivasis and Dalit Labourers organised by left-wing activists decided to occupy forest land and establish their own village called Ramnagar. The objective of this action was to end their dependence on Yadav landowners for work and the formulation of the Forest Rights Act had created an awareness among the Adivasis on their rights and privileges. The Mahila Mazdoor Kisan Sangathan (MMKS) marshalled the provisions of the Forest Rights Act to justify their occupation of the forest land and they claimed to have occupied the land prior to the 2005 cut-off date which is an important prerequisite for land ownership. The land occupation faced a substantial backlash from local elites and Ramnagar was ultimately razed to the ground in an attack by a mob led by the people of the Yadav community. It is significant to note that Ramnagar was made possible in large

⁷ Supreme Court orders eviction of more than 10 lakh Adivasi and forest-dwelling families, Scroll.in (Feb 20, 2019, 8:59 PM), <https://scroll.in/latest/914002/forest-rights-act>.

only because of the radical interpretations of the Forest Rights Act⁸.

In Chattisgarh the Forest Rights Act could potentially allow about 7.4 million tribal and other traditional forest dwellers to claim land rights. However, half these claims have been rejected and the land siphoned off, often arbitrarily. Sunder Singh Kumeti, an Adivasi belonging to the Gond tribe, lost access to a parcel of land in the forest that he and his family had foraged for two generations. In 2016 tracts of land were acquired by the government for a laying a railway line as part of a railway project. Workers cut nearly 300 sal, saja and fruit trees for the purpose of surveying and prospecting the forest. The next year, heavy machinery was deployed and swathes of standing crops were destroyed for constructing the railway line. The aftermath of the destruction led to acres of land becoming unfit for cultivation and Kumeti does not know how much land he lost. Kumeti is fortunate for at least in theory they have a land mark piece of legislation for recourse, which was framed in order to correct historical injustices towards the Adivasis. For several thousand Scheduled Tribes and traditional forest dwellers in India, the Forest Rights Act or the FRA, is a single sheet of laminated paper. The patta or title deed, which is closely guarded by owners, is often their most valuable possession, which proves their entitlement for rights to their forest lands. According to the provisions of the FRA, forest dwellers have individual rights and villagers have community rights over tracts of land that they are allowed to manage in ways they deem fit. Any transfer of land for non-forest purposes requires the prior consent of the gram sabhas. Kumeti has proof to show that he is the owner of forest land consisting of 2.5 acres. However a portion of his land was taken away for the railway project. Attempts by Kumeti and other villagers to point out stretches of their land which have now been made inaccessible are being thwarted by the heavily armed patrol. Other tribal villagers have also had similar experiences where their claim for land have been rejected by the officials without any concrete reasons. These examples shed light on the bureaucratic impediments that stop the effective implementation of the FRA and the apathy in executing them⁹.

VI. LANDMARK JUDGEMENT IN THE SAMATHA CASE

The history of land relations in tribal Andhra Pradesh, as well as in much of the rest of tribal central India, is one of recurring struggles against the transfer of farmland in the

⁸ Alf Gunvald Nilsen, *Adivasis and the State: Subalternity and Citizenship in India's Bhil Heartland* 257-258 (2018).

⁹ Jacob Kushy, *Aliens in their own lands: when Chhattisgarh's tribals were turned into encroachers*, *The Hindu*, April 06, 2019.

valleys to non-tribal farmers and moneylenders, and against the government's claim to own forest land on and around the hills. There have been continuous efforts made by the state governments to strengthen tribal legal rights to agricultural land in the valleys, but the state governments have retained control of forest land, leaving many tribals insecure for generations. The FRA provided some hope for change in favour of forest dwelling communities. Yet threats of dispossession by development projects, including dam and mines have thwarted the efforts envisioned by the Act. With respect to the state of Andhra Pradesh, legislation to restrict the transfer of land belonging to the Adivasis were passed successively which culminated in the formulation of the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959 also called the Land Transfer Regulation. The Land Transfer Regulation as it currently stands, completely prohibits the transfer of any type of land to anyone but an Adivasi person or a registered Adivasi Cooperative society. It importantly includes forest land owned by the government. The law also presumes that all land in the state's Scheduled Areas originally belonged to a tribal person, which means that land found in possession of a non-tribal owner should be returned to the original owner. Nominal Tribal holdings in which the real beneficiary is a non-tribal person known as a benami is also prohibited. However the legislation does not attempt to resolve issues related to ownership of, and access to forest land¹⁰. During the 1990s, the Andhra Pradesh government leased some forest land of indigenous peoples to a company to exploit calcite. The Andhra Pradesh High Court dismissed the case filed by the NGO Samatha on behalf of the Adivasis. The Supreme Court over turned the decision of the lower court and annulled the lease in what became the land mark judgement known as the Samatha case. One of the central issues in the case was the ambit of the meaning of the provision in the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959, which states that there is a legal prohibition of "transfer of immovable property to any person other than a tribal". The question in front of the judges was whether the term "person" would include the state government. The Supreme Court stated that the word "person" would include natural persons as well as judicial persons and constitutional governments. In this regard, this judgment had far-reaching consequences across the country as the Supreme Court clarified the content of the Fifth Schedule of the Constitution by stating that government lands, tribal lands, and forestlands that are included in the Scheduled Areas cannot be leased out to non-tribals or to private companies for mining or

¹⁰ Patrik Oskarsson, Landlock : Paralyzing Dispute Over Minerals on Adivasi Land in India 33-34 (2018).

industrial operations¹¹.

VII. CHALLENGES AHEAD

Administrative apathy continues to be the biggest roadblock in effective implementation of the provisions of the FRA. Illegal encroachments continue to take place on Adivasi lands and many a times their claim for land has been unfairly rejected by rejected by the administrative officials. Secondly, the lack of awareness not only among the Adivasis but at the levels of bureaucracy has been appalling. Unawareness at the lower level of forest officials who are supposed to help process forest rights claim is high and this has led to discrepancies in resolving the claims. The forest bureaucracy has misinterpreted the FRA as an instrument to regularize encroachment instead of a welfare measure for tribals. Dilution of the Act is of great concern because states are vary of vesting forest rights to gram sabhas which gives the local people control over the forest resources which constitutes a significant portion of the forest revenue collected by the states. Hence certain environmentalists voice their concern over the fact that some states have diluted the FRA act, to give preference¹¹ to individual rights and thereby suppressing the community rights enshrined in the Act. Finally, reluctance on the part of the forest bureaucracy to follow the rules of the Act, fearing that it might lose the enormous power that it exerts over forest land has also attributed in the over all faulty implementation of the FRA. Judicial decisions have also added to the owes of the Adivasis and have pushed them to the brink of losing hope on the government and the judiciary. For instance the Supreme court in its February 2019 ruling on the implementation of the FRA, put at risk the lives of more than two million Adivasis who were on the verge of facing eviction from their land and homes due it's decision. The court asked officials in nearly two dozen states to submit details of claims that were settled under the FRA and evict those whose applications were turned down before 24 July 2019. Following stiff opposition and backlash, the court later provided temporary reprieve to the Adivasis.

VIII. CONCLUSION

The area of land rights has been one of the most crucial and pressing concerns for the Adivasi community in India. Securing land rights to the Adivasis offers the government an opportunity to correct the historical injustices meted out to the long oppressed community, but a half hearted attempt to this end would not suffice. Development projects have played a huge role in displacing Adivasis from their land and thereby depriving them

¹¹ Supreme Court of India, *Samatha v. State of Andhra Pradesh* (1997) 8 SCC 191.

of a livelihood. To ensure that this indifferent approach towards the Adivasis does not continue, the government has to strike a fine balance between its development agenda and the rights of the Adivasis. The government would stand true with its intentions of securing land rights to the Adivasis if it at once stops the large scale development projects capable of displacing a sizeable population of Adivasis from their land. Development and modernization at the cost of dispossession of Adivasi land and stripping them of their rights would only alienate them further and would be a jarring example of unequal development. The Forest Rights Act was a welcome piece of legislation that gave the Adivasis the right to access and manage the forest lands which was under the control of the forest officials since colonial times. But bureaucratic apathy has been an impediment in the effective implementation of the Act. To ensure that the land claims of the Adivasis are heard and processed properly, the lapses in the bureaucracy have to be corrected immediately. Finally the Forest Rights Act should not be diluted by the state governments in an attempt to usurp the powers given to the gram sabha for their ulterior motives.
