THE HIDDEN ARE FORGOTTEN: THE RIGHTS OF FOREST DWELLERS

A Critical Analysis of Laws With Special Reference To The State Of Chhattisgarh

A Thesis Submitted to the
UPES

For the award of
Doctor of Philosophy
In
Law

By
Abhyuday Singh

December 2023

Supervisor

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Dehradun- 248007: Uttarakhand

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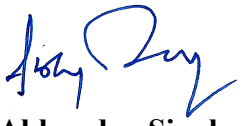
DECLARATION

I declare that the thesis entitled The Hidden Are Forgotten: The Rights of Forest Dwellers (A Critical Analysis of Laws with Special Reference to The State of Chhattisgarh) has been prepared by me under the guidance of Dr. Shikha Dimri, Senior Associate Professor, School of Law, UPES. No part of this thesis has formed the basis for the award of any degree or fellowship previously.



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CERTIFICATE

I certify that **Abhyuday Singh** has prepared his thesis entitled "**The Hidden Are Forgotten: The Rights of Forest Dwellers: A Critical Analysis of Laws with Special Reference to The State of Chhattisgarh**", for the award of PhD degree of the University of Petroleum & Energy Studies, under my guidance. He has carried out the work at the Department of School of Law, UPES.

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ABSTRACT

This legal research delves deeply into studying the fluctuating relationship between forest-dwelling communities and the law, while ascertaining the evolutionary trajectory of legal frameworks from the colonial era to the contemporary landscape. It meticulously scrutinises the intricate tapestry of laws that have shaped the rights, autonomy, and struggles of these communities, oscillating between empowerment and dispossession. Unveiling the historical underpinnings, the study illuminates the imposition of colonial-era laws that substantially impacted forest dwellers, often disregarding their entrenched traditional rights and governance structures. These legislative interventions disrupted the symbiotic relationship between these communities and their ancestral lands, resulting in a loss of autonomy and upheaval in their sustainable practices. The era instilled the cornerstone of forest jurisprudence in India and marked the beginning of the friction between the law and forest dwellers. Transitioning to the modern era, the research rigorously dissects the prevailing legal landscape, accentuating both progressive legislative measures recognising forest dwellers' rights to land and resource management, and legislative mechanisms perpetuating their dispossession. It articulates the dichotomy inherent in laws, offering self-determination and self-governance rights while providing avenues for dispossession through ambiguous clauses and legal gaps. The research critically analyses the paradoxical nature of legislations, acknowledging its potential as a tool for forest dwellers to assert their rights while revealing inherent loopholes enabling governmental intercession for denial. It scrutinises these complexities, unraveling the mechanisms allowing the state to exploit seemingly benign laws for acquisition and concomitant dispossession. Drawing from this analysis, the author advocates for nuanced policy reforms at the State level aimed at fortifying these legal loopholes, ensuring equitable development and minimal friction between the State and forest dwellers during inevitable acquisition processes. These proposed policy changes strive to strike a delicate balance, preserving the rights and autonomy of forest dwellers while acknowledging the State's legitimate needs towards economic development of the Nation. The thesis serves as a clarion call for a more equitable legal framework that empowers forest dwellers. It champions reforms that foster collaboration, respect, and recognition of their historical rights and sustainable practices. By highlighting the tensions within existing

legislation and proposing actionable policy changes, it aims to pave the way for a harmonious coexistence between the State and forest-dwelling communities. The social dynamics in Chhattisgarh, where forest-dwelling populations constitute a significant majority, provide an opportune context for these legal imperatives. This research refrains from solely attributing challenges to systemic flaws, instead highlighting the imperative need for legal change to enhance implementation. In conclusion, this legal research navigates the convoluted legal terrain shaping the lives of forest dwellers in India. It pedantically traces the historical trajectory of legislation and dissects contemporary laws, emphasising the potential of law as a tool for empowerment while identifying and addressing loopholes perpetuating dispossession. Through nuanced policy recommendations, it endeavors to instigate a transformative shift towards a fairer and more just legal landscape for forest dwellers in India.

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Embarking on this academic journey was an obstinate decision, being a matter of personal achievement for me. As I bring this scholastic expedition to a close, it would be amiss to thank those who have made this journey achievable and without whom this endeavor would not have been possible.

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Chapter III: Contemporary Legal Framework

LIST OF ABBREVIATIONS

BCE	:	Before the Common Era
CAD	:	Constituent Assembly Debate
CAF	:	Compensatory Afforestation Fund Act
CBA	:	Coal Bearing Areas (Acquisition and Development) Act)
CE	:	Common Era
CGLRC	:	Chhattisgarh Land Revenue Code
CPESAR	:	Chhattisgarh Panchayat (Extension to Scheduled Areas) Rules
CPRA	:	Chhattisgarh Panchayat Raj Act
Cr.	:	Crore/ Ten Million
CRP	:	Chhattisgarh Rehabilitation Policy
CSFP	:	Chhattisgarh State Forest Policy
DLC	:	District Level Committee
EDC	:	Economic Development Committee
EoDB	:	Ease of Doing Business
FP	:	Forest Policy
FPC	:	Forest Protection Committee
FRA	:	The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
FRC	:	Forest Rights Committee
FSO	:	Forest Settlement Officer
GFA	:	Government Forest Act

GIS	:	Geographic Information System
GPS	:	Global Positioning System
ICCPR	:	International Covenant on Civil and Political Rights
ICESCR	:	International Covenant on Economic, Social and Cultural Rights
IFA	:	Indian Forest Act
JFM	:	Joint Forest Management
MMDR	:	Mines and Minerals (Development and Regulation) Act
MoU	:	Memorandum of Understanding
NAI	:	National Archives of India
NGO	:	Non-Government Organisation
OTFD	:	Other Traditional Forest Dwellers
PESA	:	Panchayats (Extension to Scheduled Areas) Act, 1996
PHRA	:	Protection of Human Rights Act
PPA	:	Public Protected Area
PPP	:	Public-Private Partnership
PVGT	:	Particularly Vulnerable Tribal Groups
RFCTLARR	:	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act
RTI	:	Right to Information
SDLC	:	Sub-Divisional Level Committee
SLMC	:	State Level Monitoring Committee
SOP	:	Standard Operating Procedure
STOTFD	:	Scheduled Tribes & Other Traditional Forest Dwellers
UN	:	United Nations Organisation
UNDRIP	:	United Nations Declaration on the Rights of Indigenous Peoples

VFC	:	Village Forest Committee
WGIP	:	Working Group on the Indigenous Populations
WLPA	:	Wild Life (Protection) Act

CHAPTER I

INTRODUCTION

Through generations, India has fostered a rich diversity of cultures, languages, and traditions. The peopling of India happened through multiple waves of migrations, stretching through thousands of years. Such an influx of settlers to this rich land has today made India an assorted bag of civilisations represented by people of various religions, races and communities. Out of its 1.2 billion population, one of India's most unique and fascinating communities is that of the forest dwellers or Adivasis. The word 'Adivasi' is etymologically derived from the Hindi words '*adi*', which means first and '*vasi*' meaning inhabitants. Thus, these Adivasi Forest dwellers are regarded as the original and first inhabitants of India, who have been residing here since the inception of human existence. Though the tribal community of India constitutes only 8.2% of its populace, about 25% of all indigenous people live in India, which has the highest indigenous population in the world (Khanna et al., 2010). These communities have lived in forests and other remote areas for generations and have a strong cultural and spiritual connection with their ancestral land. They boast a rich traditional knowledge of the forest and its resources, which they have acquired over generations by living in close proximity with nature. Forest is not only a source of livelihood for these communities but also plays a central role in their culture and identity. Many of these tribes have traditional beliefs and practices related to the forest, such as worshipping forest deities, using forest products for medicinal purposes and practising traditional agriculture and fishing techniques. For them, forest is not just a source of food and shelter but also a way of life their ancestors have been bequeathed to them.

For thousands of years, forest dwellers enjoyed territorial sovereignty over forest lands and have lived a life of preferred isolation. Though there were episodic interludes of interference in their way of life, it was not until the British colonisation that their autonomy and ancestral domain were significantly disturbed. As a result, during their protracted period of seclusion, the forest dwellers engaged with their surroundings and the collective knowledge about their habitat became a part of their tradition. Though they desisted forced civilisation, yet the gradual transudation of religion kindled their spiritual imagination. Thus, their culture and

customs evolved around forests and their experiences with nature crafted their Gods and deities in close association with the Jungle. Their food habits, architecture, medicines and means of recreation depended solely on the forest and its resources and formed a part of their congenital tradition. Thus, the forest became an integral part of their ancestry. The forest dwellers have chosen a life of bliss in the forest for centuries and still self-sufficiently subsist in the lap of Mother Nature without any greed or avidity of profit. They have purposely rejected a civilised life and crave their traditional territorial autonomy. All their traditional knowledge and livelihood skills are wrapped around the forest, without which they are doomed to destitution and misery. Loss of habitat for a forest dweller is a loss of his/her self-esteem and thus mortifies their life to mere animal existence, for it is everything they are and everything they have. A life of freedom in the Jungle is an integral part of their idea of dignity and is claimed by them as their patrimony. This is reflected in an interview by Verrier Elwin, whereby when asked about their idea of heaven, a member of the Gond community expressed it as "miles and miles of forest without any forest guard." (as cited in Elwin, 1936, p. 22-23)

To define the scope of this study, it is pertinent to elucidate the context of the term 'forest dweller' used in this research paper. Forest dwellers in India primarily belong to the Scheduled Tribes, who are recognised as a separate class of citizens by the Indian Constitution. According to the 2011 Census of India, there are over 104 million scheduled tribe members in the country, accounting for 8.6% of the national population. A majority of these tribes are concentrated in the dense forests of North-Eastern and Central parts of India. Though Scheduled Tribes have been vaguely described under the Constitution of India, the quest of reliably defining the distinct class of tribes of India has been a tough one. The definition of Scheduled Tribe under the Constitution of India is more of an administrative recognition rather than a true reflection of the communities depending on forests for generations. The identification of such communities has been left to the discretion of the President of India, without any legislative foundation for ascertaining the classification. Due to its vague annotation, the list of recognised Scheduled Tribes in India is amenable to changes, thus failing to provide stability in affirmation. While the executive has framed a functional understanding towards the classification of Scheduled Tribes, a neat characterisation for their recognition as a homogeneous category has not been possible. The Government of India has refused to accept the internationally used designation of 'indigenous people' and the notion of Scheduled Tribe is "not coterminous with either the socially and

historically accepted term 'Adivasi'" (Khanna et al., 2010, p.13). Thus, there is no fixed definition for the recognition and designation of a community as an Aboriginal population, which is often swayed by political and social considerations.

Due to fluctuating definitions and also owing to centuries worth of percolation, it would be inappropriate to assume that forests in India are inhabited only by those acknowledged as Scheduled Tribes. Several such communities reside within the forest, which have not been recognised within the Constitutional denotation of Scheduled Tribes but have dwelled in the forests for centuries. In India, there is no single designation or individuation which encapsulates all of the forest-dwelling population. Thus, while recognising that not all forest dwellers are Scheduled tribes and that not all Scheduled Tribes are forest dwellers, this paper will study the relevant provisions of law and history concerning the Scheduled Tribes, since they constitute a majority of the population living in the forests of the concerned geographical area. Also, though a dichotomy of classification for Scheduled Tribes and Other Traditional Forest Dwellers exists within the law, any reference to the term 'forest dweller' will encompass all those living in the forest and have an appropriate claim to it. For this, it is presumed that all the dwellers of the forest share a strong bond with their habitation and have a conduct similar to that of the forest-dwelling tribal population. The social structures of forest dwellers are culturally associated with community holding rather than private ownership, which includes community proprietorship of all the natural resources and is governed by their traditional schemes. This mode of autonomy is completely democratised, whereby thousands of years of self-sufficiency and freedom have instilled territorial sovereignty in their communal character. The individual ownership of land and utilisation of shared resources are nested within the authority of the community to regulate their territory under customary procedures. Thus, this research's espousal of forest dwellers is both as individuals and community.

It is also essential here to explicate the definition of 'forest' for the purpose of this paper. The description of 'forest' in India has been clouded in confusion since legislations in India have avoided giving a fixed definition to the term 'forest' and have been elusive in delineating its characteristics since the colonial era. Though the Supreme Court had taken it upon itself to define the forest (T.N. Godavarman Thirumulpad vs. The Union of India, 1997) the Government of India is still grappling to come up with a "comprehensive, clear-cut and legally sustainable definition of forest" (Mahapatra, 2019, para 11). Thus, in the absence of a

decisive legal definition, the term forest for this paper includes its land, resources and everything that has been culturally, traditionally and vocationally crucial for the forest dwellers.

Though it is difficult to single out such elements of forest which play a crucial role in defining the ethos and institution of forest dwellers, it can be summated down to two crucial resources which encompass everything that is important in life, identity and self-sufficiency of forest dwellers. These two resources are 'land' and 'forest', which have been regarded by the Bhuriya Committee Report as the "basic resources of the tribal life support system." (2004, p.3) The importance of land in the existence of forest dwellers has been succinctly elucidated by the Xaxa Committee, which has described it as "Land is the basis of their socio-cultural and religious identity, livelihood and their very existence. Their lives are closely interlinked with forests for food, fuel, medicine, fodder and livelihood. Their God and guardian spirits reside in hills, forests, groves, etc. Traditionally, ownership of land was by the community and economic activity mainly agrarian, including shifting cultivation, which fostered egalitarian values which influenced their power relations and organisational system. Forest and hills are the main source of tribal identity" (Xaxa Committee, 2014, p. 251). Similarly, the profuse resources of the forest have been the lifeline for the self-sustenance of these isolated communities. Due to the self-generating capacity of the forest and the traditional knowledge of the forest dwellers to contentedly exist on its bounties, their way of life has been based on subsistence and conservation ethics, with minimum need for foreign interaction or dependence. These two essential resources are interdependent in their importance to forest dwellers, as a land without forest is not their natural habitat and a forest without land cannot exist. Forest and forest land are not commodities for forest dwellers but are fundamental elements of their existence. As elucidated later, these resources form the central theme of this research. Thus, forest and land have been considered interlaced for this paper and any singular mention of 'forest' or 'land' would inevitably include the other, unless otherwise separately classified.

Though the forest dwellers of India are regarded as 'Adivasi', being those who were there from the beginning, they represent the most downtrodden population of the country. They have been vilified since the ancient ages, which continued up to the independence of India. The introduction of religion and the prevalence of the caste system classified them under the lowest strata of the echelon and further led to their humiliation. The advent of the British Raj

in India increased the commodification of forest, which was treasured for the economic and military interests of the Crown. This led to the formulation of introductory legislations, with the object of denuding the forest dwellers of their territorial sovereignty and extinguishing their claim over the forest. The imposition of restrictions saw frequent clashes between the Crown and the tribes, which have been recorded in the annals of their struggle against subjugation. Unfortunately, the position of the forest-dwelling tribes did not change much after the independence of India. Though the Constitution did recognise a distinct class of Scheduled Tribes and also chalked out special provisions for areas dominantly inhabited by forest dwellers, the governing idea of modernising the forest dwellers and gradually assimilating them into mainstream society did not find favour with the forest dwellers. They considered this as "being not only paternalistic and patronising but also prejudicial to the indigenous and tribal peoples' ethnic identity and mores, and violative of their rights" for they wished to "preserve the integrity of their culture and personality, say through the first of the five principles of the Panch Sheel of Tribal Development which exhorts that the tribal people should be allowed to develop along the lines of their own genius." (Bhuriya Committee, 2004, p. 2). The position of the forest dwellers has not changed much since the ancient ages and the narration of discrimination is still not obsolete to be forgotten into oblivion. Despite 75 years of independence, being celebrated as "Amrit Kal' of India, the tribes living in forests remain to be one of the most vulnerable and improvised classes of the country. Due to their preferred isolation from civilised society, they have no voice to bring forth their predicaments to the knowledge of the public, who remain impervious to this class of society. The atrocities faced by them are buried deep within the Jungles and what little comes out is often ignored by mainstream media. The forest dwellers in India have now been gauged by society as an expandable population which must sacrifice for the comfort and development of the Nation.

There are several issues pestering the lives of tribals and forest dwellers, such as human trafficking, insurgency, violence against tribes, extreme poverty and marginalisation, weak health, illiteracy, mortality, frequent unreported human rights violations, false incrimination, extrajudicial killings, deprivation of livelihood, harassment by the forest department, persecution through money lending, engagement as bonded labour etc. Since a single research paper cannot address various complications encountered by forest dwellers, the scope of this paper is focused on one of the primary challenges forest dwellers face in India: acquisition and dispossession.

The dispossession of forest dwellers in India is a convoluted subject involving various factors such as industrialisation, urbanisation, and conservation. The Government's push for economic growth has led to clearing forest lands for mining, dams, highways, and other large-scale projects. These projects are often undertaken without proper consultation or compensation for the affected communities, leading to forced eviction and displacement. This has disrupted these communities' traditional way of life, as their access to forest resources has been restricted. The impact of dispossession on the lives of forest dwellers has been devastating. These communities have lost their homes, traditional livelihoods, and cultural identity. In addition to losing livelihoods and cultural heritage, dispossession also results in social and psychological trauma. They are often resettled in distant locations, where they struggle to adapt to unfamiliar environments and find new sources of income. Dispossessed forest dwellers often face discrimination and marginalisation in their new locations, leading to feelings of isolation and loss of self-esteem. They are also vulnerable to exploitation by middlemen and contractors who milk upon their pregnable situation. Where the dispossession does not lead to relocation, it leads to loss of livelihood, environment and autonomy. Forest dwellers know nothing about civic life, since their traditional knowledge is all about their forest and its resources. For thousands of years, these communities have been self-governing and self-sustaining. Thus, the loss of their habitat, even if viewed as ‘modernisation’ under the paternalistic approach of the State, leaves these self-sufficient and self-governing communities dependent on the mercy of the Government and its funds. Thus, the two primary resources of the tribal life support system, land and forest, have both been assaulted and “continues to be under constant attempts at expropriation” (Bhuriya Committee, 2004, p. 3).

Since forest and land are two of the primary sources for their sustenance, with the loss of both, these communities are pushed into impoverishment, poverty and despair upon being uprooted from their well-knitted social fabric and traditional establishment. The benefit of many and the fortune of few brings destitute to the lives of the forest dwellers, who cannot recuperate from the shock of loss in their entire life and have no share in this development. Recently, under the policy of ‘ease of business’, the Government has been entering into Memorandum of Understanding with private corporations and thus playing its agent in promising the deliverance of unencumbered forest lands for industrialisation. Thus, the trend of depriving the forest dwellers is likely to continue, or even escalate, with the aggressive economic policies of the Government.

Furthermore, dispossession of forest dwellers is inevitable since the forests in India suffer from the 'resource curse'[1] or the paradox of plenty. Fifth Schedule Areas comprise 70% of the mines and minerals in India, which is home to 39% of the tribal population of the Country (Wahi & Bhatiya, 2018, p. 29). Thus, any ambition for economically exploiting raw materials must involve deforestation and dispossession. In the past five years 69,414.32 hectares of forest land have been approved to be diverted for non-forest use under the Forest (Conservation) Act, 1980, and 126,000 hectares of forest land have been covered under compensatory afforestation (Staff, 2020 March 20). In the first four decades of the independence of India (1951 to 1990), tribal people constituted 40% of the total displaced population, despite constituting only 8.2% of the national population (Planning Commission, 2008). Furthermore, though distinct data for the forest dwellers is not available, it has been recorded that out of 20 million people displaced during this period, 75% of the evicted population had not been rehabilitated or resettled (Nayak, 2008). Apart from the minerals underneath, the forests themselves have been a valuable resource for commercial exploitation. The forest cover in Scheduled Areas is over two and a half times more than in the rest of the country and constitutes 38% of the entire forest of the Country (Wahi & Bhatiya, 2018, p .29). These economic resources have become a curse for the forest dwellers, leading to their dispossession by agencies that stake claims over their rich lands, resulting in forced displacement without appropriate rehabilitation.

Such, dispossession of the forest dwellers is not limited to their displacement from their forest land but also the extinction of their rights upon their traditional domain. Insensitive conservative legislations and environmental degradation have caused the exclusion of forest dwellers from the forest and thus have resulted in their internal transposition. While some legislations affect direct acquisition of forest land, others lead to oblique deprivation of the rights and say of forest dwellers in managing and conserving their habitat. Both classes of laws ultimately lead to the lopsided loss of the forest dwellers and lead to their disarticulation. Thus, for the purpose of this paper, the term 'dispossession' is not limited to the direct loss of land but also includes the loss of rights over the forest and its resources. Such a loss may be caused by depriving them of their traditional rights or by ignoring the entitlements of the forest dwellers over their ancestral domain, which includes their right to self-governance, autonomy over forest land and their right to self-determination. Due to a

[1] Term Coined by Richard Auty as given in Auty, R.M. (1993). *Sustaining Development in Mineral Economies: The Resource Curse Thesis.* London: Routledge

lack of space for diction, the scope of this study has been consciously limited to such legislations, which cause large-scale dispossession. There is no particular justification for such an election apart from the fact that the study's conclusion would benefit a larger population.

Law as a tool

The relationship between forest dwellers and the law in India is complex and multifaceted, with a long and troubled history dating back centuries. One requires a nuanced understanding of the historical, social and jurisprudential factors to comprehend their present interaction with legislation. To borrow the observation of Singh, “The history of the struggle of forest dwellers for their rights is as old as the legislation governing them” (Singh, 1986, pp. 26-27).

During the Medieval ages, the tribes of Bastar enjoyed complete independence for more than a thousand years. The rulers, if any, governed these territories as per the traditions and customs of the communities rather than imposing rule on them. The dawn of imperialism in India saw the introduction of legislations to assert control over forests and land for the commercial needs of the Crown. The proliferating accession of land and alienation of rights by the British, without any understanding of their deep connection with the forest, saw tribal revolts in India as early as 1770 (Ghai, 2022). For generations, these communities have faced a multitude of injustices, including forced displacement, loss of land and resources and discrimination at the hands of the legal system. Their traditional ways of life have often been at odds with the interests of the State and powerful economic actors, resulting in a long saga of dispossession and exploitation. This history is characterised by a range of discriminatory practices, ranging from the imposition of colonial-era forest laws that criminalised traditional forest use to the more recent policies that seek to restrict access to resources and force relocation from forested areas. The forest dwellers of India have struggled against these injustices for centuries, and their relationship with the law has been a crucial aspect of this struggle. Though much water has flown under the bridge since India’s Independence and the nation has witnessed a sea of legislative changes in the past 75 years, the forest dwellers continue to resist any form of legislative supervision which challenges their territorial sovereignty and still endure armed resistance, remaining the “biggest threat to internal security” of India (PTI, 2021).

The colonial legacy of forest governance in India has been a significant cause of the plight of forest dwellers. Colonial-era laws such as the Indian Forest Act of 1865, which gave the State absolute control over forest resources, were used to displace forest communities from their traditional lands and restrict their access to traditional resources. Similarly, the Land Acquisition Act, 1894 presented a firm assertion of the doctrine of eminent domain and completely disregarded the rights of forest dwellers over their habitat. These laws were shaped by the colonial ideology of resource exploitation and economic development, which prioritised the ruling class's interests over those of local communities, often resulting in widespread poverty and marginalisation among forest dwellers, who were forced to seek livelihoods outside the forests. However, over time, changes in social and political forces have led to shifts in the legal frameworks that govern forest communities in India. The Panchayats (Extension to The Scheduled Areas) Act, 1996 and The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006, for example, were the result of years of advocacy and mobilisation by forest communities and their allies, who pushed for legal recognition of their rights to access and manage forest resources.

Forest governance in India after independence can be broadly categorised into three phases, which reflect upon the changing social forces and the moulding of the law in stride with these episodic changes. The first phase, which lasted from 1947 through roughly the early 1970s, was one of reckless consumption of forests for industrial development and promoting agriculture towards food security. This was prompted by the weak and depleted condition of the country's economy after facing a wealth drain for centuries at the hands of the Britishers. The period saw legislations which strongly asserted the colonial idea of eminent domain and kept the public purpose on the highest pedestal. The laws during this period either continued with the autocratic colonial legislations or developed new legislations in line with the same. The second phase, which lasted until the implementation of the 1988 National Forest Policy, was a conservation phase that increased the State control over natural resources of the country. The enactment of legislations in the second phase was triggered by the depletion of forests and wildlife during the first phase and thus provoked the Government to prevent the ruthless destruction of forests for development and gain. Forest conservation was introduced as a Directive Principle under Part IV of the Constitution of India, and the subjects of 'Forest' and 'Wildlife' were added to the Concurrent List for greater control of the Central Government. However, this phase was more concerned towards the protection of natural

resources, which were ought to be protected from forest dwellers as well. Thus, the legislative instruments introduced during this era were extremely conservationist in nature and did not indulge the forest dweller's concern and the fact of their extreme dependence on the resources, which were jealously sought to be protected by the State. The third phase began with the implementation of the National Forest Policy in 1988, which not only made the forest a local resource but also required the participation of local communities to employ their traditional knowledge towards the sustainable development of the forest. This period eventually saw the amendment to the Constitution of India by the addition of Part IX and, subsequently, the introduction of the Panchayat (Extension to Scheduled Areas) Act, 1996, which granted the autonomy of self-governance to the people. After a long struggle, as a watershed moment in the history of the struggle for forest rights, the Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006 came to be legislated by the Government, which recognised the rights of the forest dwellers upon the forest and thus cemented their authority to govern it. All the legislations during this phase were increasingly progressive one after another, in devolving the right to the forest dwellers and recognising their ancestral domain. However, we may now be entering a fourth phase of returning back to the start of the circle, whereby the State is undertaking upon itself the role of a facilitator for setting up industries, losing its neutrality and increasingly acting as an agent for the private corporations, with the development aggression leading to the ‘ease in business’ policy.

The phases of jurisprudential history amply demonstrate the fact that law is a dynamic and evolving system that is not static but rather a reflection of changes in social forces. This proposition highlights the importance of understanding the broader social, political, and economic context within which laws are made and interpreted. It recognises that laws are not set in stone but are shaped by the values, beliefs, and power relations within a society. The legal system is not infallible and laws that were once seen as progressive can become outdated or harmful in the face of shifting social and political dynamics. Thus, laws can be challenged and reformed to redress historical wrongs and promote more equitable legal frameworks.

In the case of forest communities in India, the legal frameworks that govern their rights and access to resources are shaped by complex social and political forces. These include the power dynamics between the State, forest communities, and private actors; the historical

legacies of colonialism, land grabs, and displacement; and the shifting political and economic priorities of different governments and ruling parties. Thus, the idea and governance of land and resources for the forest dwellers are very different from that of the civilised population of the country. It would be flagrantly inappropriate to find justification for the dispossession of forest dwellers in tandem with that of the general population. The rules and jurisprudence that apply to the general population cannot satisfactorily operate for forest dwellers and hence have to be crafted towards their special stratification based upon their vulnerability towards their existential association with their land.

Change of popular view leads to changes in social forces, which in turn results in a change of Government. Change of Government can result in a change of priorities and every Government legislates according to its ideology, which reflects upon the social force in play during its vogue. The shift of social forces through the ages has led to laws on both sides, creating a tangled web of legislations for the forest dwellers. India's forests are governed by a matrix of laws, rules, and executive instructions, both at the Central and the State level. However, these laws have two faces, whereby while legislations like the Panchayats (Extension to The Scheduled Areas) Act, 1996 and the Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006 grant autonomy and title to forest dwellers over the forest and its resources, colonial and conservationist laws cause their dispossession.

Though the forest dwellers have resisted the atrocities of dispossession through violence or public protest, with the former being frowned upon and the latter being crushed, Menon rightly observed that "the law must and will remain part of the struggle for Adivasi rights. Not engaging with the law when it has such a direct impact on the struggle for the survival of Adivasi communities will be tantamount to surrendering both economically and culturally to the whims of the neoliberal State. The basic principles of the Constitution provide a framework in which this struggle can be fought. The challenge will be to use legal and policy spaces to uphold these constitutional rights without watering down the rights discourse in ways currently fashionable in neoliberalism. Rights are important in and of themselves and not for managerial purposes alone" (Menon, 2007, p. 2242).

Examining the laws in this paper points to several spaces for forest dwellers to assert their rights and thus resist undue dispossession. When read in its totality, the legal framework in

India provides significant compliance with the international benchmarks towards the dispossession of indigenous populations from their lands. However, the existence of Colonial and oblique laws, with their strict implementation when needed by the Government, has soiled years of effort in correcting the historical injustice. Though these laws have a creative potential to fulfil their objective, their interpretation is subsided by economic forces, thus leading to the continued deprivation of the forest dwellers by rendering the beneficent legislations redundant.

This thesis explores the historical and contemporary dimensions of this complex relationship between forest dwellers and the law in India. It seeks to assess the impact of such laws on forest communities in India, exploring how they have been affected by legal frameworks that both grant them rights and cause displacement and dispossession.

By examining the historical context of this tryst and analysing contemporary legal frameworks, this thesis aims to shed light on the ongoing struggle of forest dwellers for recognition, justice, and dignity in the face of longstanding structural oppression. At the heart of this thesis will be a critical analysis of the ways in which legal frameworks have both enabled and constrained the ability of forest dwellers to secure their rights and protect their communities. Drawing on a range of interdisciplinary sources, including legal documents, Government reports, activist accounts and oral histories, the thesis will identify critical gaps in legal protections and analyse the political and social forces that have contributed to their persistence. Through a critical analysis of colonial and contemporary policies and laws, the paper will identify the gaps and loopholes in the legal frameworks that have historically disadvantaged forest communities.

Though several laws cause dispossession, it would only be possible to discuss some of the laws in one research paper. Thus, I would restrict the scope of my study to only those laws which, in my opinion, cause large-scale dispossession in Bastar, Chhattisgarh.

Ultimately, the thesis aims to contribute to a broader understanding of the relationship between marginalised communities and the law and to highlight the importance of recognising and supporting the struggles of forest dwellers for justice and dignity in India and beyond. It contends that the law can be an essential tool at the hands of the forest dwellers to assert their rights and resist unfair dispossession from their land and forest. Overall, the paper

aims to contribute to a better understanding of the complex relationship between forest communities and the law in India. By critically analysing the laws and policies that affect forest dwellers, the paper seeks to propose policy and practice that can promote more equitable and sustainable forest governance in India.

Chhattisgarh: Geographical Significance

The preponderance of the tribal population and their distinct recognition was one of the prime reasons for the demand of the State of Chhattisgarh, which was carved out of Madhya Pradesh in the year 2000 (Tillin, 2013). Chhattisgarh is the ninth largest State in India with a geographical area of 1,35,191 sq. km, being 4.11% of the geographical area of India. Since its formation, the original sixteen districts have now been bifurcated into thirty-three districts, with a cumulative population of 25.55 million, accounting for 2.11% of India's population. The State is bordered by Madhya Pradesh in the northwest, Uttar Pradesh in the north, Jharkhand in the northeast, Maharashtra in the southwest, Telangana in the south and Odisha in the southeast.

As per the 2011 census, Scheduled Tribes constitute 30.62% of the population of Chhattisgarh, which is almost a third of its composition and thus represents a majority of the population in the State. This is a shift from the National position whereby the Scheduled Tribes are a minority, representing only 8.2% of the National Population. There are 42 Scheduled Tribes recognised in the State of Chhattisgarh, including sub-tribes and homonyms (State/Union Territory-wise list of Scheduled Tribes in India, p. 3), whereby Gonds are the prominent tribe in the State, followed by Abhuj Maria, Bison, Horn Maria, Muria, Halboa, Bhatra, and Dhurvaa. Abhuj Maria, Baiga, Birhor, Hill Korwa, and Kamar are the five Particularly Vulnerable Tribal Groups (PVTGs) residing in Chhattisgarh (Names of the Particularly Vulnerable Tribal Groups, p.1). As per Census 2011, 92% of the Scheduled tribes in Chhattisgarh reside in rural areas, while about 50% of the villages in the State are located inside a five-kilometre radius of forests (India State of Forest Report, 2019, p. 45).

The preponderance of tribal population in Chhattisgarh is also evident from the fact that out of its thirty-three Districts, fifteen districts are entirely covered under Scheduled Areas, while ten districts have some areas being notified as such. The Districts thus completely recognised

as Scheduled Areas are- Surajpur, Balrampur, Sarguja, Koriya, Jashpur, Gariyaband, Kanker, Bastar, Kondagaon, Sukma, Dantewada, Narayanpur, Bijapur, Mohla-Manpur-Ambagarh Chowki and Gaurela-Pendra-Marwahi (GPM). Other districts like Bilaspur, Raigarh, Dhamtari, Balod, Rajnandgaon, Baloda Bazar, Mungeli, Korba, Gariyabandh and Janjgir-Champa contain blocks which fall under the Schedule Area. Thus, 75% of the Districts in Chhattisgarh have Scheduled Areas, which have been recognised to have a significant tribal-dwelling population.

Most of these Scheduled Areas in Chhattisgarh have dense forests. Although the geographic area of Chhattisgarh constitutes only 4.1% of the National territory, it has 7.7% of the country's forest cover. Forests in Chhattisgarh cover a whopping 45.80% of its entire area, covering 63,160 sq. km. of its landmass, twice the size of Belgium. The total area under Recorded forests (59,772 sq. km) in Chhattisgarh comprises Very Dense Forests (7,067.72 sq. km.), Moderate Dense Forests (32,129.56) and Open Forests (16, 345.29), whereby Very Dense Forests and Moderately Dense Forests together cover 29.05% of the entire geographic area of the State (Forest Survey of India, 2019).

While Chhattisgarh has one of the richest biodiversity habitats, boasting dense forests, plush wildlife and various species of flora and fauna, it is also one of the wealthiest States in India in terms of mineral resources. As per the latest data available for 2017-18, mining activities contributed Rs. 6,110.25 Cr towards the State exchequer, producing minerals worth 9,183.99 Cr. and contributing almost 15.66% of the total value of minerals produced in India ("Mineral Revenue", 2019). Chhattisgarh is India's largest producer of Coal, bearing 17.45% of the national deposit. It also has one of the finest and most extensive reserves of iron ore in the country, with 19.59% of the entire prospects of the country ("District Wise Mineral Resources", 2019, p. 1). Chhattisgarh is the only State in India to contribute towards the production of Tin ore and is the largest producer of Dolomite in India. Coal production and iron ore mining respectively contributed 44.41% and 30.08% of the total mineral revenue of the State, comprising about 75% of total mineral excavation in Chhattisgarh ("Mineral Revenue", 2019).

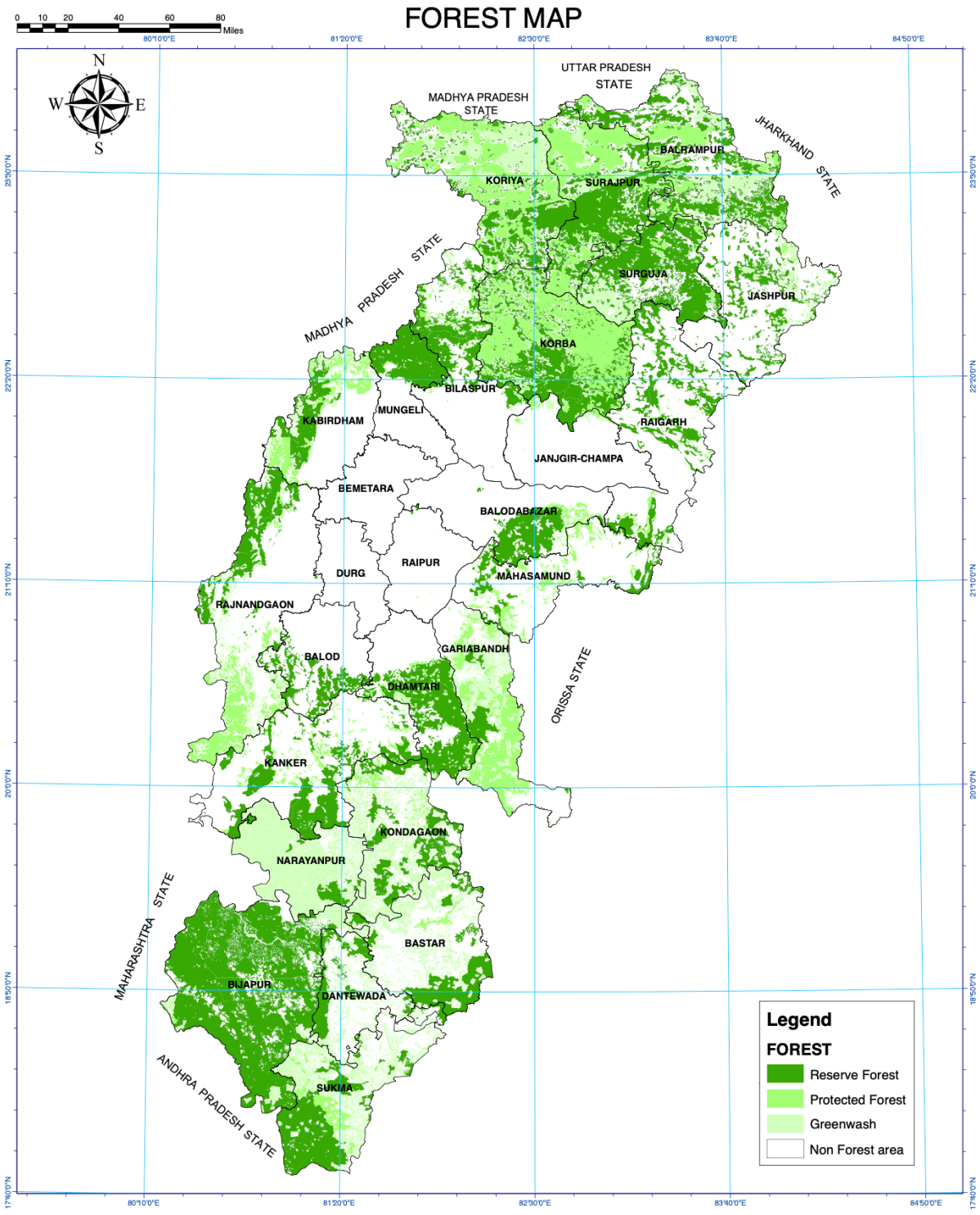
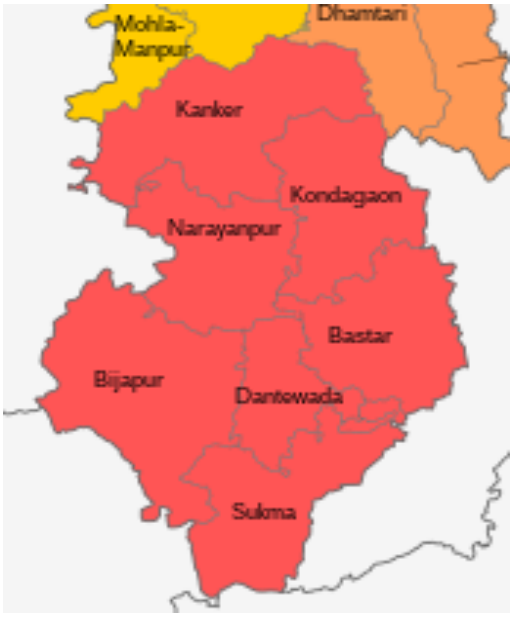


Figure Source: 'Chhattisgarh' under India State of Forest Report 2019. 48.

http://fsi.nic.in/isfr19/vol2/isfr-2019-vol-ii-chhattisgarh.pdf

Bastar, Chhattisgarh

Bastar is located in the southern part of Chhattisgarh. It has been regarded to be the *Dandakaranya* mentioned in epics like Ramayan and Mahabharat, boasting some of the densest forests in India. After the Independence of India, the erstwhile princely State of Bastar, together with the feeble State of Kanker, were kept intact as one single large district in the Central Provinces and Berar. However, just before the formation of the State of Chhattisgarh, it was split into three districts in 1998, namely Bastar, Dantewada and Kanker and the erstwhile area was converted into a revenue Division. Furthermore, in 2007, the Narayanpur district was carved out of the Bastar district and the Bijapur district was carved out of the Dantewada district. The last two districts of Sukhma and Kondagaon were created out of Dantwada and Bastar, respectively, in the year 2012. Thus, Bastar Division has seven districts today, with the divisional headquarters at Jagdalpur in Bastar District. The Bastar Division forms a gulf for Chhattisgarh, surrounded by Odisha in the east, Telangana in the south and Maharashtra towards the west. The reference to Bastar in this paper would be a reference to Bastar as a Revenue Division comprising its seven districts.



Source- (1907-1909). Imperial Gazetteer of India Vol 3. 106. Oxford: Clarendon Press

Though the data for the Division of Bastar is not available per se, an assessment of the area can be drawn from the data available for its seven districts. Also, since the districts of Sukhma and Kondagaon were created after the last Census of 2011, data available for the districts on their respective official websites have been relied upon, and where not available, these two districts have been considered part of their parent district in such valuation. This may also cause a discrepancy in the data of the parent districts, which may or may not have updated their data after the partition.

Bastar accounts for 32% of Chhattisgarh's land mass and 15% of its citizens, yet is home to more than 38% of the State's Scheduled Tribe population. An average of 75% of the population of Bastar belongs to the Scheduled Tribes, with all its districts being classified as Scheduled Areas under the Constitution of India. As per the data accessed through Right to Information, 19% of the entire area of Bastar has been recognised under both individual and community rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, with twice the potential for further recognition.[2] Thus, Bastar has a preponderance of forest-dwelling population, with 1102 villages situated inside the forest or within its five-kilometre radius ("Data on Villages with recurring cultivation within 5 km of forest area", p.1)

[2] As per calculation made from data received under RTI

The erstwhile Dandakaranya, Bastar, is famous for being one of the densest forests in India. As per the data available, 59% of Bastar is constituted of forest land, with Narayanpur (81%) and Bijapur (76%) being almost entirely covered under forest ("Chhattisgarh", 2019). With its hilly forests and isolated terrain, these Jungles are inhabited mainly by a majority of the Scheduled Tribes who have enjoyed territorial sovereignty of these lands for thousands of years. When found by the Britishers, the Deputy Commissioner of Bastar described the tribal population of the region as "the most perfect specimens of the aboriginal race" (Comyn, 1868, p. 25). The dense forest of Bastar is rich in natural resources and amply sustains the self-sufficient simple lifestyle of the tribal community. The forest dwellers enjoy their habitat of dense forests, high hills, waterfalls, caves and are deeply intertwined with the forest for their tradition, culture, rare artwork, liberal culture and innate nature. Today, the forests of Bastar are divided into two forest circles, namely Kanker Circle and Jagdalpur Circle, for administrative convenience ("Annual Report 2021-2022", 2022).

Like most of Chhattisgarh, Bastar has enormous untapped reserves of Iron Ore and Bauxite, and thus, its forests are gravely and largely susceptible to mining. Bailadila-Rowghat hill ranges, which run through Dantewada, Bastar, Kanker, and Narayanpur, are considered to be one of the most extensive iron ore fields in India (Inadian Bureau of Mines, 2015) and are also considered the sacred dwelling place of Raja Rao devata by the forest dwellers. Out of 6,110.25 Cr revenue earned by Chhattisgarh through mining activities in 2017-18, Bastar Division contributed Rs. 1,515.75 Cr, accounting for almost 25% of the entire mining revenue of the State.

The Resource Curse of Chhattisgarh

While Chhattisgarh is one of the wealthiest States in India in terms of mineral deposits, most of these mineral-rich lands are within forests and thus cause the 'resource curse' effect for the forest dwellers. As per the report of the Comptroller and Auditor General of India compiling the data between 2006-2012, Chhattisgarh stood second in allowing forest land diversion, changing the land use for 20,456.19 hectares of forest land during the period, right behind Madhya Pradesh at 20,740.52 hectares. The Xaxa Committee, 2014 assessed that 1.71 lakh hectares of forest land was diverted in present-day Chhattisgarh during 1980-2003, of which

67.22% was for mining. Recently, Chhattisgarh was found to be the fourth largest applicant in seeking diversion of forest land, with 972.22 hectares of forest land being diverted in 2019-2020 itself ("Analysis of Forest Diversion in India", 2019). Thus, a total evaluation of the data presented above gives a fair picture of the frequent destruction of forests in Chhattisgarh for mineral extraction, which inevitably leads to the dispossession of forest dwellers from their traditional lands.

Since Chhattisgarh has adopted the development aggression spirit of the country and has been enticing investors from across the globe to establish itself as an industrial hub of the country, the trend of destruction and dispossession is likely to continue in Chhattisgarh and hence is a topic of relevance to be addressed. This economically weak State, which was once a part of the shameful BIMARU[3] acronym, has now been ranked 4th in the DIPP-World Bank Ease of Doing Business (EoDB) rankings for 2015-2016 in the country. Given the mineral-rich lands of the State, this is a lucrative offer for private corporations as well, who are looking to exploit these mineral leaden lands to feed their furnace for commercial production. As of 06.08.2021, the State of Chhattisgarh has 317 live MoUs with several private corporations for industralisation, with a prospective investment to the tune of 3,28,626.87 Crores ("List of Effective MoU's for Chhattisgarh", 2021). Out of these, 130 MoUs were recently entered into by the incumbent Government, projecting a prospective investment of Rs. 58,949.98 Crores ("Effective MoU List from 2019 to 2021", 2021).

Distinction of Area Under Study

The State of Chhattisgarh is a fascinating study for the subject under enquiry, for it has the prevalence of both extremes of the situation. While Chhattisgarh is one of the largest mineral-producing states in the country, its tribal population holds sway in State politics as one-third of its voters. Being a tribal-dominant State, these forest dwellers are a large enough population to shift the social forces and thus have the power to influence the law. Unlike the national scenario, whereby the Scheduled Tribes constitute a meagre 8.2% of the entire population and can be sidelined for 'the greater good', in Chhattisgarh, they are the 'greater' and their 'good' must be ensured by those expecting the political support of this substantial

[3] The 'BIMARU' acronym has been used to refer to Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh, to imply they have lagged in terms of economic growth, healthcare and education. the states of Jharkhand, Chhattisgarh and Uttarakhand were not separate states and were part of the grouping.

population. Thus, Chhattisgarh is a classic example of a State where it is expedient for the Government to strike a win-win balance for all the concerned parties, for they can neither ignore the rights and demands of its sizeable forest-dwelling community nor can they forgo the economic development of the State.

Since the socio-economic mood of the Nation is currently inclined towards development aggression and a meagre 8.2% of the national population is not its primary concern, it would be futile to expect any changes in Central Legislations, which has been making constant attempts to dilute even the existing benevolent legislations to facilitate its hassle-free exploitation. However, I believe that forest dwellers of Chhattisgarh hold enough power through democracy to shift the social forces so as to ensure that the legislations in the State are moulded in their favour. With more than 30% of the entire population, Scheduled Tribes are a strong voice in the State that cannot be ignored by the political masters and legislators. To this, the incumbent Government has shown a keen interest in appeasing these communities by their proactive stance in recognising the rights of the forest dwellers and has been sincerely listening to the voice of their concern. Hence, this paper expects to present suggestions for the State Government and the concerned communities to bring forth the required changes in regulations for ensuring sustainable development with the consent of the forest dwellers. Thus, under the current scenario, I am hopeful that the incumbent State Government would sincerely consider the changes suggested in this paper to bring changes in legislations with an aim to minimise the struggles of the forest-dwelling population. Due to its propensity to the issues under consideration, I have chosen Bastar to affirm the conjunctures and proposals in this paper empirically. Since the desired data was unavailable through secondary sources, I have collected the primary data, and the empirical study has been used only to support my assertions.

ORGANISATION OF THE THESIS

This thesis seeks to explore the ways in which forest dwellers in India have engaged with the law over time, with a particular focus on identifying the gaps in legal frameworks and suggesting policy changes to address them. To accomplish this, the thesis will thoroughly examine historical and contemporary legal frameworks, along with the journaled accounts of forest dwellers and their struggles for recognition and justice.

This investigation has been divided into two parts, with Chapter II of the thesis covering an examination of pre-independence history and legislations in India and Chapter III of the thesis covering an analysis of legislations brought forth after India's independence and thus currently applicable as the law of the land. Chapter II sheds light on the prejudice faced by forest dwellers since the ancient ages and their plight upon the introduction of legislative governance after the advent of the British Raj in India. It sets the stage for understanding the vulnerability of the forest dwellers and their deep intertwined connection with their habitat, which has been exploited by the Sovereign since the ancient past, thus leading to their 'historic injustice.' The Chapter enunciates upon the development of jurisprudence during the colonial era, which was exclusively focused on the exploitation of forests for the commercial gain of the Crown and the strict application of the doctrine of eminent domain in India. Chapter II thus recites the scarred account of forest dwellers in the pre-independence era and maps out the development of forest jurisprudence in India.

Chapter III embarks upon analysing the post-independence legislations applicable today in India as the law of the land. These legislations have been split into two categories: legislations that grant rights and recognition to the forest dwellers and 'other laws' that, in my opinion, impact these rights. I have also discussed some significant government policies related to forest and mining, which, though are not strictly legislations and thus cannot be put in either of the criteria, reflect upon the change in the ideology through time. The legislative analysis will be supported by judgements of Constitutional Courts and their interpretation and thus evaluates the possibility of its application in line with such decisions. At the core of the purpose of this investigation would be a critical examination of how legal structures have both allowed and constrained forest dwellers' ability to secure their rights and safeguard their communities. The thesis will identify critical gaps in legal safeguards and evaluate the political and social factors that have added to their persistence, drawing on various multidisciplinary sources such as legal papers, government reports, and judgements.

Having identified these gaps, the thesis will then turn to proposing policy changes that can help fill them in Chapter IV of this research paper. The Chapter highlights the remedies, which if brought, can diminish, if not irradicate, the anxieties faced by the forest dwellers. The author thus argues that all the solutions are very well present within the existing law, which can be brought forth by bringing legislative changes. This will involve careful

consideration of the political and legal feasibility of different approaches, as well as an assessment of their potential impacts on forest dwellers and other stakeholders. The discussion reaches a conclusion suggesting induction of the elements of 'free and prior informed choice' before dispossession and seeks the security of appropriate rehabilitation to minimise the struggle. To effect such changes, the prerequisite condition of recognition of community rights has been proposed and the ways to implement that have been suggested. The chapter thus sets the stage by proposing the conceptions which can be brought by the State Government to address the issues faced by the forest dwellers.

Chapter V thus insinuates the legislative changes which can imbibe the solutions proposed in Chapter IV. The Chapter aspires to suggest specific viable legislation which can be effected at the State level. Possible policy changes that may be explored include legal reforms to strengthen protections for forest dwellers, the creation of new legal frameworks to recognise and protect customary forest rights and the development of participatory governance mechanisms that give forest dwellers a more significant say in decisions that affect their communities. The suggested changes have been tested for viability and legal authority for the State to enact such legislation. The Chapter concludes while ruminating on the way forward for the Government, with a hope towards implementation of the changes suggested. By combining a rigorous analysis of legal frameworks and a deep engagement with the experiences of forest dwellers themselves, this thesis aims to make a valuable contribution towards understanding of the tryst of forest dwellers with the law in India.

SCOPE OF STUDY

The study aims to critically examine how the two-faced legislative framework in India has both allowed as well as limited forest dwellers' ability to secure their rights and safeguard their communities. Through the careful understanding of these laws, I desire to find critical gaps in legal protections and analyse the political and social factors that have led to the persisting anxiety of the forest dwellers despite several legislative reforms in their favour. Ultimately, the scope of this paper is to suggest legally viable policy changes at the State level that can result in closing these gaps and promoting greater fairness and equality for the forest dwellers, by minimising the problems caused to them due to the exploitation of their homeland. Ultimately, I plan to justify my suggestions as aligning with the desires and

requirements of the forest-dwelling community by relying on empirical data collected from the Bastar Division.

The laws discussed in this paper do not constitute an exhaustive list of legislations affecting the rights of forest dwellers, which are many and cannot be assessed in a single research paper. Also, the tribal polity in Chhattisgarh is afflicted with several problems, including Naxal infestation and frequently reported human rights violations. Including such a wide array of issues for discussion within this paper would not be possible. This research paper yearns to be a solemn study of law and legislative policy, with minimal indulgence in everyday hands-on concerns faced by forest dwellers. Some of the practical problems have been discussed within the paper, but only those which a change in regulation can solve. Thus, the scope of this paper is limited to assessing those laws which, in my opinion, cause large-scale dispossessions of land and forest, particularly in the State of Chhattisgarh, and which can be corrected through legally viable policy changes. The scope of designation to the terms ‘forest dwellers’, ‘forest’ and ‘dispossession’ would be as asserted earlier in the introduction.

RESEARCH OBJECTIVE

The main objective of this research is to comprehensively investigate the challenges and issues within the legal system that lead to the painful large-scale dispossession of forest-dwelling individuals or communities. By studying law, history and government data, this research aims to identify the loops within the law which make the process of dispossession a struggle between the State and the affected community. It thus aspires to propose effective solutions through legislative changes to make the inevitable process a win-win situation for all. The research seeks to justify the final recommendations by integrating stakeholders' opinions and perspectives through primary data analysis. The study is focused on the specific geographical area of the State of Chhattisgarh and thus experiments within the powers of the State Government to tweak the law to suit the needs of its vast population. The ultimate goal of this research paper is to formulate primed evidence-based legislative changes within the existing legal framework, promoting a more equitable and just system that safeguards the rights of forest-dwelling individuals and communities against large-scale dispossession.

RESEARCH QUESTIONS

This thesis seeks to address the following questions:

1. What are the major challenges and issues within the legal system that lead to large-scale dispossession of individuals or communities?
2. How have historical legal practices and government policies contributed to the current state of dispossession within the legal framework?
3. How can content analysis of relevant legal literature and historical data shed light on the key themes and patterns related to the laws causing dispossession?
4. What are the potential solutions that can address the problem of large-scale dispossession through legislative changes within the existing legal system?
5. How can meta-ethnography of multiple qualitative studies on dispossession in the legal system offer a comprehensive understanding and synthesis of existing research?
6. Can the loopholes within benevolent legislation be plugged solely and viably by the State Government through the exercise of its powers?
7. What legislative measures and instruments can be brought by the State Government to minimize and mitigate the trauma faced by the forest dwellers upon dispossession?

These research questions will guide the study towards a comprehensive understanding of the challenges related to dispossession within the legal system and inform the formulation of evidence-based legislative changes. Incorporating content analysis, meta-ethnography, and stakeholder-based approaches, along with primary statistical data collection, will contribute to a data-driven and stakeholder-informed exploration of the research topic. The focus on addressing dispossession within the framework of existing laws aims to advocate for positive change while ensuring the protection of the rights of vulnerable individuals and communities.

REVIEW OF LITERATURE

In this Internet age, a plethora of material is available for research on any subject or discipline. Like any other researcher, it was difficult for me to choose the literature that was aptly relevant to my focused topic of study. Several empirical, anthropological, cultural and social studies are available on the life and style of forest dwellers. Most of the research papers have shed light upon the pitiable plight of the forest dwellers and have discussed the

practical failure of the law in uplifting the most downtrodden class of society. Though these papers had no nexus with the research topic, they convinced me towards the need and necessity of authoring this paper. I aimed to identify the elements already existing in the law which can be better implemented to solve these troubles, which several eminent researchers have exhaustively pointed out. Thus, the first step was understanding how the 'historic injustice' came to be and has been a thorn for the forest dwellers for centuries.

The paper explores the history of forest dwellers in India since the ancient ages. The brief study of history aims to understand the effect of colonial law on the lives of forest dwellers, which could be better appreciated through the study of epics and sagas since the ancient forest-dwelling communities had not developed a system of recording through writing. The work by Romila Thapar is an excellent tool for deducing the socio-economic conditions of the forest-dwelling community through the interpretation of these Aryan mythologies (Thapar, 2001, 2003). The research paper and the book by Thapar on the history of India gives a basic outline of the opaque period in the history of forest dwellers. Thapar argues that forest dwellers have always been expandable in the eyes of the sovereign and that the relation between the forest dwellers and their habitat is in a continuum. Her work progressively demonstrates the effect of the dawn of civilisation on the nomadic tribes, followed by the establishment of States. The research by Suranjit K. Saha examines the processes through which the States emerged from within the tribal societies of the modern forest regions of east-central India and thus sheds light on homegrown political structures built by autochthonous leaders (Saha, 1996). This has been useful in understanding the thousand years in peace and the elements adopted by the sovereign in congealing their rule with the social structure of the forest dwellers.

The obscure history of forest dwellers also drew the attention of C.U. Wills, an India Civil Servant and the Commissioner of settlement in the erstwhile Central Province, who examined the governance structure prevalent in Chhattisgarh during the Medieval ages (Wills, 1919). Wills thus concluded that the weakness of central authority was an essential characteristic of medieval politics in and around Chhattisgarh. Thus, the monarchs kept their rule intact by sharing sovereignty with the forest dwellers and with minimal interference in their way of life. This resulted in peace and shared prosperity in the kingdom.

W.V. Grigson was yet another British Civil Servant who had scrutinised the history and plight of the forest-dwelling tribes before independence. He was appointed as the Aboriginal Tribes Enquiry Officer and came out with two books detailing the report from his enquiry. Grigson accounts for the life and living of the Maria Gond tribes, who predominantly reside in present-day Chhattisgarh (Grigson, 1949). It sheds light on their way of life, traditions and cultures, which have been considered sacrosanct from the ancient past and are uncompromisable.

Forest dwellers in Chhattisgarh were under a very loose command of any sovereign and thus had absolute autonomy over their personal and traditional affairs. However, with the advent of the British Empire and the commodification of the forest, the Crown introduced legislation to define the rights of the State and the liabilities of the forest dwellers. This led to the formulation of forest jurisprudence in India. Works by Brandis (Brandis, 1868, 1875) and Biden-Powell (Baden-Powell, 1874, 1875, 1882) can be regarded as the foundational stones for India's current jurisprudence of forest governance. They were primarily focused on extinguishing the rights of the forest dwellers and asserting proprietary rights over the forest by the State. The evolution of jurisprudence explains the outlook of the Government towards the forest dwellers. The introduction of the doctrine of eminent domain in India still echoes within the country's legal framework. These works and legislations introduced by the Crown and their effect on the forest-dwelling tribes have been profoundly studied by notable historians.

Madhav Gadgil And Ramachandra Guha have examined the history of forest use in India (Guha & Gadgil, 1989, 1993). It discloses the beginning of the resource use problems and sheds light on the effect of such commodification on forest dwellers. The authors predominantly chose to delve into the ostensible social changes against the backdrop of concomitant changes in patterns of utilising natural resources. Though the works of literature are not strictly legislative studies, they describe the growing need for the Crown to enter into the forest and thus formulate laws to regulate the part of the population that had never been regulated before. It provides a perception of the cause and effect of the application of laws by the Crown and thus helps in understanding the effect each phase of the law had on the forest dwellers.

Independent work by Ramachandra Guha sews the legislative framework with the history of its development (Guha, 1983b). The article concentrates on the historical process, whereby the traditionally held rights of the forest communities have been progressively curtailed through forest policy, management and development. It is a succinct account denoting the increasing need for wood by the British Empire towards the expansion of Railways and shipbuilding, leading to the formulation of the forest department in India. The second part of the paper denotes the continuance of the colonial forest policy even after the independence of India, concluding it to be remarkably invariant. Guha thus concludes that though the beneficiaries and reasons in both periods, pre- and post-independence, have been different, the impact on forest dwellers and their life-support systems has been uniform. When Guha had authored the article, there was no significant shift of law in favour of the forest dwellers, who continued to suffer under the repressive colonial legislation.

In a more recent study of laws, starting from the colonial era until the introduction of Joint Forest Management in India, Guha demonstrates the discourse from conflict to collaboration and thus displays the shift in forestry in India with a time-lapse (Guha, 2001). Guha elaborately assesses the jurisprudence propounded by Brandis and Biden-Powell vis-à-vis the goal of the imperial Government to commodify the forest for their economic gain. The study gives a detailed account of the resistance by several strata of society against the imposed law and thus describes its effect on forest dwellers. The paper gives ‘two cheers’ for introducing Joint Forest Management in India by National Forest Policy 1988, calling it the ‘politics of collaboration’, a significant deviation from the earlier adopted ‘politics of blame’. However, in conclusion, Guha envisions the next and final phase of forestry in India to be the ‘politics of partnership’, whereby, unlike the JFM in which the Forest Department governs the terms, the forest governance would be more democratised and the State would be willing to share its sovereignty. While Guha has rightly declared the century-old history of state forestry in India to be a failure, the introduction of subsequent laws has further given the tools for implementing the fourth phase he envisioned. The study of the change in law and jurisprudence after the National Forest Policy, 1988 will further trace the development of the law, with an aim to find ways for triggering the fourth and final phase of forestry.

An even more recent work by Guha reflects upon the concerns of mining over forests and the loss of ecology (Guha, 2012). The paper reflects upon the plight of the forest and forest dwellers due to the depletion of their resources. While reflecting upon the loss of forests due

to rampant mining, Guha now comes out with a fifth possible scenario of the complete depletion of forests and eviction of forest dwellers due to increasing consumerism and demand of the economy. However, he rarely discusses the legal provisions and seems ignorant of the FRA, 2006. Though the paper provides some profound insight into the threats of autocratic mining, it is not a legal analysis and thus needs to be supported by a legislative study.

Ranjit Guha presented some strong subaltern ideas and narratives of the resistance by the peasants in Colonial India, touching upon the revolts by the forest dwellers against repressive laws (Guha, 1983a). The book is a collection of more than 110 peasant insurgencies against the social situation created by the British Raj. In addition to the other works, Guha describes how the laws crafted and used by the British Government to expel and subdue the forest dwellers from exercising their ancient rights over the forest. It gives an insight into the development of jurisprudence against forest dwellers, which continued with the enactment of the Indian Forest Act, 1927 and its adoption after independence.

Amongst the contemporary thinkers and researchers in the field, Nandini Sundar has made valuable contributions towards deciphering the history of forest commodification in India (Sundar, 1997). Sundar was one of the experts to have deposed before the Joint Parliamentary Committee burdened with drafting the FRA, 2006. To add to her expertise in the field, her work has been even more enlightening for this paper since she has conducted significant research in the geographical area concerned with the scope of this study. The manuscripts by Sundar highlight the practical problems and present strong opinions against the violation of fundamental human rights, particularly engaging with the plight of forest dwellers in Bastar. Her work has successfully sewed the study of the anthropology of tribes with that of their tryst with history. Sundar presents a vivid history of Bastar during colonial times and explains the social factors responsible for significant revolts in the area (Sundar, 2001). It is an excellent account for understanding the forces at play in Bastar during the colonial period and the reaction of the forest dwellers towards such changing forces. Sundar's literary portfolio comprehensively narrates the lives of the forest inhabitants in Bastar, spanning from the pre-colonial era to the present-day Naxalism crisis. However, these works primarily focus on the practical challenges faced by forest dwellers and are more of a sociological study than a legal one.

On the specific history of Bastar and the revolt against the British Raj, Shukla has done a phenomenal job of describing the geo-political situation of the area during colonial rule and gives a vivid description of the biggest revolt against the British Raj in India (Shukla, 1991). The text reveals the forest dwellers' frustration towards the Crown's imposition of laws, which interfered with their traditional way of life. This reflects upon the reasons and beginning of the tryst of the forest dwellers with the law, which was propagated with an ulterior motive of their eviction and deprivation and continued to be so for several years even after independence.

Though the colonial period was one of the worst eras in the history of forest rights, Verrier Elwin, a British Missionary, has been lauded as a hero for the cause of the forest dwellers during and after the British Raj. His works (Elwin, 1935, 1936, 1941) present vibrant accounts of his interaction with the forest dwellers, specifically in the now State of Chhattisgarh, and thus recorded the feelings of the forest dwellers towards the imposition and introduction of law to curtail their freedom. As such, the work by Elwin has been a gold mine for researchers in understanding the narratives and plight of the forest dwellers, which tells the other side of the story. Elwin was the foremost commentator of Tribal culture in India, which was seldom recorded in their zest under government documentation. Thus, these narratives and anecdotes of his interaction with the forest dwellers in Chhattisgarh fill the cavity in history. It helps in understanding the initial reaction of the forest dwellers towards the introduction of laws and how the law became an enemy for the forest dwellers.

Akhileshwar Pathak has done a laudable job of tracing the history of forest legislations in India. Of all the literature reviewed for this paper, the work of Pathak has been most enlightening and close to the topic at hand, which is the study of the emergence of law governing the forest and forest dwellers (Pathak, 2002). Pathak explores the relationships between legal provisions and ideas on forests in colonial India and thus asserts that jurisprudence was frequently changed during the initial years of law formulation. He thus rightly concludes that “Beneath the grandeur of legal theories and principles, there was the strategic play of power and domination” in the formulation of colonial legislations (Pathak, 2002, p. 21). His work on the emergence of laws on forests in India during the colonial period explains the reasons behind crafting the law, which attained its peak through such refinement. The fundamentals of the jurisprudence governing the forest remain the same in India; thus, his work illustrates the reasoning behind its creation, which was purely exploitative in nature.

The study of contemporary legislation and literature brings with it different sets of challenges. While the study of history is static, the contemporary laws applicable towards the governance of forests and forest dwellers have been in their most dynamic form for the past three decades. The scope of this paper is particularly limited, and thus, I have endeavoured to pull ideas from various papers which are strictly relevant to the topic under study. The commentaries and works on the interpretation of the Constitution of India are ever-evolving since it is an organic law. Some of the research papers need to be revised and are centred towards just one law without considering the changing playing field after the introduction of subsequent legislation. There has been significant development in the law, which must be read together to identify and plug the gaps. However, legislation such as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is barely ten years old and is still too early to be categorically interpreted. The Forest (Conservation) Rules 2022 and the Chhattisgarh Panchayat (Extension to Scheduled Areas) Rules, 2022 have been introduced during the authoring of this thesis, which demonstrates the rapidly changing social forces and the highly dynamic nature of the changing landscape governing the field. There has been a change of Government at the Centre in 2014 and at the State in 2018, which furthermore brings about volatility in the legislative ideology. Thus, it is imperative to re-evaluate numerous research studies in light of recent changes in regulations, rendering them outdated.

Additionally, most studies concentrate on Pan-India laws, leading to a uniform analysis of the subject matter. These research works study the forest dwellers as being a minority, representing less than 9% of the National Population and hence do not consider them as a strong enough force to shift the law in their favour. However, my paper is focused on the State of Chhattisgarh, particularly the tribal dominated area of Bastar Division, whereby the forest dwellers constitute a majority of the population and thus have the political capability to demand laws to protect their interests. I could not find many research papers particularly undertaking the study of the State laws applicable in Chhattisgarh towards the dispossession. Though there are plenteous papers which have undertaken the study of the particle problems being faced by the forest dwellers in Chhattisgarh and much research has been done on identifying the reasons for the failure of the law, I aspire to keep the discussion of practical problems to the minimum and thus hope to propose legislative solutions to attain the achievable goals by suggesting the change of policy.

The inception of the recognition of forest dwellers as a special class of citizens stemmed from the supreme law of the country, the Constitution of India. The Panchasheel doctrine propounded by Nehru demonstrates the plight and demands of the forest dwellers in India at the time of its independence (Nehru, 1953). The ideas proposed by Nehru still resonate with the calls by the forest-dwelling communities towards the right of self-determination and self-governance. The short paper by Nehru has been the foundation for several research papers authored in search of a solution for the rudimentary predicament faced by forest dwellers. I too have banked upon the doctrine of Panchasheel as still being the correct solution towards the tribal problems, despite a lapse of more than 70 years since it was proposed. The history of the framing of the Constitution of India is exceptionally well recorded in the Constituent Assembly Debates (Constituent Assembly Debates, 1946, 1949) and thus sheds light on the discussions by the first leaders of the independent country. The role of Jaipal Munda in bringing forth the voice of the secluded tribes of the country to the forefront of debate has been commended and relied upon to show the gap between the existing law and the law demanded during the framing of the Constitution of India. The work by Iyengar, Menon and Rao elaborates the Constituent Assembly Debates with the papers of the committees constituted before discussion and thus provides a deeper insight into the issues and thus helps in understanding the outcome (Iyengar et al., 1966). These historical tools have been essential in shaping the interpretation of the law to find solutions within the existing framework.

After recognising the special class of Scheduled Tribes under the Constitution of India, there were no particular legislations for forest dwellers' distinct improvement for almost 46 years. The Panchayats (Extension to The Scheduled Areas) Act, 1996 was the first piece of legislation to give special treatment to the forest-dwelling communities residing within the tribal-dominated Scheduled Areas and thus aimed to devolve self-governance through its enactment. Apurv Kurup has criticised the Panchayats (Extension to The Scheduled Areas) Act, 1996 and has called it a failure due to the “top-down approach of decentralisation adopted in the Indian Constitution” (Kurup, 2007, p. 97). He argues that the Act, 1996 and the Fifth Schedule to the Constitution of India are flawed since they “delegate the management of natural resources to tribal communities, without divesting control or ownership by the State” (Kurup, 2007, p. 97). Kurup thus contends that without according the rights over resources, mere devolution of management rights would not attain its true purpose. The author has relied upon the provisions of the Land Acquisition Act, 1894 to

criticise the unfair procedure adopted in the acquisition of forest lands and thus has pointed out that there is no protection under the Act from such coercive action. Kurup rightly points out that the ambiguity towards 'consultation' within the Act,1996 "lowers the standard for ensuring procedural safeguards", which frustrates the purpose of the provision. The author advocates autonomy over decentralisation, which he equates with mere power delegation. It is one of the rare papers which examines the flaws in the law rather than blame the administration for its implementational failure. Such an approach by Kurup has inspired this paper. The Research has minimal discussion of practical problems but focuses on the legal changes that can solve forest dwellers' difficulties. Kurup has proposed "freedom within the law", which has furthermore struck a chord with my idea for this research (Kurup, 2007, p. 97). However, though the paper was published in 2008, yet the landmark change in the legislative landscape with the introduction of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006 has been primarily ignored by Kurup while assessing the Panchayats (Extension to The Scheduled Areas) Act, 1996. The Act, 1996 can no longer be read in solitude. Hence, the work by Kurup needs to be revisited, with much water flown under the river since then. The heavily banked suggestion by Kurup towards recognition of rights over property in commons has already been implemented by the Act, 2006, and thus, though the paper provides some foundational ideas, it has to be reworked in light of subsequent legislative changes. Similarly, between 1996 and 2006 other researchers have exclusively studied the Panchayats (Extension to The Scheduled Areas) Act, 1996 in isolation without factoring in its increased efficacy after the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, which does not reflect the current State of the law.

A study by Participatory Research in Asia ('PRIA') has examined the applicability of the Panchayats (Extension to The Scheduled Areas) Act, 1996 specifically in the State of Chhattisgarh (PRIA, 2004). Several laws govern the Panchayat structures in Chhattisgarh, which have been concisely discussed in this paper. The research has painstakingly endeavoured to put together the pieces of various legislation and thus interpret the law in such cross sections of their application, which is phenomenal. It goes on to show the complex web of regulations created to govern what was supposed to be a simple structure for self-governance. The analysis of the study irrefutably leads to the conclusion that such a complex legislative entanglement fails to serve the needs of the forest communities, who were comfortable with their non-institutionalised governance structures. Though the paper could

not take into account the recently promogulated Chhattisgarh Panchayat (Extension to Scheduled Areas) Rules, 2022 and thus needs a reassessment, the literature rightly slams the failure of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 in implementing the spirit of the Panchayats (Extension to The Scheduled Areas) Act, 1996 in Chhattisgarh.

Choubey discusses the Bill brought to amend PESA during the UPA regime, which the incumbent Government has put on hold. Though the discussion is predominantly academic due to the improbability of its enactment, it gives some insight into the role of the State in enforcing PESA (Choubey, 2015). The author criticises the proposition to leave the determination of the process of taking prior and informed consent to the State Government, which is under the assumption that the State would fail to formulate a fair scheme. However, this research paper relies on the State Government to enact the provision of PESA to induce and affirm the elements of prior informed consent as law through exercising its powers under the Act. Furthermore, the author applauds the proposed supervisory role of the Central Government in overruling the legislative actions of the State, which is contrary to the current State of affairs. The only point I could concur with the author is in appreciating the provision of the proposed amendment, which seeks to bring all Central and State laws in conformity with PESA.

M. Arora Relan narrates the intricate history behind the demand and implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The research is an excellent literature to grasp the aim and objective of the Act, 2006 and enunciates the fundamentals of the Act. It analyses the Act, 2006 in both negative and positive ways, while giving a glimpse of the implementational issues encountered by the forest dwellers. Nonetheless, Arora concludes by accepting that “The Forest Rights Act gives communities a political space in forest governance” while observing that “even in the best of times, an honest bureaucracy, a good and evenly distributed forest cover, a peaceful and vibrant civil society, political leaders concerned about the welfare of others, the implementation of the Act, at least in spirit, is a formidable task. But these are not the best of times and, in fact, the situation in most parts of tribal India is dismal” (Relan, 2010, p. 485). Though the study was done in 2010, which was before the major overhaul of the law in 2012, yet it has traced the history of the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, which helps in decrypting the struggle and objective behind the Act.

B. Satpathy traces the history of the development of law and the degradation of the autonomy of forest dwellers with the introduction of legislations (Satpathy, 2015). The author criticises the policies governing the forest and its dwellers as being ad hoc in nature, without clear priorities and excessively bureaucratic in nature. The author calls out the laws as rhetoric, whereby due to the tussle between the State and the forest dwellers, the latter are kept away from planning and implementing the legislation. However, Satpathy criticises the law without finding solutions. Moreover, the author could not congeal the legislations to define the paradox and hence needs reconsideration.

M. Bandi has focused on assessing the implementation status of the Act, 2006 in Chhattisgarh and provides a brief history of the local legislations applicable in the State before the introduction of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Bandi, 2012, 2014). While assessing several practical problems towards implementation of the Act, the author concludes to include the issue of undemocratic and unfair means adopted by the State, which is sought to be addressed in this paper. Bandi has also called for adopting the law as suggested by the Joint Parliamentary Committee, with which I agree (Bandi, 2016). However, Bandi has focused only on one law and thus needs to provide the complete picture of the rights available to forest dwellers. The studies are not an in-depth study of the legal provisions and thus fail to suggest any legislative measures to cure the problems.

C.R. Bijoy, S. Khanna and S. Gopalakrishnan have done an intricate study of numerous struggles faced by forest dwellers, including the examination of the rights and deprivation of land, natural resources and environment (Khanna et al., 2010). The study primarily examines Indian laws and policies “through the lens of the values and spirit of international law on the subject” (Khanna et al., 2010, p. 51). The study traces the applicability of the label of ‘indigenous people’ to the tribes in India, which has been a hitch in the apposite applicability of international instruments in the country. Evaluation of Central laws is sufficiently backed by the assessment of Judgements delivered by Constitutional Courts and hence aspires to integrate the elements of International Law through its interpretation. Thus, the report aspires to assess the extent to which the Indian political and legal situation conforms to the principles of equity, self-governance and justice enshrined under the international instruments and discovers it falling short of its international obligation. Since the underlying purpose of the

report is to examine the implementation of international obligations in the Indian scenario, the literature lacks a deep analysis of the national laws. Moreover, the scope of the study is very wide, touching upon a lot of subjects, and thus only has touching reference to the relevant laws rather than its profound scrutiny. Though the suggestions to include free and prior informed consent have been made to be included in State and Central legislations, the recommendation does not propose or define as to how the same is to be done. While the report demonstrates the position of regulations in India vis-à-vis the international instruments, it falls short of thoroughly examining Indian laws and thus fails to validate the means to implement its suggestions.

A.K. Hazra proposed the idea of giving precedence to the recognition of common rights over the forest land rather than focusing on private rights (Hazra, 2002). He stated that "common property is a way of privatising the rights to use a resource without having to divide the resource into individual holdings" (Hazra, 2002, p. 4). While most of what had been suggested towards property rights over forest land and resources have been incorporated under the Act, 2006, and the underlying landscape of discussion has changed since 2002, the idea of giving precedence to common ownership or individual ownership, in my opinion, still holds water. This has been foundational in my suggestion towards immediate recognition of community rights. Hazra also suggests that 'Multiple stakeholder negotiations' is a way of resolving multiple interests, but does not elaborate upon how this can be achieved nor proposes any change in legislation towards this. Other researchers have towed his ideas and developed models to suggest the means and ways of Multiple stakeholder negotiations. Desor has also conducted research specifically on the recognition of Community Forest Rights, which elaborates on the pre-recognition and post-recognition scenario of the implementation of the Community Rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Desor, 2013). The research finds that the forest-dwelling communities can possibly assert their authority by participating in the decision-making process towards the acquisition of forest land if the community rights over their traditional lands are recognised under the Act.

Punj presents an analysis on the RFCTLARR Act, 2013 vis-à-vis the promise of 'partners in development' under the preamble of the Act (Punj, 2017, p.155). The author presents a brief study of the provisions of the Act to ascertain the trickling of the benefits of the acquisition to those who have been displaced for development. He asserts that consent, participation and

sharing of benefits are the foundational requirements for the notion of partnership and thus tests the provisions under the RFCTLARR Act, 2013 to assess its coherency to the assurance under the preamble. Punj is also inspired by the works of Cernea and condemns the Act for depriving the forest dwellers of their self-sufficient and self-sustaining livelihood. I concur with the Punj, whereby the Act has been disparaged for lack of provisions towards restoring the autonomous ecology of the forest dwellers. The general administrative schemes of rehabilitation do not suit the needs of the forest-dwelling population, and thus, the requirement of a specific rehabilitation policy through risk assessment is a must for such a distinct class of population. The author thus criticises the Act for considering rehabilitation as a one-time affair, failing to restore the social and economic organisation. The literature has sought to read the Act in light of the postulations floated by Cernea and finds the legislature lacking. The research paper focuses only on a single Act and does not consider the interplay of other legislations in governing the field. Also, there are no proposals for plugging the gaps in the legislation, which leaves scope for this paper.

The works by R. R. Iyer is not a scholarly research-based paper, but one which sheds light on the issues of rehabilitation borne out of the author's experiences while being under several official capacities towards the development and implementation of rehabilitation and resettlement policies (Iyer, 2007). The paper shows the resistance by the Governments towards a just and fair rehabilitation and resettlement policy and the prominent role of bureaucracy in stalling the same. The author, after sharing his experiences, contemplates that in the current scenario of the development policy of the State, a just and humane rehabilitation policy is hard to emerge. The author proposes that the elements of free and prior informed consent must be made a part of rehabilitation and resettlement and not only towards the limited purpose of compensation and acquisition. The author suggested some very advanced ideas towards the elements necessary for just Rehabilitation, which have been kept in view while formulating the conclusion for this research paper. Though this paper aspires to suggest measures to incorporate the long-standing requirement for just and fair rehabilitation, the paper could not have the advantage of having perused the RFCTLARR Act, 2013, which has to be considered.

Dr. S. K Panigrahi,. strongly argues that displacement is caused due to the uneven distribution of power, where those displaced are usually politically, socially and economically the most vulnerable sections of rural Indian society (Panigrahi, 2018). The

author adopts a broader definition of displacement to include both the loss of physical land as well as loss of livelihood, the former being caused primarily due to development projects and the latter also due to conservationist legislation. He contends that displacement for the tribal population is more gruesome than the civilised as they are more reluctant to resettle in project colonies. The author has also criticised the RFCTLARR Act, 2013, though he has not delved into the perils of exception and has not offered any solution for the gaps in the legislation.

The report by CFR-LA also reflects upon the lack of recognition of community forest rights, and the conclusion is supported by testimonies of stakeholders and experts (CFR-LA & AJAM, 2013). The nature of the report was to examine the problems faced by the forest dwellers through first-hand testaments and thus affirms the State's lack of interest in admitting community rights over the forest. The paper is enlightening since suggestions by communities have been incorporated in its conclusion, whereby the forest-dwelling communities preferred the immediate recognition of community forest rights and thus the view supports the conclusion suggested in this paper. In furtherance to this, a ten-year assessment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 by CFR-LA cites lack of political will as a reason for the poor implementation of the Act and thus calls for exerting political pressure towards seeking the apt realisation of the law (CFR-LA, 2016). Through quantitative analysis, the report reveals a massive potential for recognising community rights, which the Government has largely ignored. Though the study has been done on a national landscape towards a tribal minority, the suggestions are very much possible in the State of Chhattisgarh, where the forest dwellers constitute a significant population and thus can cause such pressure.

P. Sampat has evaluated the application of the doctrine of eminent domain in the context of dispossession and emergent land and resource conflicts in India, which she asserts to be imminent under various political and economic calculations towards the growing Indian economy (Sampat, 2013). While delineating the pre-constitutional history of the doctrine of eminent domain in India, Sampat reflects upon its contemporary usage to deliver lands to private corporations for capitalist interest. Sampat criticises the extraordinary nature of the power exercised by the Government under the doctrine of eminent domain, having “Extra-constitutional and pre-democratic moorings in India” (Sampat, 2013, p. 42). The study provides a succinct insight into the land acquisition laws in India, which are all fundamentally based on the doctrine of eminent domain. When the paper was published, the

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was just a bill and had not been passed in its current form. However, Sampat has discussed the history leading up to the formulation of the Bill, which shows the tussle between the industrialists and stakeholders, ultimately resulting in the legislation's dilution. The significant exceptions under the Act, 2013 have not been discussed in the paper, which changed the entire narrative of the law upon its implementation. Commendably, Sampat has studied the provisions of the Panchayats (Extension to The Scheduled Areas) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to assess the role of the "Third Tier of Democracy" in pushing against the unilateral exercise of power by the State. Sampat argues that the power of eminent domain contradicts the purpose of decentralising governance while overriding the statutory requirements and diminishing the sovereign nature of local bodies. Though the examination of the law is very limited in the literature, Sampat concludes that "in Principal, and in limited practice" the Fifth Schedule to the Constitution of India, the Panchayats (Extension to The Scheduled Areas) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 have the potential to bring affairs of the State more directly under the control of the citizens and thus reflects upon a possibility of local measures being used to contain the excessive powers of eminent domain (Sampat, 2013, p. 45). However, Sampat cautions that without a well-defined framework and reliable safeguards, there can be legal inconsistency regarding protecting the rights of individuals and communities subjected to forced acquisition. She thus calls for prior informed consent to be included in the law regulating forcible acquisition, which must not be limited to compensation or the appropriate determination of public purpose. With a limited examination of relevant laws and judgements in her paper, Sampat concludes, "Unless such framework is elucidated, clearly the power of eminent domain cannot be challenged in a court of law" (Sampat, 2013, p. 45). Thus, Sampat leaves the possibility of further research to suggest frameworks that can curtail and contain the power of eminent domain by changing the law at the local level. This would be the endeavour of my research.

A book by scholars of Delhi University titled 'Abandoned: Development and Displacement', sheds light on the actual experience of the forest-dwelling population at the dawn of the implementation of the FRA, 2006, rooted in the search for the justification for the loss of indigenous land in the name of development. Even before the implementation of the FRA, 2006, the literature blamed the implementation rather than the law for the failure that led to

the infringement of rights and struggled displacement due to development (Saxena, 2008). The book criticises the doctrine of eminent domain under the then-applicable Land Acquisition Act, 1894 as a blunt instrument of dictatorship, without any regard for the loss of life and livelihood of those dependent on these lands. The use of the doctrine for causing private profit by stretching the all-encompassing definition of 'public purpose', which has been condemned in the compilation, still resonates, even after the change of colonial law. The literature does not suggest concrete legal steps to solve the issues highlighted through their experiences. While the book sheds light on some of the persisting issues, the authors did not have the advantage of considering their experiences in light of the law introduced therefater.

N. Wahi and A. Bhatia have conducted an excellent data-based study on the Legal Regime and Political Economy of Land Rights of Scheduled Tribes in The Scheduled Areas of India (Wahi & Bhatia, 2018). This National study on the overlap between the Scheduled Area and land required towards economic development presents a startling finding of the current and imminent threat of the acquisition of forest lands. The report uses maps to examine the overlays of these areas with forests, dams and mines land-intensive developments that may potentially cause displacement of individuals and groups residing therein. The literature succinctly traces the change of policy towards the forest, forest dwellers and acquisition of forest land from the colonial era to the current time. It thus provides a road map to witness the "development through integration" and "identity-based isolation" narratives adopted by the State (Wahi & Bhatia, 2018, p. 19). Though the research paper has been a significant instrument in asserting the need for legislation to protect the rights of forest dwellers in the face of inevitable displacement, it does not suggest any policy changes to cushion the blow. The study is primarily empirical and serves its purpose by validating the significance of this research.

The Nobel prize-winning work by E. Ostrom breaks the colonial stereotype of conservation through exclusion. It thus has inspired suggested the model for the participation of the community in decision-making (Ostrom, 1990). The author examines the rights over common water resources through various case studies and thus formulates a framework for analysis of self-organising and self-governing Common public resources. The research instils confidence in the community entitled to enjoy the resources to be its best guard against exploitation and thus advocates their active and fervent participation in any decision-making concerning the

same. Green gives a glimpse of the possible positive outcome in the State of Chhattisgarh through community engagement (Green, 2015).

The study done by K.S. Shrivastava, S.G. Bhagya, T. Worsdell is concise yet contemporary in expolring the inter-legislative landscape governing the rights of forest dwellers in land acquisition (Shrivastava et al., 2020). The Authors aspire to find the elements of free and prior informed consent within the existing legislation and thus advocate for its strict application before the acquisition of forest lands in India. The study accurately argues that subverting the provisions requiring consent from the affected forest-dwelling communities during land acquisition results in conflict. The paper finds such subversion to be through "the lack of implementation of relevant laws; the violation and undermining of those laws; the curbing of the ability to bargain or give free consent; or through disingenuous acts that conceal or falsify information during the process of seeking consent" (Shrivastava et al., 2020, p.21). The investigation thus reveals the grim reality of the concealment of information and falsification of the consent, thus exposing the on-paper consent as a mere façade. This provides a gap for finding ways to prevent such subversion of the provisions already existing within the legal framework. However, the research paper indulges in the debate between 'consent' and 'consultation', while ardently arguing for the former. This activist idea of superseding eminent domain by suggesting the grant of power to the forest dwellers to veto the land acquisition has failed to solve the problems within the existing jurisprudence and legislation. I aspire to overcome this debate in my suggestions and thus prescribe such changes which can balance the FPIC and the powers under eminent domain. Since the study championed the necessity of consent over consultation, it has failed to deeply deliberate upon the extraordinary powers of the community and local bodies to seek participation in the decision-making process under the Panchayats (Extension to The Scheduled Areas) Act, 1996. Moreover, the research paper fails to assess the impact of the exceptions under Section 105 read with the Fourth Schedule to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which cannot be ignored as being the legislation's Achilles heel.

The difficulties of legal anomaly under the Indian legal system in both protecting and dispossessing the forest dwellers have been discussed by Kannabiran, whereby she adopted a broader definition of dispossession to include "the wrongful occupation/ usurpation /transfer/usufructuary rights of lands in scheduled areas to individual non-tribal occupant"

(Kannabiran, 2016, p. 92). She argues that the idea of proprietorship for the tribals is not as simple as that for the civilised and is not limited to physical ownership, which could be replenished through compensation. She also touches upon the issue of the right of religious freedom guaranteed under the Constitution of India, which is dependent upon the territorial rights of the forest dwellers and is violated by their dispossession. The author thus asserts that the right to liberty for the forest dwellers is expressed in terms of their territoriality and thus calls upon the need to read all the concerning legislations, thus conferring rights and causing dispossession through transformative constitutionalism and hence creating a mandate over the State to protect these rights. Though the research paper lacks any particular solution to such a legal anomaly, it points to it for further research.

Such impasses between the legislation have also been discussed and reflected upon by M. Sarin, whereby Sarin has discussed the logjams of the laws which contradict each other, ultimately resulting in the failure of the decentralisation of the power to the forest dwellers (Sarin, 2005). She has critiqued the Joint Forest management and thus sought democratic management of forest by the forest dwellers. While the research paper criticises the legislation, it also deliberates on the practical difficulties in its implementation on the ground. However, soon after the paper, the FRA, 2006 was introduced, which has plugged most of the gaps in law as pointed out in the paper, n acknowledged in the Postscript and now added to the research paper.

I am incredibly impressed and influenced by Michael M. Cernea in formulating schemes towards fair rehabilitation and resettlement and have adopted the spirit of his suggestions in this paper (Cernea, 1996, 2000, 2007, 2008). Cernea has done exceptional and landmark work in the field of studying the impact of displacement and thus has postulated some fundamental ideas for mitigating the trauma of dispossession by proposing models for just and fair rehabilitation and resettlement. The most striking feature of his papers, which is also the foundation of this research, is that he accepts that displacement and dispossession are inevitable for development and thus seeks to minimise and, where unavoidable, formulate principles to mitigate the trauma of the impact (Cernea, 1996). Cernea has often cited examples from India to show the difficulties of the disadvantaged class in facing displacement, which pushed them towards impoverishment of several forms, including landlessness, joblessness, homelessness, loss of access to common property resources and community disarticulation, i.e. loss of valuable social capital. While the author accepts that it

may not be feasible to prevent all the adverse effects of dispossession, he formulates the Impoverishment Risks and Reconstruction (IRR) model "to put in place sets of procedures, backed by financial resources, that would increase equity in bearing the burden of loss and in the distribution of benefit" (Cernea, 2000, p. 3670). The model encourages the participation of the affected community in searching for the risks that they could face due to dispossession and thus requires the State to formulate the rehabilitation policy to specifically mitigate the risks of converting into impoverishment. Thus, the risk assessment is not an academic exercise but has to be done for every individual project to design the action for risk reversal (Cernea, 2000). In his later work (Cernea, 2008), he criticised the Compensation principle under the doctrine of eminent domain while asserting that compensation can, at best, only provide for past asset replacement and not for the potential growth and the loss of social capital. He thus has suggested that those who give their land for development must be considered as 'investors of equity' in the project, and thus the proceeds from the development should account towards continuous support in rehabilitating the economy and social structure of the dispossessed (Cerena, 2007, p.1040). To some extent, the ideas floated by Cernea have been included in the RFCTLARR Act, 2013 under the Social Impact Assessment. However, the study of the Act, along with its exceptions, under the Indian scenario of countervailing legislation must be done. The fundamental idea behind this paper is to formulate the spirit of just and fair rehabilitation suggested by Cernea through legislative functions.

My model of suggestion towards shared sovereignty and deliberative consultation is significantly inspired by the work of A. Kodiveri, whereby the author has drawn her conclusion based on the interviews with forest-dwelling communities and their aspirational legal interpretation of the consent provision (Kodiveri, 2021). Kodiveri observes that the provisions relating to free and prior consent exist within the Indian legal framework, which has the potential to realise the right of self-determination of forest dwellers. However, her investigation finds the State as a "pro-business or extractive state, the police state, and the paper state and absent in its deliberative form", whereby the requirement of consent has been ruined to be a mere paper formality to be checked off from the list of requirements (Kodiveri, 2021, p. 29). The author convincingly argues that such a reimagination of forest law and governance can repair the relations between the state and forest-dwelling communities on aspects of development and conservation. The investigation finds that forest-dwelling communities' interpretation of the right to self-determination does not involve rejecting the formal State. Instead, it entails a carefully designed way of interacting with the State,

including the right to self-government and autonomy. Thus, the study encourages reading the provisions mandating consent as not merely being reduced to a binary decision between 'yes' or 'no' but one requiring the State to listen to the aspirations and grievances of the forest dwellers in formulating the governance strategies. This is a different approach from the age-old debate between 'consent' and 'consultation' and instead finds a mid-path which entails the indulgence of communiqué between the parties involved in the land acquisition to understand each other's perspective. This has been termed as shared sovereignty by the author, whereby the actions depend on the final outcome of the negotiations between the land losers and the requiring body, with the State playing a more neutral part as an arbiter in the entire process. The author suggests "institutional pathways to overcome the structural imbalance experienced by forest-dwelling communities" in their negotiations and dialogue with the State. Under the suggested model, the State shares its sovereign power of eminent domain with the stakeholders and takes into account their anxieties and demands before exercising its authority (Kodiveri, 2021, p. 5). Under this theoretical framework, the assertion of sovereignty by the State and the claim of autonomy by the forest dwellers can interact and co-exist, which is worth exploring. The pathways suggested by the author are worth a visit while formulating the laws incorporating the suggestion in my paper, but are out of the scope of the current study. Nonetheless, though the thesis shows a feasible architecture for this deliberative governance based on nodes and forums and encourages the reimagination of the laws to adopt the suggested model, the author has not indulged in proposing the legislative modifications to bring about such changes. Kodiveri places sole reliance on the TAC and the Governor to implement the suggested transformations, which is shortsighted. Though the entire investigation is focused on the dispossession of forest dwellers, the author does not discuss the provisions under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Nevertheless, Kodiveri acknowledges the need to entrench the proposed deliberative circuit while reconciling the legislations and expresses her anxiety about its impossibility at the National level. Thus, my research is in furtherance to the ideas suggested by Kodiveri in this brilliant paper and aspires to suggest legislative measures at the State level to incorporate the recommendations.

Another piece of literature which gave me the conviction towards my chosen area of research, both in its scope and geography, is the study by Ajit Menon, whereby law has been regarded as an essential tool for achieving the demands of the forest dwellers (Menon, 2007). Despite the practical issues faced in implementing beneficent legislations, Menon suggests

that the law can be further used to bring change through a shift in both legal and political space. The ideas proposed by Menon formulated the scope of my research, which focuses on suggesting legal measures to solve the anxiety of forest dwellers. In this short paper, Menon defines the law as "not autonomous" and a contested domain "often shaped by different social forces" (Menon, 2007, p. 2242). This observation gave me confidence towards my chosen geographical area, the State of Chhattisgarh, where the forest dwellers constitute a significant majority of the population and thus have the political power to sway the social forces in their favour. Though the article by Menon is concise and crisp, it has had a foundational effect on my research.

It is with this again affirmed that the research undertaken by me is purely legal and would seldom indulge in examining the practical and implementational problems faced by the forest dwellers or pondering over solutions to such hitches. Though I have reviewed abundantly available literature on implementational failures, I have entrenched those problems within this paper which can be solved through legislative changes. Moreover, studying the ground realities of the difficulties forest dwellers face in realising their existing rights has fueled my conviction to work on this topic.

Any examination of the laws governing forest dwellers would be incomplete without the thorough study of the Report of the High-Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities of India, commonly referred to as the Xaxa Committee Report (Xaxa Committee, 2014). Out of several committees constituted by the Government of India to examine the life and living of the Tribal Communities in India, the report by the Xaxa Committee is the latest and all-encompassing, with an elaborate discussion on the acquisition of forest land. Three chapters of the report, namely 'Tribes: Legal and Administrative Framework', 'Land Alienation, Displacement and Enforced Migration' and 'Legal and Constitutional Issues', provide ample awareness of the problems unearthed by the Committee, which are relevant to this study. The report is very progressive in acknowledging the mandatory nature of the Rehabilitation and Resettlement of displaced forest dwellers and backs the provision of 'land for land' in every such acquisition of land in Scheduled Areas. The report highlights major practical problems faced by forest dwellers, which helps in understanding the gaps in the law. The Committee considers the rampant economic exploitation of the forest and thus expresses its anxiety against the frequent MoUs and PPPs between the private players and the Government, which affects the neutral nature of

the State. However, the report majorly reflects upon the idea of implementation failure and fails to suggest any concrete change in the law to avoid such failures. Furthermore, the report suggests significant changes towards the Central laws and policies, which have not been implemented to date. Thus, though the suggestions by the Committee are applaudable, the purpose of this paper is to suggest local changes that can be implemented locally and immediately within the existing framework of Central legislation.

Virginius Xaxa has also authored several research papers on the issue of forest-dwelling tribes, whereby in one Xaxa transverses into the issue of the identity of forest-dwelling tribes in India through the ages and thus reflects upon the forceful attempts to assimilate the forest-dwelling tribes with mainstream society (Xaxa, 1999). He criticises the Sanskritisation of the tribes and points out the significant anomalies faced by the tribes under such Hinduisation, whereby they have nothing to gain by adopting the Caste-based stratification. The author thus, while discussing the distinction in language, the heterogeneity in their social structure and the social differentiation, sheds light on the unique nature of the tribal society, which cannot be stratified under the Caste system and thus gives an insight into their special status.

Another elaborate assessment of the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been conducted by the Joint Committee appointed by the Ministry of Environment and Forest and Ministry of Tribal Affairs, termed as Manthan (Report of National Committee on Forest Rights, 2010). As the title suggests, the Committee was tasked to deliberate the changes in law and policy that were to be brought for better implementation of the law, which, to some extent, culminated in the major overhaul of the law in 2012. Though the report is voluminous and covers several aspects of the law, for the purpose of this paper, what can be derived is its emphasis on the significant role of the Ministry of Tribal Affairs in monitoring the application of the law. The report stresses recognising community rights over the entire area, which is of traditional use to the community. Though the report was presented by the Committee that the Government itself constituted, several of the recommended changes in law and procedure have not been adopted or implemented by the State. Moreover, the report mostly suggested changes in Central laws and did not indulge in suggesting provincial legislative measures.

Patnaik studied the framework of the Panchayats (Extension to The Scheduled Areas) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 while drawing a parallel with the ground realities in its implementation through case studies and data (Patnaik, 2013). Though the paper is not an in-depth study of the relevant laws, it exposes the shortcomings of their implementation due to a lack of prescribed procedural solicitation. Most of the research is limited to a specific geography and concentrates on how the law has been ineffective in the State of Odisha.

The most exhaustive research on the particle problems faced by forest dwellers in Chhattisgarh has been done by the Scheduled Castes & Scheduled Tribes Research and Training Institute (SCSTRTI), Bhubaneswar (SCSTRTI, 2013). The study relies upon primary data collected through field investigation at Dhamtari, Korba and Bilaspur in Chhattisgarh and thus identifies the hindrances in the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. It has endeavoured to identify the gaps between the objectives of the Act, 2006 and the ground realities of its implementation, which presents a possible scenario for filling up such gaps as has been suggested in this paper. The paper primarily focuses on identifying and examining practical issues faced by the forest dwellers in enjoying the benefits of the Act, 2006 such as inadequate awareness of the law, usurping the power by Panchayat, bureaucratic interference and procedural lapses, which are not covered within the scope of this paper. Nonetheless, the study offers suggestions for the implementation of community forest resource rights backed by a proper planning process at the state and district level, which has inspired the suggestions that I have proposed. However, since the study is more inclined towards identifying the practical problems and suggesting implementational solutions, the suggestions under the paper for the State of Chhattisgarh need a more concrete examination of legislation. Moreover, the research focuses on only one law and fails to examine the interplay between other beneficent legislations. Thus, though the study proved to be a vital tool to comprehensively identify the practical problems a policy change can solve, it has not suggested any legislative measures to effect such changes.

RESEARCH METHODOLOGY-

As a researcher, I aim to conduct legal research that culminates in a recommendation for policy change. For this, I employ a multi-faceted and systematic approach, combining content analysis, meta-ethnography, and a stakeholder-based method to clearly understand the issues within our legal system and propose effective solutions through legislative changes. The principal research question focuses on exploring the complexities of the legal system and investigates how changes in the law can offer viable solutions. My study will primarily examine existing legal frameworks, policies and regulations, within its scope, to identify the gaps and inconsistencies therein. I will primarily rely on secondary sources such as academic articles, legal documents, government reports, policy papers and information obtained under the Right to Information Act, 2005 to assess these gaps and inconsistencies amongst the laws themselves. I will perform content analysis on pertinent legal literature and historical data to identify key themes, patterns, and underlying issues prevalent in the legal system. This content analysis will offer a comprehensive overview of the historical context and the evolution of the legal framework, enabling a deeper exploration of the problems and potential solutions. Moreover, meta-ethnography will be conducted to synthesise and compare multiple qualitative studies related to legal reforms. This synthesis will provide a higher-order interpretation of findings, allowing for cross-cutting themes and a comprehensive understanding of the existing research landscape. After assessing these gaps and thus finding the elements required to fill them, I will suggest changes in policy which can minimise the anxiety of the dispossessed forest dwellers. Based on the synthesised findings, I shall propose specific legislative changes aimed at addressing the identified challenges. These recommendations will be substantiated by amalgamating stakeholder opinions and statistically significant data. Integrating primary data, content analysis, and meta-ethnographic synthesis will contribute to a holistic exploration of the research topic. Triangulation, by comparing different data sources and methods, will ensure the credibility and reliability of the research findings. Integrating primary data with existing literature will contribute to an equitable and efficient legal proposition, grounded in data and aligned with stakeholders' aspirations., aiming to create a more equitable and efficient legal system for the benefit of society as a whole. In conclusion, this research endeavours to cultivate a profound comprehension of the legal system's complexities while formulating pragmatic solutions through legislative changes.

I will use empirical statistics from the data collected from the concerned geographical area to support the suggestions made in this paper. During my research, I have focused on collecting data that can be analysed using statistical methods while using quantitative research methodology. I designed my study to include specific variables that I wanted to measure and have used standardised instruments such as questionnaires to collect data from a large sample of participants. These questionnaires were mainly yes or no based and seldom consisted of three options.

I have employed a cross-sectional survey across 7 Districts in the Bastar Division, selecting participants living in the forests of Kanker, Bastar, Narayanpur, Dantewada, Bijapur, Sukhma and Kondagaon. To ensure that the sample is representative of the subsisting population, I have used a random sampling method to select 50 participants from each District. Once I had collected my data, I used statistical software to analyse it and identify patterns in the variables. I often use descriptive statistics to summarise the data and understand its distribution. I have thus calculated the percentage of respondents who answered yes or no to each question and have conducted statistical tests to determine if there are significant deviations in satisfaction levels between different subgroups of forest dwellers. This method allows me to test hypotheses, make predictions based on statistical analysis, and draw conclusions based on empirical evidence.

GEOGRAPHICAL AREA-

The study and suggestions are focused towards the State of Chhattisgarh, the significance of which has been elaborately justified in the introduction. I have chosen Bastar in particular due to its preponderance of the forest-dwelling population, having been entirely classified as a Scheduled Area. The proposed legislative changes can be made applicable pan-state and may not be restricted to the geographical area of Bastar. The seven districts of study have been chosen only towards the empirical study and do not curtail the scope of the application of suggestions. For gathering empirical data, the sample coverage was designed to ensure a diverse representation of its population, with 50 participants selected from each of the different districts of Bastar Division, namely Kanker, Bastar, Narayanpur, Dantewada, Bijapur, Sukhma and Kondagaon. To select the participants, I used a random sampling method to capture a range of perspectives and experiences from different individuals and districts, while ensuring a sufficient sample size for analysis. This approach helped to ensure that the findings of the study are representative of the population under investigation.

STUDY INSTRUMENTS AND TOOLS

To thoroughly analyse the legal gaps and inconsistencies in the laws and policies, I will utilise a range of study tools to ensure that the study is comprehensive and systematic. I will use legal databases and official government websites to collect all relevant legal documents and policy statements related to the research questions. These documents will include legal statutes, cases, regulations, and policy documents, which will be analysed to identify the legal gaps and inconsistencies that exist within the laws and policies. I will also use the documents and data I obtained through applications filed under the Right to Information Act, 2005 while referencing my analysis. The assessment of the legislations is guided by the questions under consideration and thus seeks to find the elements of free and prior informed choice in dispossession and rehabilitation. Thus, I will rely on analytical tools such as content and comparative analysis to identify the legal gaps and inconsistencies, their impact on the legal system and society, and potential legal reforms to address them.

Empirical data will back the policy suggestion. As a researcher, I recognised the need to adapt my study instruments and tools to suit the needs of the participants, most of whom were not literate and were hesitant to answer my questions. The lack of trust and unwillingness to answer my questions about their internal affairs was apparent in my experience. In this situation, I had to use a simple and easy-to-understand questionnaire consisting of mostly yes/no questions. To make the questionnaire more accessible to the participants, I had to often take help from local NGO volunteers and translators so that the participants could understand the questions and answer them accurately.

I had to use open-ended questions during interviews to allow participants to express their thoughts and experiences in their own words. This gave me a better understanding of their perspectives and enabled me to understand their response to the questions. I had to explain the context of specific questions before recording their answers and thus had to depend upon locals who had built rapport and trust with them to facilitate such conversations. To ensure ethical research practices, I obtained informed consent from all participants and ensured their responses were kept confidential and secure.

To analyse the data collected, I have used descriptive statistics, such as mean, simple percentage and frequency distributions, to summarise the data and understand its distribution.

I have used visual data representations to demonstrate these variations and, hence to understand the ground situation. Overall, these study instruments and tools have allowed me to collect meaningful and accurate data from the participants while ensuring that their needs and perspectives are considered throughout the research process.

Ultimately, the study tools described above, along with my expertise as a legal researcher, will be essential in conducting a comprehensive and systematic analysis of the legal gaps and inconsistencies in the laws and policies of India and in identifying potential legal reforms to address them.

STUDY LIMITATIONS

As with any research study, certain limitations to my investigation should be considered when interpreting the findings. These limitations include:

Limited Scope: The study may cover only some of the laws and policies related to the topic of interest and may, therefore, provide an incomplete picture of the issue. Due to the complexity and sheer volume of laws and policies that may impact the issue, it may only be possible to examine some laws or policies related to the issue at hand.

Data Availability: The research may be limited by the availability of data, primarily since the study majorly relies on secondary data sources. Some information may not be publicly available or may be difficult to obtain. The data's veracity and validity may need to be revised, which may affect the result.

Generalisation: The study is limited in its ability to generalise the findings beyond the study's specific context. The results may only apply to the specific population or location being studied.

Bias: The researcher's biases and assumptions may influence the study. These biases may affect the interpretation of the data and the conclusions drawn.

Implementation: Even if the study suggests policy changes, it may be challenging to implement these changes due to political or practical constraints. Legislations governing

forest and forest dwellers have been frequently affected by changing social forces, and the proposals rely on these forces going in favour of the forest dwellers.

Time Constraints: The study may be limited by time constraints, which may prevent the researcher from examining the issue in depth or collecting sufficient data.

Lack of Stakeholder Input: The study has not consulted with all relevant stakeholders, such as policymakers or private corporations, which may limit the applicability and effectiveness of the proposed policy changes.

Changes in Law: The study may become outdated if laws and policies change after the research has been completed, making the suggested policy changes irrelevant or inapplicable.

Sample size: The empirical study's sample size may not represent the entire forest-dwelling population. As a result, the study's findings may not be generalisable to all forest dwellers.
Literacy and Social desirability bias: The empirical data may be tainted due to lack of literacy amongst the study group, and some respondents may have felt pressure to provide responses that they felt were more socially desirable or acceptable. This could have influenced the data obtained from the study.

Security Concerns: The security situation in some areas prevented me from accessing certain locations, such as deep in the jungles or areas where displaced communities were residing. This limited the scope of my study and prevented me from obtaining a more comprehensive understanding of the experiences and perspectives of forest dwellers in these areas. Furthermore, due to the sensitive nature of my research, I was advised by the locals to exercise caution in the types of questions I asked so as not to raise suspicion among the Maoist sympathisers or put myself in danger. This limited my ability to probe more deeply into specific topics and may have resulted in incomplete or superficial responses from some of the forest dwellers I interviewed.

Overall, while these limitations must be considered when interpreting my study's results, I believe that the findings provide valuable insights into the challenges forest dwellers face and the potential opportunities for intervention and support.

CHAPTER II

HISTORY OF FOREST RIGHTS IN INDIA

INTRODUCTION

Though India has had a significant forest cover since ancient ages and most of the population inhabiting the subcontinent were forest dwellers, little heed has been paid towards the rights of forest dwellers while developing the forest laws in India. The 'Historic Injustice' inflicted upon the Tribal Forest Dwellers stretches back to the ancient period of Indian civilisation. Due to the percolation of the races with the advent of time, the forest dwellers today may not fit the narrative of *Atavika* as characterised under ancient texts. Nevertheless, the assertion of supremacy and interference in the way of their life has been a consistent theme throughout the history of India. One may find it very hard to seek a historic account illustrating social and political reverence towards the rights of forest dwellers over the jungle, but would rather often find incidences of treating the forest as State property. The exploitative outlook of the sovereigns perceived the forest dwellers as enemies of the State for deterring such profiteering.

The forest dwellers have a rich historical and cultural past, going back to prehistoric ages. However, due to the lack of invention of a script and the absence of the tradition of recording through writings amongst the early settlers, only a little can be gathered about their ancient past. The description of tribal clans and forest dwellers can be studied only after the Aryan invasion of the Indian subcontinent and thus can be congregated from the Vedic Period onwards. The Vedic literature presents the earliest pictures of the society in Ancient India. Perception towards the forest dwellers during the classical age of the Maurya and the Gupta rulers can be deciphered from the several literary tools and epigraphs installed by the boastful monarchs.

The Ancient period was followed by the feudal medieval period, which saw the rise and fall of many kingdoms and empires. Towards the specific area of Chhattisgarh, there is significantly less history available about this period since the dense forest of *Dandak* and its

ever-conflicting dwellers did not attract much interest from the significant rulers of the era. The area was thus left to be ruled by small kingdoms of local tribe chiefs or in conformity with the local tribes, who did not deem it necessary to maintain any record. By the time the area of Chhattisgarh gained the attention of the Mughals and the Marathas to be invaded and occupied, the Crown had already begun its advent to establish British rule in the Indian subcontinent.

It is an undisputed historical fact that the British came to India only to exploit the country for the benefit of the Crown. Forests were deemed no different in their one-point agenda. The British Empire made rules, regulations and legislations only in favour of their endeavours to maximise profit by ruthless exploitation and minimise resistance from those suffering under it. This period is rich in its historic accounts and deliberations, which clearly reflect their novation and jurisprudence in creating the laws to suit their interest and to extinguish the traditional rights of the dwellers of the country.

This chapter aims to draw a basic outline of the significant events, works of literature and legislative policies from which an inference can be drawn to demonstrate the geopolitical situation of the forests and their dwellers in India and, where the literature is available, in Chhattisgarh. The chapter explores the period from the ancient known and decipherable history till the independence of India, thus succinctly covering the historical saga of about 3523 years. It is tendered that though the change of social-political situation for the forest dwellers was appropriated several years after independence and is still an incomplete process, the independence of India was a landmark event in the inception of their recognition as citizens of the country, rather than as enemy of the State. Hence, this chapter deliberates upon the situation and laws before the Independence of India while dealing with the later epoch in the next chapter.

The period before the British invasion was that of heterogeny in sovereignty and socio-political relations, and thus, the assertion for the said period is explicitly focused towards the geographic area in concern to keep the discussion focused within the scope of this paper. The period after the establishment of the British monarchy in India is marked with homogeny in rules, regulations and legislations and thus can be studied from a broader national perspective, which would also reflect upon the area under study in a similar manner. The study of colonial laws will witness the introduction of the doctrine of eminent domain in

India and thus will lay the foundation for understanding the roots of existing jurisprudence. There was a dramatic shift in the political slant and jurisprudence concerning the forest and forest dwellers before and after the dawn of the British empire in India. Thus, this chapter is broadly divided into two parts, before and after the colonial governance of India, hence rendering separate observations for such different eras. The period thus marshalled under this chapter reflects upon the narration of historic injustice towards the forest dwellers before the advent of democracy in India.

It is pertinent here to state that this chapter is not a chronological historical account of events, but is instead a broad analysis of the records to ascertain the socio-political situation of the forest-dwelling tribes in an era within the concerned geographical area. The historic years cogitated under sub-headings have been framed and formulated given the analogous socio-political situation of the forest dwellers and the availability of homogenous literature during the period, thus having been framed as per the suitability of the study. The Author hopes to examine and thus demonstrate the deep and ancient roots of the "Historic Injustice" which has been acknowledged and sought to be addressed in the Preamble of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

EARLY VEDIC PERIOD (1500 BCE TO 1000 BCE)

The Vedic period saw the migration of Aryans and the development of literature in India. Though the exact period or the fact of the voyage of the Aryan race from the north-western part of India is not clear or absolute, the earliest texts have been understood to have been composed in and around 1500 BCE (Muller, 1891). In Sanskrit, *Arya* means "the noble one", and *Aryavrat* refers to "the abode of the noble ones". As such, the geographical area and extent of Aryan settlement have been depicted as stretching from "the tract between the Himalaya and the Vindhya ranges, from the Eastern Sea to the Western Sea" (Muller, 1886, p. 33). It is also believed that India was already a native homeland to other tribes when the Aryans came to India. Hence, there were frequent tussles amongst the Aryans and non-Aryan aboriginal tribes of India for land and political supremacy. However, since the Aryans had already developed the art of writing and thus recorded events through literature, the account of this period is biased in favour of the Aryans, being unfavourable towards the forest dwellers.

According to Western Orientalist Scholars, the aboriginal tribes in India can be classified into three categories, being, the Negritos, the Mongoloids and the Mediterranean (Guha, 1937; Risley, 1908; Sarkar, 1915). Of these, the Mediterranean are the majority of the aboriginal tribe residents in India and have been considered as the true aborigines of India, often equated with the Dravidian Tribe, who have been recognised to be the primitive dwellers of Chhattisgarh (Risley, 1908). The clashs between Dravids, termed '*Dasyus*', and Aryans have been extensively recorded in Vedic Literature. Due to their fair colour, knowledge of the script and their technical superiority, the Aryans considered themselves as a superior race, and thus the aboriginal tribes of India were often vilified under the ancient Indian Literature as 'Rakshasha', 'Shudra', 'Ahira', 'Pulinda' etc.

Thus, during the Early Vedic Period [1500 BCE to 1000 BCE], the Aryans, who had adopted the pastoral way of life and established cities by clearing forests, often fought with the forest dwellers, for whom the forest was their home and was to be protected. However, during the Later Vedic Period [1000 BCE to 800 BCE], the races started to merge with each other. The boundaries between the races began to relax and initiated the interaction between the races. The ancient period lacked any strict religion and thus the adaptation of the culture and traditions was inevitable. During this period, "The process of Aryanisation of the tribal and tribalisation of the Aryans was on" (Kosambi, 1996, p. 27), which is later reflected in their literature.

LATE VEDIC PERIOD (1000 BCE TO 600 BCE)

During the end of the Later Vedic Period, epics like Ramayan and Mahabharat were being composed in the form of smaller stories and have been stated to be the 'Itihas' or historical accounts of the early to later Vedic Period. These Epics often narrate incidences involving tribal forest dwellers in their tales, both in positive, but mostly, in negative light. Though these Great Indian Epics are considered folklore and works of fiction, however, these stories are significant tools to understand the prevalent culture, incumbent views of the populace and geographical setting of the Indian subcontinent during the Vedic period.

Both Mahabharat and Ramayan have the incidental setup of Kings being exiled to the forest.

Thus, the forest plays a major part in these stories and the literature provides a significant insight into how life in the forest was and who resided in them.

It was during this period and in its portrayal of the exile faced by the tale's protagonists that the geographical proximity of present-day Chhattisgarh finds its description. While the *Dandakarnya*, where Shri Ram spent a majority of his exile, has been understood to be the dense forest area of Bastar, Maha-Kosala or South Kosala comprised of modern Raipur, Bilaspur districts of Chhattisgarh and Sambalpur, Balangir, Kalahandi and Sundargarh districts of Orissa (Sircar, 1960). Cunningham has furthermore asserted that Chhattisgarh or Maha-Kosala extended from Amarkantak in the north to Kanker in the south and from Weihgangd in the west to the Hasdeo and Jonk rivers in the east (Cunningham, 1884). Also, per the epigraphic evidence, the South Kosala roughly comprised Bilaspur and Raipur Region of modern-day Chhattisgarh and some parts of Orrisa (Mookerji, 1959). Thus, the literary evidence referring to either Dandakaranya, Maha-Kosala or South Kosala could decisively reflect upon the history of the modern-day State of Chhattisgarh.

The epic describes the kingdom of Kosala as the kingdom of Shri Ram. Soon after establishing their rule in the north, the Kings of the *Aiksvaku* dynasty moved south to expand their kingdom. One of the kings of the Aiksvaku dynasty, named *Dandak*, annexed the dense forest area of modern-day Chhattisgarh and thus the name *Dandakaranya* (Dandak's forest) was given to the vast expense of forest in the modern-day State of Chhattisgarh. As per the epic, Ram had spent ten years in this forest during his exile (Valmiki, 1871).

It was during this period that it has been narrated that Ram fought several powerful *Rakshas* that inhabited the forest and thus served various rishis and sages who lived and meditated in these forests. It may not be a far thought to assume that these depicted Asuras were the tribals living in these forests, who were reluctant towards any intrusion by foreigners of the north. The description of these Asurs being dark, tall and fearsome could match the later description of the local tribes inhabiting the area of modern-day Chhattisgarh.

The kingdom of Kosla was later divided into Uttar Kosal, modern-day Uttar Pradesh, with its Capital at Ayodhya and Dakshin Kosal, which can be understood to be modern-day Chhattisgarh and with some parts of Orissa. As per Ramayan, the Uttar Kosla was given to be ruled by Lav, while Kush ruled the Dakshin Kosal. The history and identity of Dakshin Kosal

and Dandak Forest were preserved even in Mahabharat, whereby the forest and the region have been mentioned several times as such.

We also find the narration and reference to some tribals living in forests, who went on to become prominent characters in these Epics. In Ramayan, Shabri, who was a tribal woman, had offered food to Ram when he was hungry. The incident happened in the modern-day Shivrinarayan (name finding its etymological origin in 'Shabri' and 'Narayan') at Chhattisgarh. Eklavya finds prominence in Mahabharata, who was a member of the Bheel Tribe and was asked to cut his thumb by Dronacharya, thus depriving a tribal student in favour and for the interest of his Kshatriya student Arjun. Bheem's son Ghatotkach was born to a tribal wife and Arjun married Chitrangda, a Naga Princess. Thus, these instances in the epics indicate the fact that though there was no absolute state control over the forest by the Kings, they generally exerted tenure over the forests within their kingdom.

Thapar argues that the vivid description of the burning of Khandava forest by Pandavas in Mahabharat by setting it on fire was an act of suppression against the forest dwellers (Thapar, 2003). The story narrates that Khandava forest was a residence of various ferocious Rakshas, Yaksha and Naga, who were slaughtered by the Pandavas and the raging fire destroyed the entire forest along with all the life inhabiting therein. She aptly argues that both the ferocity of the hunt and the burning of the forest were necessary preconditions for power, and not just in a symbolic sense. This affirms that while the forests have been romanticised for their beauty, the sovereign did not exercise restraint in destroying the habitat of forest dwellers for their own needs and purpose. Such clashes between the lieges and the forest dwellers were fictionalised as battles between Kings and Asurs or between the civilised and those who refused to be civilised. I agree with Thapar when she states, "It is not easy to separate poetic imagery and political reality, but the former can provide a momentary glimpse of the latter" (Thapar, 2001, p.8).

SECOND URBANISATION AND CLASSICAL AGE (600 BCE TO 700 CE)

The end of the Vedic period was followed by the rise of the Mauryan Empire, which ruled almost the entire Indian Subcontinent for more than a century. The last king of the Aiksvaku dynasty to rule the Dakshin Kosla was overthrown by Mahapadmananda of the Magadh

Empire in the middle of the 4th century BC. However, with the fall of Nandas, the region of Kalinga and Dakshin Kosla became independent states. After the famous battle of Kalinga fought by King Ashok, the State of Kalinga was annexed to the Mauryan Empire, while Dakshin Kosla was left unconquered.

The famous treaty of "Arthshastra" ('Arthashastra Translated by R. Ramashastry', 1915) composed by Kautilya gives a significant narration on the importance of forests and the socio-political situation of the tribal during the era of the Mauryan Empire (321-185 BC). It was the first time that the forests were considered assets of the kingdom and recognised as a source of revenue for the State. Thus, the State's control of the forests and their resources was deemed necessary for military and economic purposes. For this, Kautilya proposed independent placement of officers who were to protect the forest from unpermitted use of forest produce and mining. Such a Superintendent of Forest (*Kupyādhakṣa*) was bestowed with the following duty:

"The Superintendent of Forest Produce shall collect timber and other products of forests by employing those who guard productive forests. He shall not only start productive works in forests, but also fix adequate fines and compensations to be levied from those who cause any damage to productive forests except in calamities." (Arthashastra, 1915, Ch 2.17.1)

Thus, the forests were brought under the directed superintendence of the King. The forest with forest produce has been referred to as *Dravyavana* or 'Forest Asset' and has been sought to be protected from unauthorised use, even by forest dwellers. Here again, the tribes living in the forests have been characterised as wicked and non-civilised. Such forest tribes who used to inhabit the forest beyond the boundaries of town and village are often referred to as '*Atav*i' and '*Atvika*', described as being wild and resistant to civilisation (Arthashastra, 1915, Ch 8.4.41-43). As per Kautilya, the King was supposed to keep these tribes pleased by offering money or honour to avoid any threat to his own sovereignty (Arthashastra, 1915, Ch 12.3.17). Also, the king could seek military support from these wild tribes (*Aṭavībal*a), who often fought under their own Chieftains and not under the King's army, in return for favours. These tribal soldiers were not to be thoroughly trusted and were to be kept separate from the King's Army (Arthashastra, 1915, Ch 9.3.18-20).

The policy of interference in the forest, the superintendence of the forest and a firm assertion of sovereign rights over the land, produce and animals of the forest by the Mauryan Empire led to resistance and bitterness from the forest dwellers. Assessment of the inscriptions may invariably lead to a conclusion that the Mauryan empire did not share a good relation with those living to the Forests south of Vindhya (McCrindle & Schwanbeck, 1877). From the edifices found near the tribal areas, it can be deduced that the tribes dwelling in the forest near the border of the empire exerted repulsion against the control of the Mauryan Empire. One of the inscriptions read: "The Beloved of the Gods [Asoka] believes that one who does wrong should be forgiven as far as it is possible to forgive them. And the Beloved of the Gods conciliates the forest tribes of his empire, but he warns them that he has power even in his remorse, and he asks them to repent, lest they be killed" (Bloch, 1950, p. 129). Thus, King Ashok has hereby addressed the Atavikas, the forest-dwellers, who have been sternly warned of the consequences if they do not acquiesce to his rule. The King has displayed his remorse for the loss of life in the war of Kalinga but he states that even in his remorse he shall not exclude the use of military power to cause death upon those who fail to display obedience towards his supremacy and authority. This amply displays the strained relations between the empire and the forest dwellers, the latter not being subdued by the former.

Thus, it can be inferred that the wedge between the civilised and the forest dwellers was long drawn out since the empire had started to consider the forests as a valuable resource to be exploited and that which was constantly deterred and resisted by the forest dwellers, who rejected the civilised way of life and were anguished by the uninvited interruption from the government into their self-sustaining way of life.

After the decline of the Mauryan Empire, the Shungas, Kanvas and Mitras were the noteworthy dynasties to rule the central part of India between 180 BCE and 4th Century CE, academically referred to as the Middle Kingdoms. However, these kingdoms were short-lived and often in conflict. Thus, due to the lack of conclusive literature denoting the relations of these subsequent kingdoms with that of the forest dwellers of Chhattisgarh, the period has not been decisively researched and hence cannot be categorically studied to ascertain the socio-political situation of the forest dwellers. However, it may not be improbable to assume that the area of erstwhile Dakshin Kosla was not completely concurred by these rulers and thus was ruled mainly by small tribes and chieftains, a status quo that had not changed since the Mauryan Empire (Sinopoli, 2001).

The decline of these kingdoms was followed by the rise of the Gupta Empire [240 CE to 550 CE], which has often been dubbed the "Golden Age of India" for its contribution to science, art, literature and architecture (Jayapalan, 2001, p. 130).

Samudra Gupta Parakramanka, the fourth King and much-celebrated ruler of the Gupta Dynasty, instilled the reign of the Guptas over modern-day Chhattisgarh. G. Jouveau Dubreuil narrates that in about 340 CE, Samudra Gupta marched to the south of Pataliputra, modern-day Patna and the erstwhile capital of the Gupta Empire, undertaking the incursion to extend the boundary of his kingdom (Jouveau-Dubreuil, 1920). Samudra Gupta first defeated Mahendra, the King of Dakshin Kosal. During the reign of Mahendra, the kingdom of Dakshin Kosal had its Capital at Sirpur, presently in Raipur District and extended to the east and south of undivided Madhya Pradesh, including the modern-day district of Bilaspur and Sambalpur (Orissa) (Mookerji, 1973).

Moving further south, Samudra Gupta found himself in very dense forests ruled by the small kingdome of *Mahankatara*, which literally means the 'Great Forest', and which was ruled by Vyaghra-Raja, which again literally means the 'tiger king'. Raibahadur Dr. Hira Lal opines that the kingdome of Mahankatara, thus referred to by G. Jouveau Dubreuil, would undoubtedly be the area of modern-day Bastar, which still has dense forests, as described in the epigraph (Lal, 1996). Mahankatara and its King Vyaghra Raja find mention in literature and inscriptions from later periods as well and thus its location has been an issue of interest to the scholars, asserting that the King Vyaghra Raja would have been a tribal King with his reign over the dense forest of Bastar in Chhattisgarh (Sharma, 1947).

Line 19 and 20 of the inscriptions on the Allahabad Posthumous Stone Pillar Inscription of Samudra Gupta (translated by Fleet, 1960) describes 12 rulers who were defeated by Samudra Gupta and were later reinstated in the Deccan Region, which included Mahendra of Dakshin Kosla and Vyaghraj of Mahankatara. Furthermore, line 21 of the inscription claims that Samudra Gupta had subjugated these *Atavikarajas* (Tribal Kings) as his *Paricharakikrita* (Servants). The fact of servitude has been specifically mentioned for the Atavikarajas and not for other kings who were also reinstated. Hence, it was a matter of pride for the Gupta King to have defeated a tribal king and furthermore the mention of him as his servant displayed the social status being accorded to such tribal chiefs.

Thus, Samudra Gupta established his sovereignty over the entire area of the modern-day State of Chhattisgarh by establishing loyal tributaries. Since various literary works have illuminated the period, these texts provide significant insight into the changing socio-political status of Forest Dwellers and the dominion over the forests at the advent of time. Furthermore, the study of this period becomes even more critical since the period between the Decline of Mauryan and the rise of the Gupta Empire can only be inferred from fragments of historical evidence due to the lack of literary endorsement during the intermediary period. Thus, these compositions have been an essential tool for historians to understand the shift of policies and perceptions in the period between 320 BCE to 500 CE.

This period in history was marked by ample foreign trade and a flourishing economy. The boundary of the empire extended up to present-day Pakistan, and while being under the centralised command of a strong ruler, the kingdome invited significant foreign trade by maintaining uniformity and order. However, the increase in trade also saw an increase in commercial activity, which often involved either forest produce or the clearing of land for agriculture, along with the regular movement of goods through forest areas. Thus, it became even more necessary for the sovereign to subdue the forest dwellers, who did not welcome any intrusion into their way of life, land and culture.

This era saw a significant transition from tribe to caste, that is, from '*Jana*' to '*Jati*' and thus led to an obscure yet prominent metamorphosis, whereby the erstwhile forest regions paved the way for the rise of present society (Thapar, 2001). The Gupta Period was marked by the Brahamainical revival after the rise of Buddhism during the Mauryan Empire. It was during the reign of the Guptas, who were Vasihnavaites, that the first Purans were composed, which were the 'scriptures for the common people' and were to be used to "disseminate mainstream religious ideology amongst pre-literate and tribal groups undergoing acculturation" (Thapar, 2001, p. 19).

The period saw the grant of land by the Guptas as alms to Brahmins for earning their livelihood by cultivation. However, these lands were often in forest areas and thus the labour for cultivating the land had to be drawn from amongst the forest-dwelling tribes, who viewed these Brahmins as intruders into their sacred land rather than peaceful settlers. Thus, it became even more important for the Brahmins to change their strict Vedic rules and relax the

rituals to accommodate tribal culture. The Brahmans started giving more weightage to those sacraments which included group participation so as to draw the interest of the tribal groups and even relaxed the Vedic rule against hunting and eating meat (Nath, 2001).

Thus, the tribal population was sought to be merged with the civilised population by introducing religion into their culture. This process of altering the identity of the tribes by the proliferation of religion and thus blending into the general society by assimilation has often been dubbed as Hinduisation, Sanskritization, Technological Adoption or State Formation (Xaxa, 1999). Though various theories try to understand the reason for such an amalgamation, as to whether it was forced upon the tribal or was consensual on their part, it remains clear that such acculturation would have proved to be a vital tool to subdue the hostility of the tribes towards the civilised population by making them a part of the common cultural identity.

The process fused the cult practices of the forest with that of the Vedic rituals under puranic Hinduism and thus gave birth to new Jatis and their unique practices, which though do not find their subsistence in ancient Vedic texts like Manusmiriti, are today a part of the modern-day Hindu religion. Thus, with the synthesis of beliefs, tribes started to culturally relate with the civilised Hindu villagers and hence started to identify themselves within the hierarchical religious system. With common deities and myths, the Vedic supremacy and knowledge of Brahmans would have been instilled amongst the tribesmen in the name of rituals. Evidence suggests that the tribal Kings and chieftains declared themselves as Kshatriyas, hence seeking to legitimise their kingship by associating their ancestry with mythical Vedic Gods and lineage (Sinha, 1962). The Brahmans revered these Kings and performed Vedic sacrifices and rituals for them, hence integrating and absorbing the ethos by blurring the classified cultural boundaries. This must have relaxed the absolute hostility of the tribesmen, who could now culturally identify themselves with the general population of civilised Hindus and their rituals. Thapar however warns that such cultural proselytism does not indicate that the exploitation of the forest dwellers had ended during this period, nor does it suggest that the forest dwellers had established a new liberal relationship with those who were civilised. Where the exploitation of forests and revenue by abusing forest products was concerned, it could be a disjuncture for the tribal society.

Though works of literature did not feature Rakshasa and Asuras in the forefront anymore, the outlook and attitude towards the forest dwellers remained the same. The forest kings were pompously designated as servants of Samudra Gupta in the Allahabad Pillar inscription, which amply demonstrates the lack of respect towards these tribal chiefss. Furthermore, if the King disdained the rulers of Dakshin Kosal and Mahankatara as his servants, one cannot expect the civilised population to show any veneration towards the subjugated forest dwellers residing in these kingdoms.

Banbhatt's *Harshcharita* (Translated by Cowell & Thomas, 1993) describes the encounter of King Harsh with Vyaghraketu, the son of tribal chief Sharabhaketu living in the forests of Vindhya, where the latter has been described as a dark man with projecting forehead and cheekbone, flat nose, thick lower lip, full jaws and bloodshot eyes, who appears like a melting block of iron. The description is stereotypical to that of the earlier descriptions of Nishads, Pulinda, Asura and the forest dwellers living in the central part of India.

These forests of Vindhya could probably be the same forests of Dakshin Kosal, narrated to be Shri Ram's abode during his exile. However, the description of a village forest in *Harshcharita* differs from that of the same forests in Ramayan. The early perception of forests, primarily focusing on hermits, hunting, exile and Asurs, was beginning to fade away. Banbhatt describes a village forest, which was visited by King Harsh, as being well stocked and with a developed economy. The forest dwellers were active in farming, hunting and smelting. Thus, the forests have been described in their proper self-sustaining form rather than perceiving them as being inhabited by Asuras, who were looting the forests of the kingdom. The forest dwellers here had adopted the modern means of agriculture and manufacturing without leaving their fundamental way of life. The comity between the State and the tribes could be comprehended since the tribal kings and chieftains had been won over and reinstated and were now loyally serving the kingdom. The tribesmen had now become a part of the mainstream economy and could be relied upon to supply the forest produce for trading.

Although there might have been congruity between the tribes and the king with the amalgamation of the culture, it remains a fact that those who castigated and rebelled were subjected to chastisement. One may find proof of such an instance in one of the more revered stories of King Vena narrated in Bhagvat Puran, composed during the reign of the Gupta

dynasty. King Vena was the son of King Anga and was a decedent of King Manu. He has been described as a man who did not follow religion and held contempt against the Brahmins and their Vedic rituals. After acceding to the throne, King Vena stopped all the ritualistic sacrifices and prohibited the public from giving alms to the Brahmins, who earned their livelihood by performing rituals. Owing to his disapproval of Vedic Hinduism, the Brahmins killed King Vena. However, soon there was chaos in the kingdome in the absence of a King. Thus, in desperation, the Brahmins churned the thighs of King Vena, from which a short man with bloodshot eyes, a large jaw and a flat nose, who was 'black as a crow' named Bahuka emerged. He has been described to be very submissive and meek in intelligence. He was thus termed a Nishada and was sent to live in the forest, for he had the sinful traits of his father and was engaged in stealing and hunting. Upon churning the hands of King Vena beautiful Prithu or Aryan description emerged, who was ordained as the religious King (Translated by Prabhupada, 2012).

Though the story is absolutely fictitious in its account, yet the common perception of the populace is palpable from its narration. This Puran could be a guideline for the public to follow or be construed as the reflection of the society's common belief. The story of the death of King Vena for opposing Brahmins, while the religious Prithu being made the king for observing Vedic rituals, could be a warning to those not following the ways of the Brahmins. The physical description of Bahuka leaves little doubt about the fact that he was a forest-dwelling tribal who has been described as being submissive and with little intelligence. This fortifies the contention that the tribesmen were not considered fit for ruling and were dejected to live in forests. They were thought to be fit for servitude and were perceived to lack intelligence for undertaking leadership roles. Bahuka has been stated to be the progenitor of forest-dwelling tribes, hence stereotyping the forest dwellers to be dim-witted and as people indulged in 'sinful' acts of thievery and hunting.

Medieval and Early Modern Period (600 BCE to 1800 CE)

After the downfall of the Gupta Empire, the region of Chhattisgarh remained largely isolated till the 19th Century (Dube, 1998). The period after the collapse of the Gupta Empire witnessed the prevalence of a hierarchical political order of tribal clans in the forest, with tribal chiefs ruling a minimal area and people under them (Willis, 1919). At about 1000 CE,

the Kalachuris from the Haihaivanshi dynasty of Tewar (Tripur), near modern-day Jabalpur, conquered the upper part of Mahanadi, comprising the modern-day area of Raipur and Bilaspur division, with its capital at Ratanpur. The Kalachuris ruled over the northern part of Chhattisgarh for over six centuries, neither expanding into neighbouring regions nor succumbing to invasions (Willis, 1919). The Haihaivanshi dynasty of Ratanpur and Raipur fell to Baskar Pant in about 1742, a General of the Maratha Empire who dominated the country's military landscape during the 18th century. Thus, the north of Chhattisgarh remained under Maratha rule, first as a suzerainty of the Marathas and then under the direct rule of the Bhonsle rajas, for over a century.

The history of Bastar for most of the medieval period in the history of India is lost in time due to a lack of literature and thus is predominantly shrouded in mystery. Very few inscriptions and epigraphs alleged to belong to this period also fail to portray any clear picture of the socio-political setup of the region (Huber, 1984). The period after the fall of the Gupta Empire saw urban decay and it can be presumed that the period witnessed the revival of the old chieftain system of governance amongst the tribal clans. This would have followed as a consequence of the downfall of the Gupta Empire and the independence of the tribal chiefs earlier subdued under the empire. The tribal king Vyaghraj of Mahankatara, who has been mentioned to have been reduced to servitude by Samudra Gupta, can be recognised to have independently ruled the region of Baster after the fall of the Gupta Empire. Inscriptions found at Sihawa near Kanker suggest that the descendants of Vyaghraj continued to be the Kings of Bastar at least till 1320 CE (Lal, 1908). Though these tribal Kings did not claim the status of Kshariyas until 1216 CE, the practice of granting land to Brahmins, building temples and digging ponds for public and religious usage have been recorded since the time of Vyaghraj and thus continued with his successors (Saha, 1996).

Thus, Bastar can be comprehended to be administrated by the tribal chiefs in isolation for about one thousand years, since the region was not under the control of the Kalachuris, nor is there any evidence of the area being conquered by any foreign ruler during this period. There are inscriptions of small areas in Bastar being ruled by feudal chiefs, zamindars and small rajas and the area being invaded, but not retained, by Chalukya, Chola and Hoysla princes from 844 CE to 1150 CE (Huber, 1984). However, most of these have been gathered from coins and trivial inscriptions, which do not shed ample light on the socio-political conditions during their reign (Lal, 1916). The medieval history of the region under study remains

obscure and thus the situation of the forest dwellers during the said period cannot be ascertained for sure. However, since there was no outside administration, it can be assumed that forest dwellers lived an isolated and secluded life of their choice and liking.

It was only in the 15th century that a kingdom was established at Bastar as a consequence of the expansion of Muslim rule down to the south of India. In about 1425, the Mughals attacked the adjoining area of Warangal, situated in modern-day Telangana, located about 150 kilometres from the border of Chhattisgarh. The area was then ruled by the Kakatiya King Pratap Rudra II, who was killed when the Mughals took Warangal. However, Anam Deo, the younger brother of Pratap Rudra, escaped the incursion with a small army and crossed the Godavari River into Chhattisgarh and thus organised the local feudal chiefs into the modern State of Bastar. These events are often recalled and thus recollected in the folk songs of the local tribes of Bastar (Grigson et al., 1949).

The Kakatiya rulers conquered most parts of the modern-day Bastar Division but were stopped in their adventures towards the north by the Rajput rulers of the Haihaivanshi dynasty. The Kakatiya kings thus ruled up to Kanker, either directly through conquest or through tribal chieftains, asserting their sovereignty over the entire south of Chhattisgarh for more than twenty generations (Huber, 1984). The Muslim rulers attempted to take Bastar in 1610 but were defeated, not by the army of Kakatiya rulers, but due to unique geography and dense forests with a thinly populated tracts of Bastar. In about 1750, the attempt of the Marathas under Nilu Pandit to conquer Bastar was dispelled by Dalpat Deo. However, due to a family feud over the Crown, Dalpat Deo's son and successor Daryao Deo sought the help of Marathas against his brother Ajmir Singh and thus bound himself to pay a small annual tribute of Rs. 4,000 to the Bhonsla Raja of Nagpur. Thus, Bastar became a tributary of the Bhonsle dynasty in 1780 (Grigson et al., 1949). However, even during the accession as the tributary to the Bhosle, the tribal chiefs of Bastar retained their independence and were not under the interference or management of the Marathas.

While assessing the administration of the Bastar during this period, it is interesting to note that the non-tribal rulers of Chhattisgarh did not adopt the typical way of administration prevalent during the era, but rather adapted to the ways and culture of the dwellers of their kingdom. Rather than asserting their superiority and rule over the forest-dwelling population, these sovereigns created "a feudalistic superstructure built upon a tribal foundation" (Huber,

1984, p. 39). A robust centralised power with the resolve to bend the populace to its will would not, and still does not, work with the tribals of the region. The King thus acclimatised his administration with the socio-economic and cultural practices of the local population and thus became the centralised authority through the power drawn from the reverence of his subjects. As a result, "the weakness of central authority...(became) an essential characteristic of the medieval politics in and around Chhattisgarh." (Wills, 1919, p. 234)

As such, the monarch did not declare himself to be the owner of the land in his territory, since essentially under the community-based tribal system, no one was the owner of any land. However, the King could assert his control over the economy by demanding revenue in the form of a share of the produce over the land. Thus, “the king was merely the predominant landholder who apportioned a share of the revenue among his servants in the civil administration. The land itself was a deity and could not be possessed by mortals" (Tyler, 1986, p. 96)

A prominent aspect pointing towards the change of policy by such invaders can be assimilated from the fact that both the Kalachuri Kings and the Kakatiya King ruling the north and south of Chhattisgarh paid their reverence to the *Nar Taluri* or ‘Mother Goddess’ or ‘Village Mother’, which was a personification of mother Earth for the tribals. This is a significant aspect since Devi, the female goddess, has often been identified as being the prime deity of tribal forest dwellers, when Shiva and Vishnu dominated the Hindu religious themes in vogue. Thus, while the Kalachuri Kings undertook the construction of the illustrious temple of Mahamaya Devi at Ratanpur, the construction of the temple of Danteshwari Devi and the adoption of the deity as the ‘Kul Devi” of the royal family was one of the first tasks accomplished by the Kakatiya rulers after coming into power. Thus, adopting the local deities by these sovereigns may be recognised as their attempt to associate with the cultural identity of the forest dwellers and hence legitimise their supremacy by trying to end the hostility.

To conclude the observations towards the socio-political arrangement in the State of Bastar during the Medieval and Early Modern Period, the observations made by C.U. Wills are apt in understanding the policy adopted by these invaders, who peacefully ruled for more than five centuries, whereby the king here "was not an autocratic but was rather primus inter pares-the administrative, social and religious head but nevertheless bound to regard the customs of his people whose welfare and the maintenance of whose customary rights were of

even more importance than the maintenance and extension of the personal authority of kingship" (Wills, 1919, p. 250)

By the end of the 18th century, the entire State of Chhattisgarh was under the command or suzerainty of the Bhosles of Nagpur. The last of the Bhosle ruler, Raghuji Bhonsle III, died in 1853 without a male heir, and thus the British annexed the Bhosle kingdom under the doctrine of lapse. The territories under the former Bhosle kingdom were administered as Nagpur Province until the formation of the Central Provinces in 1861. Thus, the entire area of Chhattisgarh, including Bastar, came under the control of the British Empire and was thereafter governed predominantly by the colonial laws.

OBSERVATIONS [1500 BCE TO 1800 CE]

While during the Vedic Period the tussle for forest Land and resources between the settlers and the aboriginal forest dwellers has been dramatically depicted in epics and folklore, there was no absolute control or assertion over the forest by any sovereign. Forests in these works of literature have been depicted as grounds for hunting, providing tranquillity for hermits to perform their mediations and as a place of punishment for being sent away in exile. Thus, there was no assertion of State proprietorship over the forest and the ownership of the forest land rested with the dwellers of these forests. However, extracting resources and exerting force, while trespassing into the forest for their own need and utility, has been depicted as the right of the civilised, even if it required fighting, defeating and killing the Asuras.

During the Mauryan Empire, though the King did not conquer the forest dwellers, yet the relations between the empire and forest dwellers were not very good. The period saw the assertion of State control over forests for the first time, now being recognised as an essential economic asset for the sovereign. During this period, the dominion of the forest dwellers over their land and resources had deteriorated and they had to acquiesce to its exploitation by the empire. However, the forest dwellers immediately reeled back to their absolute territorial sovereignty after the decline of the Mauryan Empire. The Gupta Empire had to attack again and win over the tribal kings and chiefs, proclaiming it very proudly. The forest dwellers and tribal kings had been subjugated as loyal tributaries and thus the access to the forest's resources had been secured by Samudra Gupta. The forest dwellers were subjected to might

and force, coercing them into submitting their home and resources for the service of the sovereign. The period of Sanskritization sought to bring forest dwellers into the mainstream, not for their benefit but to serve the empire and the Brahmins. However, after the fall of the mighty Guptas, tribal autonomy was restored for a very long time. Even foreign rulers of the tribal belts confirmed to their way of living and were extremely cautious in interfering with their traditions and culture, adapting to the forest way of life to gain legitimacy.

Thus, by the end of the 7th century, forest-dwelling Kings had been reduced to servitude and the residence and customary usage of forests by Atvikas were not exclusive anymore. Such a state of serfdom of the tribes, who paid taxes to the king and were used as labourers to collect forest products, belittled their cultural identity. It hampered their self-sustaining life of solitude and forced them to fall within the hierarchical social strata. The forest dwellers were still discriminated and were not considered fit to be a part of the civilised society. Though some of the tribes had adopted the Puranic cultures and thus could culturally identify with the general public, yet the tussle between the Atavika and the Gramina was very much there. On one hand, the civilised exerted military power to exploit the rich forest resources and occupy the forest land, on the other, the forest dwellers resisted the intrusion by the civilised into their sacred land. The laws of the State were absolutely discriminatory against the Forest dwellers with the rise of Brahminical superiority by the end of the 7th century, which would grow stronger and continue to dominate the popular dictum during the ensuing period. After the fall of the Gupta empire, the tribes of Bastar enjoyed millennia of autonomy, which was disturbed only after the dawn of the British empire in India.

COLONIAL ERA (1800 CE TO 1947 CE)

The history of forest law anywhere in the world is intertwined with the history of conflict. Law is the strategic device used to govern and regulate that which needs to be controlled and is often in conflict. A study of the history of laws governing the forests and their evolution would shed light upon the changing needs and perspectives between the British Government, the forest and the forest dwellers. The understanding of the history of colonial laws, which, even after 75 years of Independence, still applies to the forests in India, would create a historical lens to understand the effect and consequence of these laws while carving an opportunity to gauge the gaps and their solution through deliberations of historical records.

When the British came to India as the East Indian Company in about 1600 CE, they found that the forests of the land were owned by its dwellers and were not regulated by the sovereign. Though it was a possible practice for the sovereign to derive commercial and personal benefits from the forest, they neither held any ownership rights over the same nor was it regulated through laws. It had been asserted explicitly for the Central Province that the forest land had been regarded as a common property with no regulation whatsoever (Central Provinces Govt, 1875). There was no assertion of ownership rights over the forest by the non-forest dwellers, where forest dwellers lived and had the resources of the forest at their disposal. Thus, the issues concerning the recognition of the rights and ownership of the forest dwellers over the forest became the underpinning for the policies of the East India Company.

During the early 1800s, the primary source of revenue for the Crown was levying *Lagaan* or tax on cultivation. Thus, there was no benefit for the East India Company to claim ownership over the forest lands, which rather encouraged the forest dwellers to convert forest lands for agriculture. Tax on the felling of timbers was looked at as a hindrance to clearing of forest and thus was sought to be abolished so that more and more of the jungle could be cleared to make way for agriculture, to make up for the loss on the timber tax (Baskarapa vs. Collector, 1878). Though this interfered with the tribal way of life, it did not come as the force of the law for the inhabitants, who could continue their occupation of the lands. Thus, the early period of forest policy saw a ‘fierce onslaught’ on Indian forests, with no assertion of ownership by the Crown (Trevor & Smythies, 1923).

The Imperial interest in conserving the forests of India stemmed from their need for timber. In 1805, the Court of Directors received an inquiry about the British Navy's possibility of relying on a constant supply of timber from the Malabar region, owing to the growing dearth of Oak in England (Stebbing, 1922). This was based on the fact that the Company was in continual need of timber for the construction of ships in India (Court of Directors, 1798) and trade to England for its repair work (Court of Directors, 1793). Thus, to protect the teak plantation in Malabar for a continuous supply to the Navy, the First Forest Conservator, Captain Watson, was appointed in 1806, who declared the forest of Malabar as a State monopoly. However, the post was disbanded in 1822 after the successors of Captain Watson failed to provide the anticipated results. Dr Gibson was appointed as the Conservator of

Forest in Bombay in 1847 and Dr Cleghorn was appointed as the Conservator of Forest in Madras in 1856, before the creation of the forest department in 1864 (Pathak, 2002).

In 1850, a commission constituted by the Crown concluded that the locals were destroying the forests and that they were incapable of managing the forests that they lived in (Swaminathan, 1987). It was asserted in the report that if the forests are not conserved from their dwellers, the commercial produce from the forests will very soon cease to exist. Though the British had been the main culprit behind ruthless deforestation, before being enlightened about the scarce resource, they mainly blamed the dwellers of the forest, declaring them as being the barrier in attempts to conserve the forest (Guha & Gadgil, 1993)

In the famous Railway Minute of April 1853, authored by Lord Dalhousie, the Governor General of India, he emphasized the importance of the ardent establishment of Railways in India for the deployment of troops and transport of goods towards the economic advantage of the East India Company (Dalhousie, 1853). Thus, the forests of India had a new customer and the increased need for railway sleepers increased the demand to create an exclusive right over the jungle. Between 1853 and 1910, more than 40,000 kilometers of railway tracks were laid down in India (Guha & Gadgil, 1989). After the 'melancholy failure' of the local attempts to conserve the forests, Lord Dalhousie regarded the subject of conservation of forest as 'an important administrative question' and thus, in 1862, called for the establishment of a department that could meet the needs of the railways (as cited in Trevor & Smythies, 1923, p. 36). Hence, the history of Forest legislation in India begins with the establishment of the Forest Department in India in the year 1864.

The Government Forest Act, 1865

The Crown's demand for the commercial utility of the forest and its products drove the Empire to formulate policies to ensure its viability. Thus, legislation in black and white was thought fit to assert the right of the Government over the forest and hence convert them into State property. Thus, the Forest Act of 1865 was enacted to secure the colonial objectives of exploitation of the forests. The Act was an attempt by the British to assert their authority over the forest and to negate the rights of the forest dwellers, whom they believed to have little

knowledge about the scientific ways of managing the forest sustainably so as to prolong the derivation of forest produce.

The British had never before worked towards sustainable development but had always been the champions of ruthless exploitation. Due to their lack of experience in controlled utility, a German Forester named Dietrich Brandis, who had earlier managed the forest of Pegu (Burma), was invited by the administration to oversee the matters of the forests in India.

Thus, the Indian Forest Department was created in 1864, with Brandis as the first Inspector General of Forests. To assert ownership over the forest, the first Forest Act was passed in 1865. The Act was drafted hastily to secure the colonial motive of timber extraction from the forests to cater to India's expanding railway network. It enabled the Governor General of India and the local bodies to declare any land covered with trees, brushwood or jungle as government forest. The Act proclaimed the Crown to be the owner of all the land within its territory and thus sought to derive legitimacy towards its exploitation (Baden-Powell, 1882).

The Law Member of the Committee for the Act, H.S. Maine, made the following remarks while observing the need to declare the forest as the estate of the Crown:

“But while almost the whole of domanial rights over the Forest lands has been vested in Her Majesty for the purposes of the Government of India by the Act of Parliament transferring the Government of India to the Crown, it would appear that various petty rights over soil or produce of Forests have been prescriptively acquired by individuals, villages or wandering tribes” (Maine, 1864, p.5)

The Government Forest Act, 1865 (‘GFA, 1865’) was the first legislation attempting to control the area that was primarily uncharted and dwelled by tribes who did not conform to the traits of civilised society. The primary purpose and object of the Act was to establish the proprietary right of the British over the forest produce and the letters of the law did not delve into deeper issues of jurisprudence. The Act was silent on the accountability, ancient traditions and cultural identity, forest management and entitlements of the forest dwellers.

The Government Forest Act, 1865 created a new class of forest and termed it the ‘Government Forest.’ Thus, the forest was divided into two categories, the first one being the

Government Forests, which were to be under State control and the second one being the other forest, whereby the rights of the forest dwellers were recognised and allowed to be continued. The Governor General and the person authorised to administer the territory were given the powers to declare any land "covered with trees, brushwood or jungles" as government forest by way of a Gazette Notification (Sec. 2, GFA, 1865). However, being very well aware that any radical move may cause an upheaving, the said notification was made subject to the condition that the same shall not abridge or affect any existing rights of individuals or community (Sec. 2, GFA, 1865).

It is pertinent here to observe that the colonial rulers were apprehensive of strong resistance from the forest dwellers, being very well aware of their long-standing traditions and cultural identity associated with forests. Moreover, these forest dwellers had never been subjected to a leash upon their ownership rights over the forest and thus any sudden deprivation was an idea resisted under this Act. However, 'forest' under the Act was not defined, as the same would have robbed the Government of their flexibility of declaring any area with trees as forest, thus restricting the autonomy of the forest dwellers over such region.

The Government Forest Act, 1865 (Act No. VII of 1865) was thus passed by the Governor General of India in Council and assented by the Governor General of India on 24th February 1865 and came into operation on the first day of May 1865 (Sec 19, GFA, 1865). The Act comprised of only 19 Sections, majorly relying on the Local Authorities to further toe the line of serving the economic interest of the Crown in ensuring exclusive exploitation of the forest. Under its objective, the Act deemed itself necessary to give effect to Rules for managing and preserving Government Forests, without any local interference into the commercial utility of the area earmarked as government forest. It thus declared that the rules in force of law were necessitated for better management and preservation of Forests and that the rights over the same were vested with the Crown. Powers were vested with the Local Government to make rules, which were to be approved by the Governor General in Council and published in the Official Gazette to attain the force of law (Sec 6, GFA, 1865). These guidelines for formulating rules primarily delineated four significant issues that concerned the Government (Sec 4, GFA, 1865).

Firstly, the preservation of trees and plants within the Government Forest by prohibiting its lumbering. It prohibited the extraction of forest produce such as wood oil, resin, wax, honey

and other animal produce. So much so that the right to even pass through the forest and graze the cattle in these government forests were also to be extinguished under the rules.

The second concern was the transportation of the timbers to be used by the British, which was usually through streams before the advent of Railways. The logs were thrown into the streams and rivers and were later collected for their utility. Thus, the Act authorised the formulation of rules prohibiting blocking such streams or collecting the timbers being floated by the Government. This was irrespective of whether the river was going through a government forest or not.

The third and fourth clauses of Section 4 of the Act, 1865 laid guidelines for keeping the timber lumbered by the Government safe and the regulation of the duties of the forest officer, respectively.

The law was not without the power of punishment, a significant tool often employed by the British for deterrence. Section 5 vested the Local Government with the power to confiscate and, where there was no provision for confiscation, penalised the contravention of the Act and rules made there under. As such, anyone found acting in contravention of the Rules framed by the Local Authorities was liable to a fine of up to rupees five hundred. Furthermore, in default of payment, the offender was to face imprisonment for such term as mentioned in Section 67 of the Indian Penal Code, 1860. Furthermore, any Police Officer or person authorised by the Government to prevent the infringement of the Rules made under Section 4 of the Act, could arrest the offender without any warrant (Sec 9, GFA, 1865). In the background of the tussle of supremacy over the forest between the Civil Servants and the Forest Officers, the latter were clamouring for Magisterial power. The powers of the Forest officers were modelled on the lines of the Police Code, and Brandis took pride in establishing a stringent battalion for enforcing the law (Section 12, GFA, 1865).

There were provisions under the Act whereby any authority unnecessarily vexing, arresting or confiscating goods may be subjected to a fine or imprisonment (Sec 12, GFA, 1865). Also, there were provisions for remission of the sentence, penalty and return of seized goods (Sec 15, GFA, 1865). Furthermore, the limitation for registration of offence was set to be six months from the date of commission (Sec 17, GFA, 1865). These provisions gave the Act a

sense of fairness and aligned with the policy of slow intrusion of these uncharted and uncivilised areas.

The provisions of the Act of 1865 are interesting to assess against the backdrop of the socio-legal situation at that point in time. The British were very new to the forest business and were baffled by the heterogeneity of the culture and rights asserted by the forest dwellers across India. Thus, while laying down a broad guideline to assert their commercial needs, followed by conventions necessary to ensure the same, the regulation was left in the hands of the Local agents for ground execution. Such decentralisation of governance demonstrates the difficulties faced by the Government in implementing the law at the grassroots level.

However, only three years after the date of enforcement of the 1865 Act, the forest department started feeling the need for new legislation.

The Act was merely forged on the existing lines of administration already prevailing. Different Presidencies and Local Authorities had, in one way or another, already devised methods to work with the forest dwellers before this legislation. The regulation or modus operandi differed from forest to forest and tribe to tribe and were so as to accommodate their economic interest without any scuffle. Though the Government had made its wishes clear by laying down what needed to be done by the local administration, the same was already existing, in need of tweaks to fit the new bill.

While working on the field under the Act of 1865, the forest officers had now gained first-hand experience with the forest dwellers and had observed the interaction between the forest dwellers and the law. Thus, the strategies devised by these forest officers and civil servants on the field to outflank the tribes were considered essential to draft the second legislation. Most of the provisions of the law were found defective and criticised by the forest officers as impractical (Guha, 1983b). The Act was declared to be “infinitely milder and less stringent than that which is in force in most European Countries” (Maine, 1864, p. 7)

However, the experience of the forest officers on the ground had also made them realise the difficulty in implementing the new law against the existing ancient practice and civilisation. It was thereby cautioned that given the prevailing political situation, the tribes were in constant revolt and conflict with the authorities, which would destroy all the past

achievements by the Government in earning their trust for the utility of forest produce. It was thus suggested that rather than banishing the forest dwellers from the forest, they should be made a part of the chain of commerce and thus paid to get the produce from the Jungle (Horsley, 1865).

However, heeding those officers, who supported the rights of the forest dwellers or showed difficulty in controlling them, would have meant for the Crown to forsake their commercial interest over the forest and hand it over to its dwellers. This did not suit the colonial outlook of the administration, which was to exploit every corner of the country. Nonetheless, an unplanned invasion into the Jungles without keeping in context the socio-legal status of the forest dwellers would have caused more difficulty.

Though the reserves created under the Act were small areas, it was arduous for the British to exclude the exercise of forest rights by the dwellers in certain areas. For example, in Central Province, in which the existing Chhattisgarh was then fused, the Government had to allow grass cutting and grazing in the reserved forest due to local pressure. Brandis observed that it was impossible for the forest department to prevent the forest dwellers of Central Province from building houses in the forest and cultivating the land under their ancient methods (Brandis & Smythies, 1876).

A report on the administration of the Forest Department in 1871-72 (Report on Administration of Forest Department, 1872) concluded that the forest dwellers were not accustomed to any restriction of their forest privileges. The reservation of the forest roused suspicion in the forest dweller of transgression and violation of the inherent rights in the forest. Thus, the authorities adopted the policy of surrendering rights for forest dwellers in other areas of the forest (Report on Administration of Forest Department, 1872, p.39). It was thus proposed that:

“If the undoubted rights of Government to the forests be thus gradually and judiciously established, any sudden enquiry into, or absolute definition of, the question of forest rights being avoided, rather than prematurely forced on, it will be quiet possible to accustom the minds of the people to the administration of the forests on fixed rules by Government officers, and to dispel their preconceived ideas of quiet and undisturbed rights to the brushwood and jungle”

Thus, it was alleged that the resilient socio-legal status of the rights of the forest dwellers and the hands-on political situation of unrest and rebellion being faced by the forest officers in trying to curb them could not be ameliorated by the Act of 1865. The Act was riding on the existing administrative arrangements at the Local level, which was inefficient in the first place. Moreover, the strategies adopted on the ground by the Forest Officers to diffuse the political tension between the Government and the forest dwellers did not find support in the existing legal framework.

The short Act was drafted and approved in a hurried manner without addressing the practical problems. The unfettered power of the Government to declare any land as a Government Forest was not welcomed by the aboriginal tribes, who believed that the forest had been inherited by these dwellers from their ancestors. There was no regulation over the other category thus created by the Act, which was the unreserved forest area. Moreover, even within the reserved Government Forest, the local authorities were prohibited from tampering with the existing rights of the individual or the community. As such, cutting trees for building dwelling houses, hunting, using the forest produce and burning the patch of forest for cultivation were all ancient customary practices and means of subsistence for the forest dwellers and were indeed the existing rights that could not be abridged, all of which stood stark against the aim and object of the Government in enacting the legislation. Thus, while the Act of 1865 failed to achieve the objective of the Government, it germinated a feeling of distrust amongst the dwellers of the forest.

The Indian Forest Act, 1878

For a better and streamlined exploitation of forests towards commercial profit and revenue creation, the 1865 Act was superseded in 1878 by a far more oppressive Indian Forest Act, 1878. It is pertinent here to study in detail the object, the jurisprudence and the deliberations behind the creation of this Act, since the Indian Forest Act 1878 (‘IFA, 1878’) served as the blueprint, with slight alteration, for the subsequent Indian Forest Act of 1927, which is still applicable as the law of the land in India.

The transition between the Act of 1865 and the Act of 1878 saw the introduction of a young B.H. Baden-Powell, who unlike Brandis, was not a forester but a civil servant, having served as a Judge in the Panjab Province. Baden-Powell played a crucial role in introducing the legal jurisprudence to the forest laws in India and thus has been regarded as the new Act's principal architect (Guha, 1983a).

Though the common goal was to declare the State as the owner of the forest, there was a significant difference between the jurisprudence expounded by Brandis from that of Baden-Powell while dealing with the topic of the rights of the forest dwellers and their traditional assertion over the forest.

Brandis postulated distinctions between privileges and rights in order to assert complete state control over forest areas. He stated that privileges would not need to be legislated, whereas rights would need to be recognised through legislation. Thus, while observing that it would be practically impossible to deprive forest-dwelling communities of their rights over the forest, he suggested a framework whereby the State would be the owner of the forest, which would allow the forest dwellers to exercise a few privileges at its discretion (Pathak, 2002).

However, the transition in legal terminology from rights to privileges occurred when Baden-Powell presented a parallel between the easement rights in Europe and the rights of the forest dwellers within the Indian forests, thus bringing the tool from the European jurisprudence. Powell proposed that, in theory, all the land, including the forest, belonged to the Crown and yet, in practicality, it was being used unfetteredly by the dwellers of these forests, claiming the same to be their right. Hence, it was deemed necessary to distinguish ‘rights’ from ‘privileges’, which, according to Powell, was when the culture or ownership was not documented and yet was being exercised over the lands of the Government (Baden-Powell, 1875, p. 6).

Thus, while B.H. Baden-Powell emphasised the jurisprudential aspect of ‘privileges’ over ‘rights’; Brandis drew the parallel between the European concept of rights of the common and the inherent rights of the forest dwellers in India. Hence, in Brandis’ framework, it did not matter how the customary rights were acquired, but rather what mattered was that they had to be regulated in favour of the yield and sustainability of the forest. The judge to approve or reject a customary right would not have been a civil servant but a forest officer

who, being an expert in the field, would know exactly which rights were to be allowed to pass through and which were to be extinguished in favour of the intentions of the Crown (Pathak, 2002).

Both the jurists later compromised with each other's views and thus opted to find a middle path in formulating the new Act. Baden-Powell observed that since privileges could not be denied altogether due to the political and local pressure, it was best to concede them (Baden-Powell, 1875). Also, Brandis echoed Baden-Powell's theory of 'privileges' and thus asserted that forest privileges were to be allowed only for personal use and not for profit or trade (Brandis & Smythies, 1875).

Brandis was well aware of how current legislation and concepts were being subverted and that the new regulations were bound to interfere with the customary forest rights without remuneration. Moreover, Brandis saw these rights as trivial, obscure and relics of the past, which could be replaced by granting compensation for their loss. He thus reassured the authorities that any infringement of customary rights of the forest dwellers would only be temporary since he planned to eventually "free most forests of customary forest rights." (Brandis, 1868, p. 33)

A revised bill for replacing The Government Forest Act, 1865 was put forward way back in 1868, which was resubmitted after getting revised and incorporating comments and suggestions from Local Governments in 1871. A draft forest bill was subsequently presented by Baden-Powell in 1874, after receiving the opinions on the circulated bill of 1871.

Thus, the draft Forest Bill presented by Baden-Powell in 1874 reflected the jurisprudence introduced by him and the wisdom gathered from the local authorities' work being done at ground level. The Draft Forest Bill of 1874 aimed to clarify the law and draw the line between the powers of the Government and the entitlements of the forest dwellers.

Under the Bill, Baden-Powel thus proposed to classify the forest into three categories: Special Reserve, District Forest and Ordinary Reserve. The special reserves were supposed to be small in area but very valuable in their produce. As such, a total exclusion of the forest-dwelling tribes was necessary from these special reserves and no privileges could be allowed within such area of the forest. In ordinary reserves, though the Government had its

commercial interest but privileges could be allowed in a regulated manner. The district forests were to be constituted on lands of limited utility for the Government and made over absolutely for the use of villages and communities (Baden-Powell, 1875). Thus, the benchmark for the protection of the forests and the disentitlement of the rights over these lands were purely governed by the commercial values of the trees and forest produce in such zones.

The Forest Rights were defined in the Draft Forest Bill framed by Baden-Powell in 1874 as (Baden-Powell, 1875):

a) the right of ownership in trees, timber bamboos, brushwood, grass or other produce of a forest,
b) the right to cut, use, or remove any timber, trees, branches, leaves or any bamboos, brush-wood, grass, or other produce of a forest or of the soil thereof
c) the right to prohibit such cutting, user or removal
d) the right of pasturing cattle in a forest
e) the right of prohibiting such pasturing
f) the right of way through a forest
g) the right of hunting, shooting or fishing in a forest

Furthermore, forest privileges were defined to mean any use of forest or the produce thereof (as included in the definition of forest right) when such is exercised by permission and at the pleasure of the Local Government and not as of right (Baden-Powell, 1875). In the statement of Object of the Bill of 1871, Baden-Powell insisted that 'Forest', as defined under Section 4 of the Bill, "being any tract of land producing, naturally or by cultivation, trees, brush-wood, or bamboos, and shall include such other lands as may be declared" (Sec 4, Draft Forest Bill, 1875), is in favour of the Government.

However, these crucial definitions were removed from the final Act, probably because it would not have served the interest of the Government to pre-define such area, rights or privileges over the forest, thus limiting its power in curbing any other activities which may come as a hindrance against their commercial activity or to prevent incidentally ceding all other rights apart from those defined in the Act. The Government also wanted to enjoy their autonomy in declaring any part of the earth as forest and thus take advantage of this stringent

legislation. The lack of definition gave the flexibility to interpret the legislation in favour of the Government and thus the final Act contained only seven definitions. Though the proposal to keep the special reserve was accepted and termed as Reserved Forest under the Act, the area for the same was not defined to be small, as proposed under the draft.

Thus, the Indian Forest Act, 1878 (Act No. VII of 1878) was passed by the Governor General of India in Council and received the assent of the Governor General on 8th March 1878. The new Act was an elaborate legislation containing 83 Sections as against the 19 Sections of the Act of 1865. It showed the significant thought that was put into drafting the new Act, drawn from the experience of local administrations and forest officers working on the ground, crystalised with the introduction of fresh jurisprudence into it by Baden-Powell.

The Act was made immediately applicable in the territories administered under the Governor of Bombay in Council, the Lieutenant-Governors of the Lower Provinces, the North Western Provinces and the Panjab (except the District of Hazara) and the Chief Commissioner of Oudh, the Central Provinces and Assam. These constituencies were chosen because they had dense forests of incredible value and were not up to the mark in their management, while the territories like Mysore, Berar, Himalayas and Ajmer were left out for they had their special forest laws (Brandis, 1875). However, liberty was reserved with the Local Authorities to extend the application of the Act after permission and notification (Sec 1, Draft Forest Bill, 1875).

The Act of 1878 declares three distinct objects for its enactment-

1st – To demarcate, protect, and manage public forests: Reserves, Government, or State forests. Most of these forests were already demarcated and separated from other public or private property by well-defined boundaries.

2nd – To secure the protection of forests' growth on Government lands that had not been formally demarcated. These lands included open, unreserved, or district forests and all other lands over which the Government had not relinquished its rights, whether they formed part of the Government wastelands or were in the occupation of individuals or communities.

3rd- To authorise the levying of specific duty rates on timber and other forest products, as well as the general control of timber and other forest products in transit, to protect the government forest and the interests of those involved in the timber trade.

Thus, though the intention and objective had mostly stayed the same since the Act of 1865, the Government had now brought bigger guns to meet the ends of their commercial exploitation. The Government wanted the exclusive right to drain the forest and thus they brought a much more stringent legal instrument, with greater flexibility in its interpretation to be used by Magistrates and Judges in favour of the goal of the Crown. Hence, apart from the continuing theme of profitable gains from the forest, the principal goal of the new legislation was to establish absolute State ownership over forests and ensure the rescission of the customary rights exercised by the forest dwellers.

The Act created three classes of forests as against the two vague classes prescribed under the 1865 Act. These were 'The Reserved Forest', 'The Protected Forest' and 'The Village Forest'. Also, unlike the Act of 1865, whereby only one class of Government Forest was defined while all the remaining forest was left as the other class, the Act of 1878 defined the traits of all three categories of forests within the Act. The demarcation of the forests and their area into the delineated classification, which is an intrinsic component of usage definition, was solely based on administrative considerations.

Reserved Forest:

Section 3 of the Indian Forest Act, 1878 ('IFA, 1878') vested the Local Government with the power to declare any forestland or wasteland as a Reserved Forest. The local Government would appoint a 'Forest Settlement Officer' (FSO) after publishing a notice in the local official gazette, declaring its intention to constitute a reserved forest and defining its boundaries (Sec 4, IFA, 1878). The F.S.O then would require the local population to come forward and claim any existing right over any land or forest produced within the defined boundary (Sec 6, IFA, 1878). The F.S.O. could exercise the powers of a Civil Court in the trial of suits (Sec 8(b), IFA, 1878) and was empowered to enquire into the claims while exercising broad discretion to accept or reject any such claim of right. There was a restriction on further acquisition of rights (Sec 5, IFA, 1878) and any rights which had not been brought to the knowledge of the F.S.O during the survey were deemed to have been extinguished (Sec

9, IFA, 1878). The F.S.O. had much discretion throughout the process of settlement of rights. Despite the stringent and exact phrasing of the various clauses, the Act had a significant level of discretion in interpretation, which could be easily turned to favour the Crown.

Though it can be apprehended that most of the claims would not have been made, or if made, would have been rejected, the F.S.O was required to compensate the person interested whose claim has been admitted, either by a grant of land or grant of money or both (Sec 10, IFA, 1878). Also, the F.S.O had the authority to limit the rights thus established and ration the forest produce being claimed under such rights (Sec 13, IFA, 1878). There was a strict restriction on the sale or barter of the forest produce obtained by the dwellers, thus limiting their indulgence to only towards their subsistence (Sec 23, IFA, 1878).

An examination of the activities prohibited in the reserve forest under the Act demonstrates the concerns facing the British Government at the time (Sec 25, IFA, 1878). The act of making fresh clearing and breaking for cultivation was deemed necessary to be punished since timber was the main product that interested the Crown. Arson was yet another significant concern since it destroyed the forest and essential resources. Hence, kindling or carrying of fire or burning of charcoal for any manufacturing within the reserved forest was a severe offence under the law. Such strict punishment for arson under the Act was very much appreciated by the local executing agencies (Central Provinces, 1876). Using and removing forest produce was to be penalised, including cattle grazing, which was termed as trespass. Such acts were made liable to a punishment of term which extended up to six months or with a fine not exceeding five hundred rupees, or with both along with compensation to be paid for the damage thus caused. However, Forest Officers and their contractors were saved from being punished upon carrying out the task of exploitation of the forest (Sec 25, IFA, 1878). Thus, the reserved forest was crafted to be out of bounds for the forest dwellers, with stringent conditions and punishments for its violations.

Village Forest:

The Village Forests were constituted under Section 27 of the Act and the authority to declare such areas rested with the local authority. Theoretically, the forest area declared as a Village Forest was to be left entirely for the utility of the forest dwellers, with the local administration having only management rights over it. Total eviction of forest dwellers from

the forest was not a great idea for the Government, since these forest dwellers served as labourers towards the commercial activities of the administration. Thus, recognition of forest villages was labour-centric in its intention, and the forest department was directed to minimise the rights of these villages and diminish their areas of use while treating them only as a utility in existence for the purpose of the forest department (Central Provinces Forest Manual, 1907). However, there was a catch in the wording of Section 27, which is two-fold. First, it asserted that the forest belongs to the Crown and that the Local Government may assign the rights of the Government over the forest to the local population. Thus, while declaring so, the Act deprived the forest dwellers of the ownership rights of the forest but assigned to them those rights which were otherwise available at the pleasure of the State. Hence, the theory of 'privilege' being enjoyed at the mercy of the Government, as postulated by Baden-Powell, can be seen at play here. The rights of the forest dwellers were now at the mercy of the Government, which would still interfere with their way of life while regulating the management of the village forest. Secondly, the Village Forest could have been constituted only out of the reserved forest and thus the procedure for declaring a reserved forest was to be followed for a Village Forest to be culled out. This would have led to the settlement and extinction of rights by the F.S.O. and hence would have made the assignment of rights redundant. Thus, this chapter of the Act of 1878 mostly remained a "dead letter." (Ribbentrop, 1900, p. 121)

Protected Forest:

The third residuary class of forest was termed as "Protected Forest" and was devised under Section 28 of the Act, 1878. These were all the other forest lands which were the 'property of Government' or over which the Government had 'proprietary rights.' Thus, by this, all the forests in the country, excluding the private forest, were declared as the property of the Crown and were brought under the protection of the Government. This can be understood to be a residuary class of forest, thus encompassing all forests other than reserve forest, because though it was mandated that the declaration of a forest as a Protected Forest shall be done only after settlement of rights within the designated area, the Government was empowered to declare any such area as Protected Forest without doing so, on the face of a threat endangering the rights of the Government over such forest land. However, this extraordinary declaration was not to be done while abridging or affecting any existing rights of individuals or communities. Here again, the rights of the forest dwellers were rendered as mere

privileges, left to be exercised at the mercy of the Government. The Government could declare a particular class of forest as reserved, close down the areas of the forest and thus vacate the part of the area and also prohibit mining, manufacturing and cultivation on the Protected Forest land (Sec 29, IFA, 1878). All the rights exercised by the forest dwellers were subject to either license or levy of fees or taxes (Sec 30, IFA, 1878). The utility of the forest produce was strictly limited to the own use of the dwellers of the forest, while its commercial exploitation was reserved as the exclusive domain of the Crown. The Local Government had the power to make rules to regulate just about everything in a protected forest (Sec 31, IFA, 1878). Thus, the forest dwellers had to now seek permission to use their own land and pay taxes and fees for utilising their own resources, owing to the assertion of ownership by the Government. The offences prescribed for the protected forest were similar to those prescribed for Reserved Forest, prohibiting acts like kindling fire, felling of trees, mining and collecting forest produce and the quantum of punishment and penalty for these acts was also the same as for the Reserved Forest (Sec 32, IFA, 1878).

Thus, in brief, the Government declared complete ownership over all reserved forests and did not welcome any intrusion over these lands. Although the lands in protected forests were the Government's property, the forest dwellers could exercise their limited rights within these forests. These forests were often in the State of transition to be declared as reserved forests (Imperial Gazetteer of India, 1907-1909). The Government was supposed to have only management rights in a village forest, and as such, the village forests were marked exclusively for the use of forest dwellers. However, this class mostly remained a myth and non-existent.

To keep the possibility of expanding reserved forests open, the Act provided for continuing a certain level of management over the open, unreserved, or village forests (Brandis, 1875; Baden-Powell, 1875). Thus, regardless of the classification as above, the Act empowered the Local Government to prohibit the breaking-up or clearing of land for cultivation, pasturing of cattle and firing or clearing of vegetation on Forest, even if the forest was not the property of the Government (Sec 35, IFA, 1878). Upon failure to abide, such a forest could be placed under the control of a forest officer and be treated as a reserved forest (Sec 36, IFA, 1878). The Government also claimed ownership of all the drifted and stranded unclaimed timber, unwilling to let anything go by (Sec 45, IFA, 1878).

Hence, the Act asserted the power and dominance of the Crown over all the forests in the country, one way or the other. The nature and classification of the forests were completely within the discretion of the officers of the Government, without any assured territorial stability for the forest dwellers. The Government could proclaim any part of the land as a reserved or protected forest and thus assert the law over the dwellers, extinguishing their centuries-old rights and disbanding them from their habitat, culture and livelihood in a jiffy. There were 35,840 sq. km of state forests in 1878. This increased to 143,360 sq. km of reserved forests and 51,200 sq. km of protected forests in 1890 and to 208,384 sq. km and 21,248 sq. km of reserved and protected forest, respectively, in 1900 (Guha & Gadgil, 1993). Thus, the British Government was very keen to bring most of the forests under the strict control of Reserved Forest under the Act as soon as possible, to oust the forest dwellers and thus erase any resistance against their commercial endeavours through bureaucratic means and legislative tools.

For such an assertion and exercise of authority over the forests and its residents, the forest department and its officials were made powerful under the Act of 1878. Forest officers had a wide range of administrative responsibilities, including regulating the exercise of rights and privileges as well as administering the forest estate and resources. Forest-dwelling communities, on the other hand, could not own forest land. In the event that the forest area was to be designated as a special forest, the rights of the dwellers were to be settled in the form of easement rights by the officers of the forest department.

While the earlier Act of 1865 was rejected in its entirety as being too soft, only Section 8 of the previous Act of 1865, which allowed for arrest without a warrant, was retained by Baden-Powell under the new Act of 1878. Thus, the offences under the Act empowered the forest officer to arrest without a warrant and to cease all the goods, including the tools used in committing the offence upon reasonable suspicion of commission of an offence (Sec 63, IFA, 1878). The forest officers were vested with vast powers, including that of a Civil Court, to compel attendance and to hold an enquiry into forest offences (Sec 71, IFA, 1878).

In his book ‘A Manual of Jurisprudence for Forest Officers’, Baden-Powell (1882) expounds on the duties of forest officials, providing insight into the obligations imposed on them as regulators of rights and liberties during this time period, delineating as such:

“The great variety of tasks which even this brief sketch shows to be imposed by the State management of forests, obviously necessitate a special service of forest officers, who constitute at once a forest police for protection and surveillance; a managing agency to handle the estates, keep their accounts, and realise their revenues; and a professional staff to direct and carry out works of utilisation, regeneration, and improvement. Such a service needs to be organised, to be vested by law with certain powers of arresting offenders, interposing to prevent offences, and demanding help in the case of fire or other danger.”

The Act jealously protected the commercial interest of the Crown over the forest resources and thus strictly prohibited any limitation towards the same. The Act asserted absolute control of the Government over the rivers used for the transit of timbers, where contravention led to imprisonment for up to six months and a fine of up to five hundred rupees or both (Sec 42, IFA, 1878). The interesting clause here to notice is the imposition of double penalty in cases where the act is committed after sunset and before sunrise and it has been planned or the offender has been convicted of a previous offence. This demonstrates that the British enviously wished to guard their produce of the forest and were willing to come down heavily on those who disturbed their commercial pursuit. By claiming State ownership over the forest, forest dwellers were reduced to servitude and were made bound to inform any contravention of the Act to the administration. They were directed to assist officers in preventing and extinguishing the fire, while helping the authorities in discovering and arresting the offender (Sec 78, IFA, 1878).

The Act of 1878 proved to be a comprehensive piece of repressive legislation, which proved to be a model for implementation in other British colonies. Forest officers trained in India were often deputed to other colonies to implement this repressive system elsewhere (Imperial Gazetteer of India, 1907-1909). The exclusion of forest dwellers under the law was thus both physical and social, the former by prohibiting and limiting access to forests and pastures and the latter by granting "right-holders" just a minimal and fragile claim on the forest's produce (Guha & Gadgil, 1989, p.144). Although forest legislation recognised certain categories of privileges of the forest dwellers, the forest-dwelling communities could not be entitled to proprietary rights, which was a point of conflict among the Adivasi communities and fuelled mutinies against the Crown (Guha, 2012).

While foreseeing such complications, there were several concerns from the Local Governments and forest officers, questioning the execution and application of the Act on the ground. In the opinion of the Collector of North Canara, the Jungle tribes were significantly less likely to answer to the proclamation for declaration of rights and to participate in the procedure with the forest department, thus leading to their rights being automatically extinguished (Assistant Collector Canara, 1876). It was also rightly observed that the lengthy legal procedure of hearing and establishing rights was better suited for the civilised population and not those living in deep forests, for they, being illiterate and poor, could not furnish the written submission of their claims (Collector of Nasik, 1876). Apart from the difficulty in the execution of the Act, there were also concerns about the legal foundation of the law. As such, the Deputy Collector of Nellore raised concerns about the validity of the law. He quipped that the proposed legislation had no precedent in the past because, historically, there were no government forests in the country. He thus rightly asserted that forests have consistently grown naturally and the people have survived on them for centuries, without any sovereign interference (Memorandum on the Forest Bill, Nellore, 1871).

There was a severe hostility of opinion between the Madras Government and the Government of India, whereby the former was ardent to oppose the implementation of the law (Guha, 2001). The Presidency of Madras advanced three reasons for rejecting the Bill of 1878 Act, as under:

“First, because its principles, scope and purpose are inconsistent with the existing facts of forest property and its history.

Second, because, even if the Bill were consistent with facts, its provisions are too arbitrary, setting the laws of property at open defiance, and leaving the determination of forest rights to a department which, in this Presidency at all events, has always shown itself eager to destroy all forest rights but those of Government.

Third, because a Forest Bill, which aims at the regulation of local usages ought to be framed, discussed and passed by the local legislature.” (Board of Revenue Madras, 1871, p. 51)

In fact, the Madras Government had predicted that such an intrusive and domineering Act would result in resentment from every class of the society and that the tribes would not

support the intention of the legislation. Regardless of all the opposition from all corners of the society and from within the Government, the Governor General passed the Act in Council and the prediction of the Presidency of Madras came true since the Government had to face severe resistance and revolts from the forest dwellers while trying to implement the law (Board of Revenue Madras, 1871).

Meanwhile, the forest area under strict Government control expanded steadily, owing to the increased demand for wood and the lavish commercial gains by the trade of exotic forest produce. In 1878, 14,000 square miles of forest were under State supervision, which increased to 76,000 square miles by 1890, a five-fold increase within 12 years and three-fourths of which were designated as reserved forest (Board of Revenue Madras, 1871). By the year 1901, 208,369 square miles of Forest were under British Control, being 22% of the area of then British India (Imperial Gazetteer of India, 1907-1909). Out of this, 88,140 square miles of forest area was demarcated as strictly controlled reserved forest while 10,488 square miles of forest land was earmarked as Protected Forest (Imperial Gazetteer of India, 1907-1909). With the increase in the area of the state-controlled forest and the parallel increase in the population of the forest dwellers, the conflict was bound to rise between the State and the Aboriginals.

The founder of the Indian Forest Department, Brandis, was concerned about the rights of the forest dwellers and thus convinced the Authorities to give a leeway for exercising these rights rather than trying to crush them by force of might. As such, before the enactment of the Act of 1878, Brandis observed:

"The trouble of effecting the forest rights and privileges on limited well-defined areas is temporary and will soon pass away, whereas the annoyance to the inhabitants by the maintenance of restrictions over the whole area of large forest tracts will be permanent, and will increase with the growth of population " (Guha & Gadgil, 1993, p.132).

Brandis's concerns still echo today, for the historic injustice of deprivation by the sovereign has left a permanent scar upon the conscience of the forest dwellers, who are now up in arms to avenge it.

The Forest Policy, 1894

In 1884, the forest department was brought under the Imperial Department of Agriculture and Dr. John Augustus Voelcker, a German expert on Agriculture, was invited by the Government of India to examine and present a report on the improvement of agriculture in India. This Report was presented in 1893, whereby he observed that "the forest department was practically called upon to show a large revenue and was naturally proud of the profits it made" (Voelcker, 1893, p. 141)

The Report emphasised upon the need for further classification and demarcation of forest areas to create 'Agricultural Forest' and 'Fuel and Fodder Reserves' (Voelcker, 1893, p. 140) and thus toed the line proposed by Brandis, claiming it to be the map of the future of any forest policy in India.

Voelcker thus suggested that the stern approach in ousting the villagers from the forests and its vicinity would severely hit their daily needs and thus would deprive the villagers from fulfilling the agricultural demands of the village. Thus, he maintained that after reserving the dense and distant forests for the commercial exploits of the Crown, the vicinity around the reserved forest should be allowed to be used for agriculture and for realising the daily requirements of the forest dwellers so that the less fortunate people, who could not establish any right as required under the Act 1878, could fulfil their needs. Thus, the unviable forest lands were suggested to be given to be cultivated to provide for a large number of the cultivating villages. It was hence recommended that after the agricultural needs of the village communities have been met, the forest department may do anything that is possible and remunerative, while cautioning that such commercial exploitation and expropriation "must come after, and not before, the agricultural needs of the country" (Voelcker, 1893, p. 145).

Thus, the future forest policy was suggested to be drafted with the motive of erasing the bad name being earned by the Forest Department in the past decades and thus to change the orientation to more 'public giving' rather than 'one of taking away' (Voelcker, 1893, p.147). The Report had finally assessed and accepted that the indulgence of the forest dwellers into the forest, and not their ousting, was necessary to keep the forests green. These fundamental

concepts underlying the forest policy of 1894 still hold good and were accepted as such under the National Forest Policy of 1952 (Para 2, National Forest Policy, 1894).

The following excerpt contains the crux of the forest policy of 1894:

"The sole object with which the state forest are administered is public benefit. In some cases, the public to be benefitted all body of tax-payers; in others, the people of the tract within which the forest is situated but in almost all cases the constitution and preservation of a forest involve, in greater or lesser degree, the regulation of rights and the restriction of privileges of users in the forest area which may have previously been enjoyed by the inhabitants of its immediate neighborhood. This regulation and restriction are justified only when the advantage to be gained by the public is great; and the cardinal principle to be observed is that the rights and privileges of individuals must be limited, otherwise then for their own benefit, only in such degree as is absolutely necessary to secure that advantage" (Circular No 22F on Forest Policy, 1894, para 2)

Thus, the forest policy of 1894 was adopted vide Circular No. 222-F, dated 19th October 1891 in light of Circular Resolution No. 17-105A, dated 15th July 1891. The forest policy of 1894 was identified to be broadly based on Circulars VIII and IX of Dr Voelcker's Report on the Improvement of Indian Agriculture, conducted under the Review of Forest Administration in British India for 1892-93 by the Inspector-General of Forests. For the implementation of 1894 policy, forests we are broadly classified into the following four categories (Forest Policy, 1894, para 3):

(i) Forest, the preservation of which was essential on climatic or physical grounds;
(ii) Forest which afforded a supply of valuable timber for commercial purposes;
(iii) Minor forests and
(iv) Pasture lands.

The first category of the forest was those on hilly slopes; their exploitation could lead to landslides and the destruction of plains that lie below. Thus, they were not to be exploited to protect such areas' climactic and physical conditions.

The second category was the tract, which held the commercial interest of the Crown but where the forest dwellers could be granted the privilege of usage in the fringes of the forest. This was a shift from the previous stern policy of absolutely ousting the forest dwellers from the reserved and protected areas of the forest. It was thus laid down that for this second category, "every reasonable facility should be afforded to the people concerned for the full and easy satisfaction of their needs, if not free than at low and not competitive rates." (Forest Policy, 1894, para 5) It was furthermore declared that wherever an effective demand for culturable land exists and can only be supplied from the forest area; the land should ordinarily be "relinquished without hesitation." (Forest Policy, 1894, para 6) However, such a conversion of forest land into agricultural land was made subject to certain conditions, being (Forest Policy, 1894, para 7):

(i) Honey-combing of valuable forest by patches of cultivation should not to be allowed.
(ii) The cultivation must be permanent and must not be shifting cultivation, which denudes large forest area to place a small area under crops.
(iii) The cultivation in question must nor be nominal and an excuse for creation of village
(iv) The cultivation mast not be allowed so to extend as to encroach upon the minimum area of forest which is needed in order to supply to the reasonable forest requirements, present or prospective.

The adoption of the recommendation of the Voelcker report is apparent in the Forest Policy of 1894, whereby the consideration of forest income was declared to be subordinated to the satisfaction of these needs, even for the forests which were protected, and if necessary, reserved.

The third and fourth kinds were those forests which were of no commercial interest for the Government and were akin to that of a Village Forest as under the Act 1878, whereby the Government bestowed upon itself the responsibility only to manage these forests in such a way so that the people were "protected against their own improvidence." The fourth class were only forest in name and were to serve the interest of the local population and to encourage the yield of manure for agricultural purposes while emphasizing the 'tall revenues'

collected as revenue to the Government from the levies on grazing (Forest Policy, 1894, para 9 and para 12).

The Forest Policy of 1894 was more agriculture-oriented and thus, to some extent, relaxed the exclusive exploitation rights of the British Government. Its prime purpose was to conserve the forest wealth while trying to strike a balance between the commercial interest of the crown, the local needs and the sustenance of agriculture.

The policy of 1894, by granting such concessions, also hoped to reduce the State establishment for forest and its expenses, which at times exceeded the revenue. It aimed to solve the issue of the forest department being undermanned, while encouraging agriculture in the forest area. Such an accommodating consideration also helped in releasing the frequent political tension between the Government and the Aboriginals. Nonetheless, the policy was implemented with relaxation only utmost point consistent with Imperial interest.

It was observed that the Government could benefit more from the participation of the local communities residing in the forest to encourage them to participate in commerce and thus cater to the need for small timbers. The policy also called upon the local governments to examine the recommendation of Dr Voelcker for creating fuel and fodder preserves and thus take necessary decisions in this regard, looking at the local needs and possibilities (Circular No 22F on Forest Policy, 1894, para 11). The policy also relaxed the procedure for recording of rights, as promogulated under the Forest Act 1878 and thus stated that new rights may spring up in protected, but not reserved areas, of the forest (para 15).

The first Scheduled Areas and Scheduled Tribes Commission Report in independent India observes the impact of the Forest Policy of 1894, as it states:

“It was only in 1894 that forest officials seriously appeared on the scene and claimed authority to limit and regulate tribal rights in favour of the rights of Government. This conception of regulating the rights and restricting the privileges affected the tribal people very deeply and was the root cause of the delicate relations between them and the Forest Department which continue to the present time” (Report of SC, ST Commission, 1960, p. 126)

The 1894 policy marked the beginning of the forest authorities' role as a regulator and implementor of forest rights and privileges in the territories. Though the policy time and again emphasized the fact that "no restriction should be placed upon reasonable local demands, merely in order to increase the State's revenues" (Report of SC, ST Commission, 1960, para 8) and also that "considerations, of income should be made secondary to the full satisfaction of local needs" (para 8), the process of dispossession though the mechanism of settlement of rights and extinguishing privileges continued under the legislations. The way of interpreting the provisions of the law at grassroot level made the forest dwellers suspicious of the forest officials, and to a greater extent, of the intentions of the forest department (Report of the SC, ST Commission, 1960, p. 127). Moreover, they were only policies and not law in suppression of the Act of 1878, which, at the convenience of the Government, could be brought about to protect its own interest.

Nonetheless, irrespective of the practical application of the policy, it cannot be denied that the policy of 1894 was very progressive in nature and, to some extent, recognized the right to self-determination of the forest dwellers. Whether it was the reduction of expenses of establishment or needed increase in the yield of crops or the local political pressure which determined the Policy of 1894, if implemented in its true nature and spirit, would have solved the equation between the State interest and the forest rights to a great extent.

The Indian Forest Act, 1927

Indian Forest Act, 1927 (Act XVI of 1927) ('IFA, 1927') received the assent of the Governor General of India on the 21st of September 1927, with its declared objective being "An Act to consolidate the law relating to forests, the transit of forest-produce and, the duty leviable on timber and other forest-produce." (Object of IFA, 1927) The aim and objective of the Indian Forest Act, 1927 is similar to that of the Act of 1878, whereby forest dwellers have mere privileges and, only exceptionally, very minimum rights. The Indian Forest Act 1927, just like its predecessors and under the same jurisprudential model, continues to brag and declare the Government's ownership and proprietary rights over the forest and forest produce.

True to its objective, the Indian Forest Act, 1927 is similar to that of its predeceasing legislation, the Forest Act of 1878, but consolidated the other regulations and amendments

within it, with minimal changes. As such, the Forest Act 1927 repealed the Forest Act, 1890 (Act V of 1890), The Amending Act, 1891 (Act XII of 1891), The Indian Forest (Amendment) Act, 1901 (Act V of 1901), The Indian Forest (Amendment) Act, 1911 (Act XV of 1911), The Repealing and Amending Act, 1914 (Act X of 1914), The Indian Forest (Amendment) Act, 1918 (Act I of 1918) and Schedule I, Part I of the Devolution Act, 1920 (Act XXXVIII of 1920) (Schedule of IFA, 1927).

Since this Chapter has conscientiously analyzed the Forest Act of 1878, it would be a futile exercise to readdress or reassess the provisions and jurisprudence of the Indian Forest Act, 1927. A bare perusal of the Forest Act of 1878 and the Indian Forest Act, 1927 would demonstrate unadorned similarly in their provisions and one would even find the headings of their respective Chapter and Sections to be the same. While the Forest Act of 1878 had 83 Sections, the Indian Forest Act, 1927 has 86 Sections, with some provisions being added to the latter. This includes the procedure for the treatment of claims relating to the practice of shifting cultivation (Sec 10, IFA, 1927), power to release property seized (Sec 53, IFA, 1927), and power to release on a bond a person arrested (Sec 65, IFA, 1927).

Learning from the previous experience of resistance against the blanket curbing of Jhum cultivation, which held a cultural, traditional and religious significance for the tribes, the provision under Section 10 of the Indian Forest Act, 1927 provided the procedure for assessing claims relating to the practice of shifting cultivation. However, the same has been made subject to approval by the forest department and thus could be extinguished or granted under imposed terms and conditions (Sec 10, IFA, 1927).

While there was provision for the seizure of the goods under the Act of 1878 (Sec 52, IFA, 1927) and a general power conferred upon forest officers to release the same (Sec 60, IFA, 1927), the Act of 1927 provides for the immediate release of such goods thus seized upon the furnishing of a personal bond for the production of the property before the Magistrate. This prevents any unnecessary delay in providing the bare minimum assets of forest dwellers and thus does not immediately deprive them of the forest produce that they need and may rightfully be theirs.

The Indian Forest Act, 1927 carries forward the oppressive and deterrent legacy of its predeceasing colonial legislations and thus authorized the officers to arrest without a warrant

on suspicion (Sec 64, IFA, 1927). However, power has now been conferred upon the Forest Officer, not below the rank of a Ranger, to release such person on executing a bond to appear before the Magistrate or the officer in charge (Sec 65, IFA, 1927). However, such power is discretionary and not directory and thus only facilitates such a possibility.

The categories of the forest under the Indian Forest Act 1927 remained the same and the method for such declaration also remained the same (Sec 20,28,29, IFA, 1927). As such, reserved forests are under absolute government control, the protected forests being Government controlled but with some exceptional rights to be exercised by the forest dwellers and village forests being barely forests at all. The Forest Act, 1927 criminalized access to forest resources and thus strangulated the livelihood of the dwellers, so much so that it even prohibited the minimum customary right of grazing in the former categories of the forest (Sec 69, IFA, 1927). The forest produce is strictly defined and any alteration in its nature stopped the protection of minimum rights accorded to the forest dwellers. The Act of 1927 continued providing significant autonomy to the Government and the Forest Department to make rules, regulating or restricting just about any activity or rights within the forest (Sec 30, IFA, 1927).

The Act has been subsequently, but barely, amended after the independence of India, only to replace the authorities in consonance with those adopted or established after 1950. The powers of the Provincial Government were vested with the Central Government, and the duties of the Local Government were now vested with the State Government under the quasi-federal stricture adopted by the free India under the Constitution of India (Adaptation of Laws Order, 1950).

It is remarkable that this colonial-era Act still exists and is applicable in India, with only minor changes to demonstrate that much water has flowed from beneath the river since 1927, when the nation transitioned from the Indian Empire to the Union of India, and thus from colonialism to democracy. With changing times, the Governments have now acknowledged the “historic injustice” and thus have brought legislations to recognize the rights of forest dwellers over the forest. Though the restrictions upon forest dwellers under the Indian Forest Act, 1927 have been significantly diluted with the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, it still stands tall as an instrument of possible misuse to curtail the rights of forest dwellers.

The Government of India Act, 1935

The Secretary of State for India, Lawrence John Lumley Dundas, proposed that "there are considerable tracts in India inhabited by peoples of this kind who required a simpler form of government than is now proposed has been recognised for a very long time past." (British Parliamentary Proceedings, 1936, p. 736) Thus, Lawrence John Lumley proposed a separate class of region to be established under the Government of India Act, namely excluded and partially excluded areas. These were to be areas inhabited by the aboriginal tribes, who had primarily lived without much interference, and where the Provincial laws were not to be applied and, if applied, to be modified per the prevailing cultural practices of the Forest Dwellers. These proposals later became the foundation stones of the Fifth and Sixth Schedules to the Constitution of India in 1950.

This was proposed to be made part of the Government of India Act, 1935, which would exclude the areas inhabited by aboriginal tribes to protect their culture and traditional laws from the administration of provincial laws. This schedule included in Central Provinces- "District except the Raipur and Baloda Bazaar Tahsils and the Phusar, Bilaigarh, Katgi, and Bhatgaon Zamindaris", "The Sanjari Tahsil Zamindari of the Drug District" & "The Bilaspur District except the Bilaspur Tahsil Khalsa and Janjgir Tahsil" (British Parliamentary Proceedings, 1935, p. 1387). Thus, the modern State of Chhattisgarh was almost entirely included under the excluded areas, as being majorly inhabited by the aboriginal tribes. This was proposed, as in the opinion of Wing Commander James, as "These peoples are quite distinct from the bulk of the population and my purpose is to urge that they should not be put under domination, as alien as and as yet much less sympathetic than ours." (British Parliamentary Proceedings, 1935, p. 1408). The apprehensions of this gentleman would not prove to be wrong, as even independent India would not be very sympathetic towards the rights of these forest dwellers for a very long time and thus laws would indeed remain as alien to their needs and concerns, as were the British Colonial laws, to the extent that the tyrannic British Laws would continue to government them even 60 years after independence. However, unfortunately, the schedule was voted out of the Government of India Act under the apprehension that this would create jealousy amongst those who were not excluded, as

against the aboriginals who were free to live according to their ancient customs and free from any regulation (British Parliamentary Proceedings, 1935, p. 1449).

Nonetheless, a provision for creating Excluded and Partially Excluded areas was incorporated under Chapter V, Sections 91 & 92 of the Government of India Act, 1935. It was thus proposed that "we have to choose between assimilation or segregation, we go on as before with assimilation. If at this moment we decide on a ring-fence policy and segregate as many areas as we can, we put off to a later date the chance of assimilating the backward areas in the general polity of India" (British Parliamentary Proceedings, 1935, p. 1408). The British Parliament consented and voted to include the provision for excluded and partially excluded areas while observing that the aboriginal tribes had a culturally distinct primitive identity and that they would need protection from exploitation by the mainstream. It was thus observed that not excluding them from the majority would be akin to "that of putting the innocent lamb and the rapacious wolf into one cage" (British Parliamentary Proceedings, 1935, p. 739). Moreover, the excluded areas were mostly dense forests situated in geographically tricky terrain and thus were difficult to administer. Hence, with a view to eventually draw the Aboriginals to the mainstream, the powers were left with the local government to make decisions under Chapter V of the Act 1935 on a case-to-case basis.

This proposal of creating scheduled areas for the Aboriginals to be governed by their own ancient customs and laws, without any external interference of the Provincial Laws and Administration, indeed recognised the Aboriginals' right to self-determination. Thus, self-determination was proposed as the way of governance for these tribes residing in heavily wooded and mountainous regions, who had been governed under their customary practices by their hereditary chiefs for several generations.

OVERVIEW: RAMIFICATIONS, REVOLTS AND RESISTANCE

The forest dwellers had been facing the pressure of converting into an agrarian civilized society since the rise of the settled villages and kingdoms. However, such interference was only limited to the extent of raising villages at the fringes of the forest and using the forest for products such as ivory, pepper, spices and wood for fuel, which did not seriously affect the customs and ecology of the forest dwellers. Before the introduction of Railways in India and

the dearth of oak in Europe, even the Colonial Government recognized the right of the local communities over the forest land and thus encouraged the forest dwellers to convert forest lands for agriculture, so that they could be taxed on the produce. However, with the emergence of timber as a primary commercial product, the dynamics of the relationship between the British and forest dwellers inter se the forest changed dramatically. The forest dwellers did not welcome the declaration of the forest lands as being owned by the Government, while treating the dwellers as 'encroachers' over the land on which they had cohabitated since time immemorial.

By 1901, almost 22% of British India constituted State-owned Forest (Imperial Gazetteer India, 1907-1909). The exploitation of the forest, while imposing laws on the forest dwellers to extinguish their rights over the forest, interfered with the day-to-day life of a large number of Aboriginal residents of the forest, causing severe prejudice and annoyance towards their ancient cultural practices. The commercial interest of the British Empire over the forests also disturbed the ecology of the forest, since most of the trees of local use were now being replaced by timbers of greater commercial value, which in turn were of very little use to the local population.

The rich vegetation and ample rainfall supported the subsistence of forest dwellers exclusively on forest produce and small hunts. The concept of cultivation was mostly alien to these communities due to the ample resources of the forest. However, they did trade and barter some forest products like honey and herbs with the surrounding agricultural population for metal implements, clothes, salt and, very rarely, grains (Guha & Gadgil, 1989). The legislations discussed above stood to rob everything from the tribal population, in favour of causing commercial gains to the British Raj. Their right to reside, cultivate, hunt, trade or even use forest produce was restricted, thus suffocating their cultural identity and racking up their very existence.

While the new laws prohibited hunting by the forest dwellers, the Government happily facilitated large *shikar* expeditions for the British and the Royals. This caused contempt since the forest dwellers could not see any reason for being prohibited from carrying out small hunts for their subsistence, while the authorities were killing tigers and lions just for their fun and entertainment. Thus, the Baiga Tribes residing in present-day Madhya Pradesh and Chhattisgarh, who were famed for their excellent hunting skills, showed defiance against the

prohibition, as one Baigs said: "even if Government passes a hundred laws, we will do it. One of us will keep the official talking; the rest will go out and shoot the deer" (Ward, 1870, p.37). In 1927, a police battalion was deployed to stop the Maria Gonds of Bastar from crossing to the British-administered Central Province, which did not find favour with the Tribes because the ritual hunt was not bound by political boundaries and thus amounted to an unreasonable restriction in their cultural practice (Grigson, 1949).

Another custom that greatly annoyed the British was the practice of *Jhum* or *Dihya* Cultivation. This shifting agricultural practice, which was a prevalent tradition in Tribal communities all over the country, especially in Central India, usually involved the clearing of patches of forest in rotation for cultivation. As such, a part of the forest was burned down and cultivated for some years, after which the patch was left for the soil to recuperate for about a dozen years or longer and the next patch was cleared for further cultivation. Thus, after a few years, the first patch was again used for cultivation. This type of cultivation was a way of life for the tribal population, encompassing beyond the economic, social and cultural spheres, being deeply manifested in the structure of their social life with fables and legends constructed around it in their ancestral cosmology (Guha & Gadgil, 1989). The British had several problems with this type of cultivation, including burning of fire in the Jungle to clear the woods and thus burning away precious timber woods. The European agricultural revolution made the Government discard the practice as one which does more evil than good. Thus, analysis of the laws herein above would make it starkly clear that all the legislations entailed specific prohibitions against such shifting cultivation, which was very dear to the tribal population. So much so, that the very liberal Forest Policy 1894, also prohibited shifting cultivation and thus sought to make the cultivation, even within the forest, permanent.

These issues arising out of the biased legislations were a constant reason for clashes between the forest department and the forest dwellers, where neither was ready to back down, owing to their own ardent beliefs. Verrier Elwins's study on the Baiga Tribes of Mandla and Bilaspur districts of present-day Chhattisgarh presents a vivid account of such clashes (Elwin, 1939). A rise in the value of forests triggered the Administration to stop the jhum cultivation in the forests immediately. However, such a rigid attitude prompted the Baigas to escape to the neighbouring princely state and thus created a labour shortage for the forest department. Thus, the authorities were advised to slow down the weaning of axe cultivation. While the

British devised diplomatic as well as legal ways to stop the Jhum cultivation, the Baigas resorted to “voting with their feet” and thus showed resistance by non-payment of taxes and continuing the Jhum cultivation in reserved and protected forest areas (Guha & Gadgil, 1989, p. 150). The restriction on their traditional way of cultivation inculcated a grave awareness of cultural loss within the tribal community, which can be gathered from a petition submitted to the Government after stopping of Jhum, which said: "We daily starve, having had no food grain in our possession The only wealth we possess is our axe. We have no clothes to cover our body with, but we pass cold nights by the fireside. We are now dying for want of food. We cannot go elsewhere, as the British Government is everywhere What fault have we done that the Government does not take care of us? Prisoners are supplied with ample food in jail. A cultivator of the grass is not deprived of his holding, but the Government does not give us our tight who have lived here for generations past." (Elwin, 1939, p.111)

The Administrator of Bastar expressed his exasperation in trying to stop the Jhum Cultivation in the Government Forests while observing: "On the road from Tetam to Katekalyan I found general dissatisfaction at the restriction of penda [swidden] cultivation. I was unable to convince them of its evils [sic]. Podiyami Bandi Peda of Tumakpal has to get his son married and for this purpose he wants to cultivate penda in the prohibited area. I told him he should not do it. He replied plainly that he would cultivate it and go to jail as he had to get his son married." (Sundar, 1997, p.154)

While governmental monopoly seriously harmed village autonomy, the outrage by the Tribes was directed against this very domination. What was prohibited for the subsistance of the forest dwellers, was permitted for the British Sahibs and the forest department for fun and commercial gain. Forest dwellers in several places attempted to get the Government to reconsider the regulations by pleading with the Government. But when such petitions would fall only onto the deaf ears of the agenda-driven authorities, they launched attacks on the areas controlled by the Government.

The history of forest regulation is interposed with the legends of major revolts against its implementation. Though there is no literature to tell the other side of the story behind these revolts, its excerpts can be found in the Government records. The major revolts attributable to the forest laws and policies have been in Chotanagpur Plateau in 1892, in Baster in 1910, in Gudem-Rampa in 1879 and again in 1922, continuously in Madinapur since 1920, in

Kamaun-Garhwal in 1921 and also in Adilabad in 1940 (Guha & Gadgil, 1989). These rebellions extended over hundreds of square miles and involved thousands of villagers, whereby the military had to be called for such revolts to be controlled. Where the forest dwellers did not revolt, they expressed their rebellion through arson, foot voting and defiance of forest laws. Defiance of the forest laws also surged during the nationwide Civil Disobedience & Non-Cooperation Movement led by the Indian National Congress in 1920-1930, where the forest dwellers saw this as an opportunity to get the forest regulations abolished.

The conflict between the forest dwellers and the Government did not always arise out of brutality and thus did not always take the form of a revolt. This is interestingly observed in the case of Jaunsar Bawar in Dehradun. After the classification of the Forests under the Act of 1878 into Reserved, Protected and Village Forests, whereby the Village Forests were left to be used by the local communities, but only for their own use and not for trade, the forest dwellers of Jaunsar Bawar posed some interesting legal questions to the forest department. The agitation sought clarification of the proprietary status of the Village Forests as to who was the owner of these forests, being apprehensive of the fact that soon the Village Forests, like the Protected Forests, would be declared as Reserved forest, thus depriving them of habitat and source of subsistence. It was thus asserted that if the village owned the forest, then the British Government could not regulate the use of the forest. This agitation extended for over three decades with several petitions and representations, whereby the local forest community was more concerned about the legal status of the Village Forest under the 1878 Act than its extent. A superintendent of the district thus observed that "they would be contented to take much less than they have now, if they felt it was their own" (Uttar Pradesh Regional Archives, File no 71)

The revolt in the Kamaun-Garhwal region in 1921 saw arson and destruction of Government Forests while making it impossible for the Government to uncover the perpetrators due to strong community support. Thus, the Government was forced to relax its ardent control over the forest and it succumbed to the creation of Van Panchayats in the Kamaun-Garhwal region. The Van Panchayat had a say in decisions concerning the forest and thus held a part of the profit derived out of the trade of its produce to be used for public purposes. This was a generous concession by the Government, which had not welcomed any local interference over its monopoly over the forest. However, this allowance was made only in this region by

the British for the fear of losing control over a strategically located border state and thus was not replicated elsewhere in the country (Guha, 2001).

The Poona Sarvajanik Sabha, a respected nationalist Organization, opposed the Forest Act, 1878, as being violative of the property rights of the Forest Dwellers. They equated the inherent rights of the Forest dwellers with that of the property ownership rights of any individual over any other land in the country. While opposing the excessive State control, the Organization proposed a constrictive and balanced alternative:

"The better maintenance of forest cover could more easily be brought about by taking the Indian villager into confidence of the Indian Government. If the villagers were rewarded and commended for conserving their patches of forest- lands, or for making plantations on the same, instead of ejecting them from the forestland that they possess, or in which they are interested, emulation might be evoked between neighboring villages. Thus more effective conservation and development of forests in India might be secured, and when the villagers have their own patches of forest to attend to, government forests might not be molested. Thus the interests of the villagers as well as the Government can be secured without causing any unnecessary irritation in the minds of the masses of the Indian population." [4]

The Organization was thus proposing what today can be termed the Joint Forest Management, well before its introduction into the Indian legislation. This democratic manner could have eased the revolts and rebellions, by letting the forest dwellers take care of their homes while also protecting the Government Forests.

Verrier Elwin, an Oxford Scholar and a priest, became the foremost commentator of Tribal culture in India. For his work, he became the first foreigner to be granted citizenship of Independent India and was appointed as the adviser on Tribal Affairs to the Government of India. All this while till his premature death in 1964, Elwin urged the Government to change its policy towards the forests and their dwellers, which was all in vain as Forest management became even more commercially oriented in Independent India (Guha, 2001). While describing the effect of the British laws on the forest dwellers at the grass root level, he

[4] Memorial to the Government of India from the Poona Sarvajanik Sabha and the inhabitants of the city and camp of Poona, dated 3 March 1878, in A Proceedings No. 43- 142, March 1878, Legislative Department Records, National Archives of India, New Delhi.

stated:

“The reservation of forests was a very serious blow to the tribesman. He was forbidden to practice his traditional methods of cultivation. He was ordered to remain in one village and not to wander from place to place. When he had cattle he was kept in a state of continual anxiety for fear they should stray over the boundary and render him liable to heavy fines. If he was a Forest Villager he became liable at any moment to be called to work for the Forest Department. If he lived elsewhere he was forced to obtain a license for almost every kind of forest produce. At every turn the Forest Laws cut across his life, limiting, frustrating, destroying his self-confidence. During the year 1933-34 there were 27,000 forest offences registered in the Central Provinces and Berar and probably ten times as many unwhipped of justice. It is obvious that so great a number of offences would not occur unless the forest regulations ran counter to the fundamental needs of the tribesmen. A Forest Officer once said to me: "Our laws are of such a kind that every villager breaks one forest law every day of his life." (Elwin, 1941, p.12)

The laws not only did temper with the rights and assertions of the forest dwellers over the forest and its produce but also perverted the ancient traditional and cultural practices of the tribal population. The practice of settled agriculture was inherently a sin in the culture and traditions of the Baiga tribe, who believed it to be a debauchery of ripping open their mother earth and thus were prohibited from doing so (Dutta, 1955). The loss of the forest was a grave omen for the Gonds, who believed it was the advertence of the Kaliyug, an age of obscurity and suffering. Thus, losing rights over their forests and witnessing its ruthless exploitation at the hands of the Colonial powers gave a huge cultural shock to the Gonds, who believed that such a loss could only result from their Gods leaving them and thus believed that "all the gods took the train, and left the forest for the big cities where with their help the town-dweller prospered” (Elwin, 1935, p.16)

Bhumkāl: Revolt of Bastar

Unlike the tribals in other parts of the Country, the region of Bastar, and likewise most of the contemporary State of Chhattisgarh, never came under direct rule of the British. The British Government regarded it as *terra incognita,* which remained the most uncharted territory during the Imperial period (Grigson et al., 1949, p.1). Since the forests were geographically

located in rugged terrain and the dwellers of the Jungle were very hostile towards any alien intervention, the British Government strategised to regulate these areas through their local rulers and thus left these areas with local kings, subject to payment of tribute to the Government. The local king, who had been ruling for ages and found favour with the local population and was also seen as a mediator and the executor of the British laws over these lands. This system ensured the revenues and the produce of the forest for the Government, without the tribes causing any upheave against the British Raj. Thus, though the Government of India had the final say in matters of implementation of laws, the native kings had significant discretion while governing the locals (Sundar, 2001).

By implementing the Forest Act, 1878 the Government sought to bring the tribes under the command of a centralised bureaucracy, with several innuendos and provisos in the law as its oppressive tools. The inhabitants of these parts of the Country were very primitive in their ethos and absolutely aversive to any foreign interference, let alone that of sahibs and babus. Thus, the implementation of laws to control their day-to-day life stood against the very fabric of their community-based governance and decision-making, which was administered by their ancient culture and traditions. It soon became an issue of identity crisis for the tribes, for whom the world as they knew and wanted was being intrusively and abruptly changed by distant foreigners. The attempts of the colonial laws to teach these forest dwellers about the dos and don’ts of the forest, while citing scientific reasons, did not find parlance with the forest dwellers, who did not wish to be taught how to take care of their affairs. Thus the friction between the tribes and the law escalated into a violent revulsion, which still resonates through the ages.

The Revolt of Baster in 1910 under the leadership of a Tribal Gunda Dhur, referred to as *Bhumkal*, literally meaning to be ‘the earthquake’, is still revered as one of India's most significant revolts against the British forest laws and policies (Shukla, 1991).

The Tribal population first resorted to a hunger strike in front of the King's palace at Jagdalpur and peacefully submitted their demands for freedom over their land and forest. However, the laws in place to give legitimacy to the monopoly of the Crown over the forest ruled out any possibility of relaxation from the British Government. Since the King was under the British Government's tutelage, he also failed to resolve the matter, which would have required him to go against the law.

The revolt by the tribes of Bastar was not a result of a sudden outburst but was a meticulously planned upheaval against draconian laws and authorties. The peaceful protest was merely a façade and the revolt was planned for more than nine months by sending messages through red chillies, mounds of earth, mango tree bark, etc. The Government had no idea about it since they were least concerned with the forest dwellers. Thus, in a planned manner, the Bhumkal began on 6th February 1910.

While maintaining that the issue was between the King and his subjects, forest dwellers cut off the contact between the King and the British Government by blocking the roads, cutting the telegraph and telephone lines and strategically destroying post offices. The protest soon turned violent against the foreign Hindu settlers and the State machinery, whereby police stations and forest posts were burned and the rebels plundered the forest depots and markets, while killing several merchants and state officers. The plan was to take as many officers as hostages or to kill them upon resistance. The rebellion had soon spread to see active participation from dwellers of 46 of 84 Parganahs of Bastar State, being more than 15,000 square kilometres in its expanse, garnering support from the remaining Parghanas (Shukla, 1991).

On 7th February 1910, the unnerved King of Bastar, Rudra Pratap Deo, sent a telegram to the Chief Commissioner, seeking his assistance in crushing the rebellion. Thus, G.W. Gayer, who had previously been the administrator of Bastar and thus was proficient with its terrain, arrived with the Punjabi battalions to crush the revolt. The Police forces from Central Province and Madras were also deployed to handle a large number of rebels. Over 900 forest dwellers, from as young as sixteen years old, only equipped with their traditional and obsolete weapons, were captured by the military near Jagdalpur, altogether killing hundreds of forest dwellers and looting their villages (Shukla, 1991).

The rebellion could only be crushed due to the failure on the part of the rebels to check the entry of the troops in Bastar. On the night of 25th February 1910, the troops surrounded Ulnar hill and thus captured and whipped 500 men, who were then released, while reserving severe punishment only for a few leading men. Thus, though the British crushed the rebellion at the time, it garnered a sense of revolt in the people of Bastar for centuries to come.

The British Government commissioned numerous enquiries into the shuddering revolt of 1910, whereby in one of the enquiries, the Chief Commissioner of Central Provinces concluded that “from an examination of the evidence before them the Government of India were of opinion that a too zealous forest administration might not improbably be the main cause of the discontent of the hill-tribes” (Chief Commissioner of Central Provinces, 1910, p.35)

Another enquiry by De Prett into the Bastar revolt of 1910 highlighted 11 prime reasons for the gradual buildup of discontent and the grave outburst from the Forest Dwellers. Out of these 11 reasons, a significant reason was 'the inclusion in reserves of forest and village lands' (De Prett, 1910). In his report, Standen suspected that simmering discontent was more with the forest officers who implemented the law rather than the laws themselves (BP Standen, 1910). The leading participants in the revolt of 1910 were from the belts of Bastar, which had suffered the most under the new laws and the subsisting exploitative regime since never before in history had they been ousted from their own forests (Sundar, 2001).

The plight of Bastar then was not very different from what it is today. Despite the revolt of 1910, the British policy of exploitation of Bastar did not change. They continued to declare vast tracts of forests as reserved forests and thus denuded the forests for their teak requirements. The Government consistently granted the mining lease to Tata Iron and Steel Industries from 1923 to 1932 for extracting enormous reserves of iron ore from the forests of Bastar for industrial utilisation (Bastar Mining, 1923). Though the schools, roads and hospitals were being introduced for the betterment of the population, yet the method of introduction was tyrannical and thus perspired suspicion within the local community as being used for foreign settlement and acquirement.

The revolt was against everything foreign, from laws to settlers, who had come to their land under the garb of trade, schools and hospitals and had become agents of exploitation of the tribal population. Never before or afterwards were so many sizeable independent rebel groups operating all at once and never again was so much territory subjected to widespread rebel incursions during such a short period. These revolts, rebellions, petitions and agitations may have been ephemeral and unfruitful, but their legacy was never wiped out from history and still remains affirmed in the conscience of the polity of Forest. In short, “it was a movement of Bastar state for Bastar forest-dwellers.” (Shukla, 1991, p.27)

Attempts to “modernise” the forest dwellers only to serve the purpose of the State has been a never-ending trait and can be traced to the day. The historical account thus presented demonstrates the plight of the forest dwellers upon development of jurisprudence in India, which banked solely on the policy of exploitation. This view from the historical lens is essential to the study the laws in force and to apprehend the gradual change of geopolitics after the independence of India.

CHAPTER III

CONTEMPORARY LEGAL FRAMEWORK

INTRODUCTION

After the Independence of India, several tribal leaders raised their voices for recognition of the rights of the forest dwellers. Leaders such as Jaipal Singh Munda, a member of the Constituent Assembly, put forth the grievances of the browbeaten population and sought protection for the indigenous tribes dwelling in the forests. Though the Colonial laws continued to dictate the matter relating to the regulation of forests, the Government of free India could now pay merciful attention to its own populace. The newly liberated nation could not have given up any available resources and thus continued with the consolidated Indian Forest 1927, which is in force to date. However, apart from extending the guarantee under Part III of the Constitution to the forest dwellers, certain specific provisions for protecting the rights of the Tribes were also incorporated in subsequent laws enacted after independence of India.

The International conventions and declarations, both before and after the independence of India, have emphasised on the recognition and protection of the socio-economic and cultural rights of the forest dwellers. India is a signatory to most of these treaties and is duty-bound to implement them. However, the conflict of interest of forest rights with the doctrine of eminent domain, environmental concerns and protection of wildlife, have often pushed the rights of the forest dwellers as the last of its priorities. For a long period of time, the jurisprudence behind the latter two had ignored the fact that the tribes have cohabitated with these concerns for centuries and have instead proved to be instrumental in protecting their dwelling.

This Chapter will dwell upon the current and major laws governing the rights of the forest dwellers and thus will assess their effectiveness in addressing the historic injustice they suffered. The brief appraisal of the International Instruments would reflect upon the international consensus on the rights of the Aboriginals. It is impossible to equate the forest dwellers and tribes of one State to the other, let alone of one Country to the other. However,

the concerns that we face today for effectively protecting the rights of the Forest Dwellers are similar to the ones that have been debated for the Aboriginals, which have all resulted from the imposed civilisation and efforts to obliviate their cultural identity. Thus, the author would draw upon the effectiveness of adopting the principles enunciated in these instruments in the Indian scenario. Since "Forest" is a subject of the concurrent list, both the Central as well as the State laws play conjointly to determine the legal framework delineating the rights and obligations of the forest dwellers. Thus, an assessment of the Central laws would set the parameters of the law governing the field. The Constitution of India plays a significant role in laying down the foundation stone for the recognising their rights and privileges. This paper is focused on the plight of the forest dwellers in the State of Chhattisgarh, and thus, only the policies and programmes effective in the State of Chhattisgarh will be delved into. The Judiciary has played a pivotal role in the interpretation and implementation of the laws governing the rights of the forest dwelling tribes and thus the relevant judgements interpreting the laws will be discussed concurrently along with the legislations. Thus, by the end of this Chapter, the author expects to have highlighted the fitness and flaws in the laws governing the field and hopes to present solutions to the difficulties in the next Chapter.

INTERNATIONAL FRAMEWORKS

While the International instruments may denote different nomenclatures such as indigenous, tribal, semi-tribal, aboriginal, etc., they all constitute a community of people with distinctive identities and cultures, living separately from the civilised society. There have been debates about the usage of such different terms in international instruments and how they constitute different classes of people, nevertheless, they are unequivocally those individuals who were there before anyone else and have dwelled in their traditional lands and followed their traditional practices for centuries. The indigenous people thus referred to in these International instruments can very well be equated with the Adivasis and forest dwellers living in India.

Numerous countries have their own class and types of Aboriginals or indigenous populations. They may have different cultures, traditions and practices, yet the narration of exploitation and historical injustice faced by these communities at the hands of the civilised is analogous. The conflict between the indigenous and the settlers, the former to protect their identity and

of the latter to impose their own, has been a constant theme in world history. When humankind was awakened from the slumber of imperialism, the international community thought it necessary to carve out the basic human rights which ought to be accorded to the global population.

As discussed in the previous chapter, the contest over land and resources has been a continuing cause of exploitation of the indigenous people worldwide, who have been casually deprived of their traditional ownership and usage by influential players. Since the States bluntly refused to recognise the ownership of land by Aboriginals, there was never any question of compensation or that of free prior and informed consent before any dispossession. Deprivation of land also led to a loss of cultural identity and traditions associated with their territory. Skills associated with their habitat were lost and thus the entire community lost their livelihood and vocation. Such discrimination based on their distinct cultural identity led to their forced assimilation into mainstream society, belittling the right to self-determination of the Aboriginals. Thus, the common historic injustice towards these communities worldwide evolved the international community's need to formulate and recognise certain special rights for this particular group of people.

Indigenous and Tribal Peoples Convention (ILO Convention 107 & ILO Convention 169)

Amongst all the organs of the United Nations, the ILO has contributed significantly towards recognising the rights of indigenous populations worldwide. Since its inception in the year 1919, while being a part of the erstwhile League of Nations, it has considerably voiced the rights of the Aboriginals, who then constituted a majority of the workforce.

The Governing body of the I.L.O. constituted a ‘Committee of Experts on Indigenous Labour’, which held its first session in the year 1951. After detailed research into the living and working conditions of Aboriginal populations, a report titled ‘Indigenous Peoples: Living and Working Conditions of Aboriginal Populations in Independent Countries’ was published in the year 1953. This was focused majorly on the labour rights of the Aboriginals, who constituted a major workforce and yet were the ones who were the most tormented and deprived.

The Second Session of the Committee of Experts on Indigenous Labour was held in Geneva, Switzerland, in the year 1954. It had a broader agenda and thus focused on the conditions and legislations governing the life and living conditions of aboriginal forest-dwelling populations. However, the Committee deliberated ways and methods to integrate the Aboriginal population into the national communities and thus approved of the idea that these Aboriginals must be brought into civilised society. They expressed that the cultural structure of the forest-dwelling population should be preserved and should be gradually replaced with values of advanced civilisation.

The Committee thus required the Governing Body to "recommend to the governments concerned that in framing regulations for the protection and integration of forest-dwelling indigenous groups they should be guided by the following principles:

(a) respect for indigenous tribes as peoples with the right to self-fulfilment maintaining their own individuality, having their own beliefs and living according to their traditional way of existence which can change only gradually;

(b) the need to carry out any protection programme in the tribal territories, from which the indigenous peoples must not be removed, and in the community, which must be respected as the operative social unit of such groups, while care must be taken not to break up the indigenous family even for the purpose of educating the children" (p. 11)

These recommendations were followed by the promulgation of the Indigenous and Tribal Peoples Convention (ILO Convention 107) in the year 1957. With its 37 Articles and VII parts, the ILO Convention 107 propounded an assimilationist approach towards the Aboriginal community. It thus sought to secure the same rights for the Aboriginals, as available to the larger community, by their assimilation into civilisation. The I.L.O did not want to leave the Aboriginals to their own and thus wished to persuade the Aboriginals to relinquish their culture and tradition in favour of modernisation. In fact, the entire deliberation and suggestion, including the Questionnaire for the locals and the government under the report on the Indigenous Population of the year 1955, was focused on the 'integration' of the forest-dwelling tribes with that of the advanced communities (Indigenous

Peoples: Living and Working Conditions of Indigenous Populations in Independent Countries, 1955).

The preamble of the ILO Convention 107 titled 'Indigenous and Tribal Population Convention, 1957' denotes its intention as "Considering that there exist in various independent countries indigenous and other tribal and semi-tribal populations which are not yet integrated into the national community and whose social, economic or cultural situation hinders them from benefiting fully from the rights and advantages enjoyed by other elements of the population" (ILO Convention 107, 1957, p.1) and thus aiming to achieve "action to assure the protection of the populations concerned, their progressive integration into their respective national communities, and the improvement of their living and working conditions" (ILO Convention 107, 1957, p. 2). Here, the semi-tribals were defined as those who are in the process of integration into the mainstream community but have not yet fully integrated.

The I.L.O Convention 107 was a major step in recognising the rights of the Aboriginals and thus laid the foundation for according fundamental rights to the forest-dwelling population (Art 2, ILO Convention 107, 1957). Part II of the Convention 107, titled 'Land', recognised the right of ownership, both collective and individual, over the land traditionally occupied by the forest dwellers (Art 11, ILO Convention 107, 1957). The Instrument also introduced the necessity of free consent before deprivation of land and sought adequate compensation if the tribal population was removed for reasons of national security, national economic development or health reasons (Art 12, ILO Convention 107, 1957). The Convention furthermore recognised and sought to protect those customary rights of the tribes which were not repugnant to the national laws (Art 7, ILO Convention 107, 1957). The rest of the Instrument strives towards attaining basic labour rights for the indigenous labourers and thus lays down the guidelines to be adopted to integrate these tribes into the national community through vocational training and employment. Thus, though the Convention was labour-centric in its intention, it was a good start for initiating special attention to Aboriginals as a distinct class.

However, with the passage of time and the multifarious rights demanded by Aboriginals, including the right to self-determination, Convention 107 became an embarrassment for the United Nations and thus had to be reconsidered. The assimilation model has since been

depreciated as being colonial and assertive in nature as contrary to the recognised principles of self-determination.

Following the criticism of the ILO Convention 107, significant research was done on the rights demanded by the Aboriginals in several nations. One significant contribution to this effort was spearheaded by the United Nations Special Rapporteur Jose R. Martinez Cobo, who did the significant groundwork and thus provided a framework for further discussion and assertion upon the aboriginal rights in his report titled 'Study of the Problem of the Discrimination Against Indigenous Populations' (UN, 1983, p. 9). In the year 1982, a 'Working Group on the Indigenous Populations' (WGIP) was established as a result of the report by Jose R. Martinez Cobo, with an objective to "review the developments pertaining to the promotion and protection of human rights and fundamental freedom of indigenous people and thus to ensure the upliftment of the International standards concerning indigenous rights" ("UNDRIP", 2007). The first meeting of the Working Group on the Indigenous Populations (WGIP) was held on 9th August 1982, which is today celebrated as the International Day of the World's Indigenous People.

Thus, after the meeting of fifteen experts for ten days in Geneva, Switzerland, in the year 1986, the Committee concluded that Convention 107 was flawed since it did not truly respect and recognise the right to self-determination, as had been pointed out by Martinez Cobo in his report (Barsh, 1987). The experts thus agreed that "the Convention's integrationist approach is inadequate and no longer reflects current thinking" (ILO, 1986, p. 32) and hence recommended that a revised version should be brought to imbibe upon the indigenous and tribal population "as much control as possible over their own economic, social and cultural affairs as a right" (ILO, 1986, p. 32). ILO Convention 107 had hence been declared to be an outdated idea by the experts. Thus, with such unanimous recommendations, the ILO Convention 107 was replaced by ILO Convention 169 in the year 1986, after remaining the only international Instrument expressly delineating the rights of the indigenous and tribal population for more than 30 years.

The ILO Convention 169, titled 'Indigenous and Tribal Peoples Convention, 1989' with 44 Articles, was adopted by the Governing Body of the International Labour Office in its 76th session on 7th June 1989 in Geneva, Switzerland. By this time, the I.L.O. had understood that the integration approach was not appreciated and trusted by those sought to be protected

under the Instrument. Also, by 1989, the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966, had been adopted by the UN, which arrayed a vast number of Human Rights that were to be ensured and strived by the member nations. Hence, Convention 169 had to be in consonance with these important international human rights instruments.

Convention 169 was very different from its predecessor, Convention 107. Convention 169 emphasised the participation of the indigenous and tribes in decision-making (Art 2, ILO Convention 169, 1989). It explicitly recognised the right of indigenous people to decide their own priorities towards the process of development), leaving them with the choice to accept or reject social development, thus shedding away the pressure to integrate them with the national community (Art 7, ILO Convention 169, 1989). Under Convention 169, the rights of indigenous tribes over their ancestorial land were not merely seen as property rights, but it also recognised the cultural and spiritual value thus associated with such territories (Art 13, ILO Convention 169, 1989). Not only did the Instrument require the governments to recognise the ownership of the indigenous and tribes over the land owned and possessed by them (Art 14, ILO Convention 169, 1989), but it also sought the recognition of the right to access the land, which even though not owned or possessed by the forest dwellers, but has been of traditional access for their subsistence and traditional activities (Art 14, ILO Convention 169, 1989). The Convention has placed particular emphasis on protecting the natural resources attached to the land owned or possessed or used by the forest dwellers and thus recognised their right to use, manage and conserve these resources (Art 15, ILO Convention 169, 1989).

Another significant doctrine that found its place in the Convention 169 is that of ‘the Free and Informed Consent’, whereby if any territory dwelled upon by the tribes was being acquired under any exceptional circumstances, Free and Informed Consent of the resident tribes was mandated before their dispossession from their lands (Art 16, ILO Convention 169, 1989). This doctrine is at the core of this paper and has been discussed in detail elsewhere.

The rest of the Instrument is more labour-focused and retains the touch of the assimilation of the indigenous workers working as labours in the mainstream economy. The Convention still holds water and thus has been a guiding light to the nations for formulating the laws pertaining to their indigenous and tribal population.

United Nations Declaration on the Rights of Indigenous Peoples, 2007

Despite Convention 169 being an International instrument to serve as a guiding light for the assertion of aboriginal rights, it was more labour-centric in its nature. Thus, the United Nations wished to have a specific Declaration towards the recognition of the rights of the indigenous population. Thus, the WGIP was tasked with drafting a declaration on the rights of the indigenous population. After a decade of deliberation, the WGIP submitted a draft in 1993 for internal consideration, which was declared as 'the International Year of the World's Indigenous People.' (A/RES/48/163, 1993)

However, the draft submitted by the WGIP saw severe opposition from member states upon the proposed issues of self-determination and access to natural resources by the Indigenous population. Thus, in the year 1994, an open-ended inter-sessional working group for discussion was established, and the United Nations declared 1995-2004 as the 'International Decade of the World's Indigenous People', with an explicit aim of the decade to finalise and adopt the United Nations Declaration on the Rights of Indigenous Peoples. However, the same could not be done within the decade, thus leading to the United Nations declaring a 'Second International Decade of the World's Indigenous People' from 2004-2014 (A/RES/59/174, 2005).

After more than two decades of negotiations and deliberation between the indigenous people and the member states, the draft of the 'United Nations Declaration on the Rights of Indigenous Peoples' was finalised and adopted by the newly constituted Human Rights Council in its first session on June 2006 (UN Commission on Human Rights, 1995). The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly in its 107th plenary meeting on 13th September 2007 by a majority of 144 members voting in favour of the Declaration. United States of America, Canada, Australia and New Zealand voted against the Declarations, with eleven abstentions being Bangladesh, Bhutan, Georgia, Russian Federation, Kenya, Nigeria, Azerbaijan, Burundi, Columbia, Ukraine and Samoa. However, the four Nations that voted against the Declaration later ratified their stand and today support it. It is pertinent to mention that India had voted in favour of the deceleration and thus had ratified the goals, objectives and directions delineated under the Instrument.

The United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP') comprises of 46 Articles laying down the foundation for recognition and respect towards the rights of the Indigenous and tribal populations of the member countries. Though not a binding instrument, the UNDRIP reflects the rights the forest-dwelling Aboriginals have demanded for centuries.

The UNDRIP, in its preamble, expresses its concern towards the historical injustice that the indigenous people have suffered due to colonisation and dispossession from their lands, thus recognising their right to develop according to their needs and interests. It ruminates on the right to self-determination and thus calls for respect towards their choice of development. The long permeable thus sets the stage for various recognitions and reassurances, broadly concerning:

1. Affirming that indigenous individuals are entitled to all the human rights recognised under International Law and all the rights that are essential for their existence, development and well-being.

2. Declaring that indigenous people are equal to all other citizens of the State and any concept of superiority either of race, religion, ethnicity or culture is illegal and unjust and thus there should not be any discrimination of any kind.

3. Recognising their right to self-determination by respecting the exercise of control by the indigenous people over their development and over their land and resources. The Right to self-determination is furthermore affirmed by the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action.

4. Respecting the indigenous knowledge, traditional practise and culture of the indigenous people which contributes towards the sustainable development and proper management of the environment

5. Respecting their culture and their right to impart such education to their children

6. To effect and implement the instrument with consultation and cooperation of the indigenous people in their Nation. (UNDRIP, 2007).

Thus, the UNDRIP, in its preamble, sums up the intention of the Instrument, that is, to respect and accord basic human rights to the Indigenous people and to grant them special rights on account of their difference from the rest of society. Though the preamble recognises that the Instrument is not binding in nature, but it proclaims the UNDRIP to be a benchmark to be pursued by the member nations for recognising the rights of the Indigenous population (Art 43, UNDRIP, 2007).

Article 3 of the UNDRIP, the most debated provision before its adoption, recognises the right to self-determination. By the time the UNDRIP was adopted by the General Assembly in 2007, the United Nations had already adopted five primary international instruments declaring fundamental human rights. These are the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Vienna Declaration and Programme of Action. All of these instruments had already affirmed the right of self-determination as a human right and it had become *jus cogens* and *erga omnes*. All these crucial instruments laid the foundation stone for the idea of essential, inherent and unalienable human rights across the globe, including the right to self-determination to be one of them.

Article 1 of the Charter of the United Nations defines the purpose of the United Nations, which includes the goal "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." (Art 1, UN Charter, 1945)

Also, Article 1 of both the International Covenant on Civil and Political Rights ('ICCPR') and the International Covenant on Economic, Social and Cultural Rights ('ICESCR'), together called the 'Human Rights Covenants' avow and affirm the right of self-determination. They define the right to self-determination as one by virtue of which a person can "freely determine their political status and freely pursue their economic, social and cultural development" (Art 1, ICCPR, 1966; Art 1, ICESCR, 1966)

The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in the year 1993 includes the right to self-determination in its preamble as one of the basic human rights. Furthermore, under Clause 2, the right to self-determination has been declared as 'inalienable' while considering the denial of the right of self-determination as a violation of human rights (Clause 2, Vienna Declaration and Programme of Action, 1993).

While the right of self-determination was conceptualised for people under colonial rule, its recognition in the decolonised scenario can be understood from the following observation:

"While its normative contours are yet to be definitively settled, the following can be deduced as a non-exhaustive list of the substantive entitlements conferred on a people by virtue of the law of self-determination in the decolonization context:

(a) the right to exist demographically and territorially as a people;

(b) the right to territorial integrity;

(c) the right to permanent sovereignty over natural resources;

(d) the right to cultural integrity and development; and

(e) the right to economic and social development" (Drew, 2001, p. 651)

A perusal of the above definition and the context of the introduction of the right in the colonised definition would give an impression of equating self-determination with sovereignty. This was not acceptable to the member nations, as it would fan insurgency within the State. Thus, the right to self-determination is often ignored and repressed by States, which, if recognised, would deprive the Government of its authority over the territory occupied by the forest dwellers. Nevertheless, the UNDRIP equivocally, with support from the other international human rights instruments, declares the right to self-determination as a quintessential right to be accorded to the Aboriginals. The same has been watered down to fit the national narrative in India while adopting the laws dealing with the rights of forest dwellers.

Thus, in the context of the indigenous population, the right to self-determination would be to let them decide their pace of development, their needs and their political future. It requires the State to respect and recognise their culture and traditions with minimum interference into their way of life, rather than imposing upon them the need to integrate with the national community. Article 4 of the UNDRIP furthermore affirms indigenous peoples' right to self-governance in maintaining their local affairs and finances towards their autonomous functions. The distinction of the indigenous people has been sought to be preserved and any efforts to denigrate the same have been deprecated (Art 5, 7, 8, UNDRIP, 2007).

Right over land is yet another topic of serious consideration under the UNDRIP, which has been discussed under several clauses. The right of the indigenous people over their land has been protected under Article 10 of the UNDRIP, which obligates free, prior and informed consent as a prerequisite for any relocation, along with adequate compensation. This adds to the doctrine introduced under Convention 169, by introducing the word 'prior' to the informed consent. The principle of 'free and prior informed consent' is a facet of the right to self-determination, whereby upon any necessary land acquisition, the terms of the displacement and rehabilitation can be negotiated by the forest dwellers. Article 25 of the UNDRIP recognises the traditional and spiritual relationship between the indigenous community and their land. Article 26 affirms the right of the indigenous people to use, develop and control their land as well as resources which they have traditionally owned, occupied or used, thus requiring the State to give legal recognition and protection to such rights. The Deceleration thus recognises the distinct vulnerability of the forest dwellers due to their deep attachment to their habitat and hence aspires to protect their interest and prevent the exploitation of their land and territorial sovereignty.

The UNDRIP aspires to protect the distinct cultural identity of the indigenous population while ensuring that there is no discrimination against them on such grounds. Articles 11 to 16, Article 31, and Article 34 of the UNDRIP emphasise the protection and promotion of Aboriginals' language, culture and history, along with their right to impart education to the next generation without any hindrance, discrimination or destruction. The Instruments furthermore extends all the other fundamental human rights to the indigenous people and thus strives to assure its enforcement by the Member States. Towards its conclusion, the UNDRIP under Article 43 asserts that the rights thus delineated and recognised under the Declaration

constitute the bare minimum standard towards the survival, dignity and well-being of the Aboriginal people.

The United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention 169 indeed reflects the voice of the Indigenous communities around the world, called by any name, and thus requires the Member States to ensure the bare minimum rights and standard for these distinct communities. However, a declaration is a 'soft law' (Barnabas, 2017) and not binding on even those Countries which have adopted it. The Member States can thus choose not to extend the benefit under the Declaration to its indigenous population. Furthermore, the ambiguity and debate about using the term indigenous have often allowed the member states to distinguish between communities and thus deprive the native forest-dwelling population from exercising and asserting their rights under the Declaration.

However, since the UNDRIP encompasses and derives its recognitions from other Instruments which are mandatory on member nations, it has acted as a sincere moral force and thus effluxes a binding nature. Hence, the UNDRIP has strived to ensure recognition of at least the basic human rights, including the right to self-determination, for the Aboriginals. Through the compulsory Universal Periodic Review, the United Nations has been keeping a watch on the implementation of the UNDRIP along with the United Nations Expert Mechanism on the Rights of Indigenous Peoples.

After the adaption of the UNDRIP and the dissolution of the United Nations Commission on Human Rights in the year 2006, the WGIP was dissolved in 2007 and replaced by the Expert Mechanism on the Rights of Indigenous People, which today advises the Human Rights Council on Rights of Indigenous and ensures the implementation of the UNDRIP.

OVERVIEW: THE INDIAN CONTEXT

Since its inception in 1945, India has been a prominent member of the United Nations and is accredited as one of the founder nations of the international organisation. India today holds a strong contention as being inducted as one of the permanent members of the UN and thus holds a dominant presence on the global platform.

For a long, India has maintained the stand that the tribals in India are not synonymous with the term 'indigenous peoples', as reflected under the international instruments, and thus, the terms cannot be used interchangeably to reflect upon the forest-dwelling population in India (Jaiswal, 2010). It has thus tried to mitigate the application of the Covenants to the tribals residing in India while claiming that "we regard the entire population of India at the time of our independence, and their successors, to be indigenous." (Jaiswal, 2010)

India has also had a problem with accepting and recognising the right to self-determination for the tribals within India. The official stand of India in this regard has been that "the right to self-determination applied only to peoples under foreign domination and that the concept did not apply to sovereign independent States or to a section of people or a nation." (UN, 2007, para 25) This stand denies the independence to the forest dwellers to determine their fate and pace of development, which, in fact, was the vision of the framers of the Constitution. As such, India has signed and ratified the ILO Convention 107, but has not yet ratified the ILO Convention 169, since Convention 169 has shifted the focus from assimilation to self-determination. India has been reluctant to admit such a right. Despite Convention 107 being replaced by Convention 169 in 1989 more than thirty years ago, India continues to submit the compliance report under Convention 107 and has not been consistent even at that (Khanna et al., 2010).

As discussed earlier, International Covenants are soft laws, being without any penal servitude upon their dereliction, thus allowing the member nations to flout their assertions. Nonetheless, these international instruments have had an impact on the formulation of legislations in India and have been employed by the Judiciary for interpretation. Also, the observance of the international benchmark towards human rights recognition has been an issue of the global reputation for India and is sought by the World Bank for advancing financial assistance.

The Constitution of India provides some hints for the Government to adopt and follow international standards and conventions. Part IV of the Constitution of India, being the Directive Principles of State Policy, aspires for the nation to promote international peace and security and strives to "foster respect for international law and treaty obligations in the dealings of organised peoples with one another" (Art 51(1)c, The Constitution of India, 1950). Article 253 of the Constitution of India seeks to give effect to international treaties,

agreements or conventions entered into by India and thus grants the power to the Parliament to enact laws for the implementation of such international instruments. Thus, the Constitution of India provides the doorway for incorporating international covenants within domestic legislations and hence recommends the implementation of international benchmarks.

It is pertinent here to mention that unless the principles of International instruments have been enacted under domestic law by the Parliament in India, the same cannot be binding on the State and thus would not be justiciable before a court of law in India (Maganbhai vs. UoI, 1969). Even if India has ratified the International Covenants, they can only be enforced by the Court of law if the step of actual enforcement of domestic law takes place, without which the citizen cannot claim breach and the Courts cannot grant any remedy (Jolly vs. Bank of Cochin, 1980). In exercise of its powers under Article 253, read with Entry 14 of List 1 of the Seventh Schedule to the Constitution of India, the Parliament has the sole authority to make such instruments binding by legislating upon it and thus incorporating them within the domestic legal framework. As such, upon any conflict between the principles of International laws and those within the National laws, the Court is bound to follow the National Laws, as it has been held that "National courts cannot say 'yes' if Parliament has said 'no' to a principle of International Law." (Gramophone Co. vs. Birendra, 1984, p .9)

The Protection of Human Rights Act, 1993 ('PHRA, 1993') can be considered to be a national legislation aiming to imbibe international treaties and instruments concerning human rights into the domestic arena. The Act defines human rights as "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India" (Sec 2(1)d, PHRA, 1993). Thus, the definition of human rights under the Protection of Human Rights Act, 1993 includes rights embodied in the International Covenants. Furthermore, the definition of International Covenants as such includes "International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights adopted by the General Assembly of the United Nations on the 16th December, 1966 and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify" (Sec 2(1)f, PHRA, 1993). Though the Act provides for the recognition of such rights by entrusting the Human Rights Commission to study treaties and other international instruments on human rights and make

recommendations for their effective implementation (Sec 12(f), PHRA, 1993), the Act has a minimal application and is not enforceable before a court of law.

As stated, the Parliament has the sole desecration to enforce international covenants through legislation. However, with the rise of judicial activism and the dominant role played by the Supreme Court of India in extending the horizons of human rights, the Constitutional Courts have started reading the international instruments into the national legislation, where there is no inconsistency or conflict between the two. The Supreme Court, in a recent case while dealing with the Right to Privacy as a human right under Article 21 of the Constitution of India, held: "The position in law is well settled. Where there is a contradiction between international law and a domestic statute, the Court would give effect to the latter. In the present case, there is no contradiction between the international obligations which have been assumed by India and the Constitution. The Court will not readily presume any inconsistency. On the contrary, constitutional provisions must be read and interpreted in a manner which would enhance their conformity with the global human rights regime. India is a responsible member of the international community, and the Court must adopt an interpretation which abides by the international commitments made by the country, particularly where its constitutional and statutory mandates indicate no deviation. In fact, the enactment of the Human Rights Act by Parliament would indicate a legislative desire to implement the human rights regime founded on constitutional values and international conventions acceded to by India." (Puttaswamy vs. UoI, 2017, para 133)

The Courts have also turned to international instruments to govern such fields where there is a gap in the law and thus have used the international covenants as a parameter to lay guidelines till the legislature makes an enactment in such regard. As such, where there was no law or regulation administering the redressal of sexual harassment at the workplace, the Hon'ble Supreme Court relied on 'The Convention on Elimination of Discrimination Against Women' to formulate procedures to check and address sexual harassment at workplace. While relying on the international instrument for such a formulation, the Hon'ble Supreme Court held: "Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and enabling power of the Parliament to enact laws for implementing the

International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in the Seventh Schedule of the Constitution." (Vishaka vs. State, 1997, p. 4)

In the landmark and legendary case of *Samatha*, the Hon'ble Supreme Court had drawn reference from the international obligations of India to conclude that the tribals have a fundamental right to social and economic development. The Hon'ble Court thus held that "India being an active participant in the successful declaration of the Convention on Right to Development and a party signatory thereto, it is its duty to formulate its policies, legislative or executive, accord equal attention to the promotion of, and to protect the right to social, economic, civil and cultural rights of the people, in particular, the poor, the Dalits and Tribes as enjoined in Article 46 read with Articles 38, 39 and all other related Articles read with right to life guaranteed by Article 21 of the Constitution of India. By that constant endeavour and interaction, right to life would become meaningful so as to realise its full potentiality of "person" as inalienable human right and to raise the standard of living, improve excellence and to live with dignity of person and of equal status with social and economic justice, liberty, equality and fraternity, the trinity are pillars to establish the egalitarian social order in Socialist Secular Democratic Bharat Republic." (Samatha vs. State, 1997, p. 29).

Nonetheless, international instruments can only be used as a tool for interpretation, which has the precedent of being used even against the spirit of the Convention. Rather than tapping the international instruments to develop the rights of the forest dwellers, the same have at times been used to justify their displacement and dispossession. In the matter of large-scale displacement and dispossession of the tribals due to the construction of the Sardar Sarovar dam, the Court read into the ILO Convention 169, which has not even been ratified by India, to justify their suffering for the cause of development. Thus, while referring to Article 12 of the ILO Convention 169, the Court observed that "the said article clearly suggested that when the removal of the tribal population is necessary as an exceptional measure, they shall be provided with land of quality at least equal to that of the land previously occupied by them and they shall be fully compensated for any resulting loss or injury. The rehabilitation package contained in the award of the Tribunal, as improved further by the State of Gujarat and the other States, prima facie shows that the land required to be allotted to the tribals is likely to be equal, if not better than what they had owned" (Narmada Bachao Andolan vs. UoI, 2009, p. 22)

The International Covenants delineating the rights of indigenous people can be an excellent tool at the hands of the Judiciary to expand the horizon of the rights of the forest-dwellers, if read with the Constitution of India and other beneficent legislations. The guiding light of these instruments was available to the Government while drafting the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Panchayats (Extension to The Scheduled Areas) Act, 1996, which, to some extent, confirm to the international requirements and benchmarks.

UNION OF INDIA: LAWS & POLICIES

After independence, India adopted a quasi-federal governance structure under the Union of States (Art 1(1), The Constitution of India, 1950). Sovereignty in India has been broadly divided into two tiers, the Union and the State, with the former governing the entire nation and the latter governing its dependent province. The legislative, administrative and executive powers of the Union and the States have been distinctively delineated under Part XI of the Constitution of India, with the residuary powers resting with the former (Art 248, The Constitution of India, 1950). Legislative powers of the sovereign under the Constitution are divided into three lists: the Union List, the State List, and the Concurrent List, which reflects the powers of the Union government, the State governments and the subjects upon which both can legislate, respectively (Schedule VII, The Constitution of India, 1950). However, as dealt with in detail later, the power of the State Government to legislate upon matters enlisted in the Concurrent list is subject to its conformity with the laws legislated by the Parliament and thus is restrained in its authority (Art 254, The Constitution of India, 1950).

Since the area under study is in the State of Chhattisgarh, there is an interplay between the Central and the State Laws over issues concerning the rights of forest dwellers. This is more of a problem than protection since there is a lack of coherency between the laws enacted during a widespread timeline, with changing views and jurisprudence all along. The enactments of the Central Government bind the State Government, and the latter has minimal room to legislate for a significant population of tribals inhabiting Chhattisgarh and its vast tract of forest land.

At this juncture, it is pertinent to understand the subject matters and the authority of the State legislature, so as to facilitate a legally viable suggestion in this research paper. An understating of the scope of legislative competence of the State government would reflect upon the binding nature of the national laws and thus explore avenues to bring forth changes which are consistent with the central legislations. It would also uncover the subject matters upon which the State can legislate without any dissuasion and while being within the Constitutional parameters.

The subjects of 'Forest' and 'Protection of wild animals and birds' were catalogued in State List (List-II) under the Seventh Schedule to the Constitution of India when enacted in 1950 and thus conferred the authority upon concerned State Legislatures to legislate upon forest within its jurisdictions. However, in a major turn of events, the subjects of 'Forest' and 'Protection of wild animals and birds' were transferred from the State List (List-II) to the Concurrent list (List-III) by the Forty-second Amendment to the Constitution, also known as 'the Mini Constitution' (The Constitution (Forty-second amendment) Act, 1976). Thus, today, 'forest' is Entry 17A of List III and 'protection of wild animals and birds' is Entry 17B of List III, whereby both the Central as well as State Governments can legislate upon the subjects. Thus, any law made by the Parliament over such subject matter under the Concurrent list prevails over that made by the State legislature and upon any repugnancy with the Central laws, the law made by the State Legislature shall be void (Art 254, The Constitution of India, 1950). Thus, the Union laws govern the field of forest legislations and serve as a frame for any State legislation upon the subject matter.

Entry 54 to the Union List gives the power to the Parliament of India to enact legislations for regulating mines and minerals, which are deemed to be of national importance by the Central Government, and Entry 52 empowers the Union to legislate upon Industries of national importance. The authority of the State to legislate upon mines and minerals under Entry 23 and upon Industries under Entry 24 has been made subject to the authority of the Union Government. Thus, the Union Government can declare any mineral or industry of national importance and override any legislation, rule or regulation made in this regard by the State Government. More than twelve such minerals have been notified by the Union Government, including coal, iron, bauxite and copper (Schedule I, Mines and Minerals (Development and Regulation) Act, 1957), that can be legislated upon by the Parliament alone.

The State Government has been empowered under Entry 5 of List II under the Seventh Schedule to the Constitution of India to legislate upon the subject matter of 'Local Government', which includes the Panchayats. However, Part IX of the Constitution of India lays down the guidelines for such enactments and the State legislation is expected to follow its spirit. The subject matter of 'Land' and the rights in and over the land can be legislated upon by the State Government under Entry 18 of List II.

It is imperative here to study and understand the provisions of both the Union and the State laws concerning the forest dwellers to assess and understand the interplay between them and thus suggest such changes which could bring coherency and harmony amongst the legislations. Also, it would help in understanding the untapped powers of the State in exercising its authority to protect the rights of its tribal population under their unique status within the State of Chhattisgarh.

The Constitution of India, 1950

The Constitution of India was adopted by the Constituent Assembly on 26th November 1949 and came into force on 26th January, 1950. At the time of its adoption, the Constitution contained 395 Articles in 22 Parts and 8 Schedules and was about 145,000 words long, making it the longest Constitution ever to be adopted by a sovereign nation. Every Article in the Constitution was debated by 284 members of the Constituent Assembly, who sat for 11 sessions in 167 days to frame the Constitution over a period of 2 years 11 months and 18 days.

The plight of the aboriginals dwelling in the forests of India was raised and debated by several members of the Constituent Assembly while shaping the provisions related to their recognition and protection from the historic injustice faced at the hands of the British. The inequality in the society based on race, caste, culture, wealth and education was rampant during the independence of India since they were tools at the hands of the British to execute their policy of divide and rule successfully. Thus, the members of the Constituent Assembly, being very well aware of the injustice faced by the forest dwellers at the hands of the British, extended both general and special rights and privileges towards the tribal community.

Pt. Jawaharlal Nehru, the first Prime Minister of India, was a champion of tribal rights in India and played a crucial part in the framing of The Constitution of India. The Panchsheel Doctrine (Nehru, 1953) devised by Pt. Jawaharlal Nehru, visioned tribal development under five points:

1. "People should develop along the line of their own genius and we should avoid imposing anything on them. We should try to encourage in every way their own traditional arts and culture.

2. Tribal rights to land and forest should be respected.

3. We should try to train and build up a team of their own people to do the work of administration and development. Some technical personnel from outside will no doubt, be needed, especially in the beginning. But we should avoid introducing too many outsiders into tribal territory.

4. We should not over administer these areas or overwhelm them with a multiplicity of schemes. We should rather work through, and not in rivalry to, their own social and cultural institutions.

5. We should judge results, not by statistics or the amount of money spent, but by the quality of human character that is evolved."

The Panchsheel doctrine aptly captures the entire gamut of rights claimed by the forest dwellers and prophesizes solutions to such difficulties which still resonate with the tribal population. If this doctrine, in its spirit, was adhered to at the core of the framing of the Constitution of India, then India would have been at par with the international standards prescribed for the indigenous population in 1950 and would have unravelled most of the issues faced by the forest dwellers today.

Amongst several members of the Constituent Assembly, all of whom represented the multifarious diaspora of the Indian populace, Jaipal Singh Munda was the voice of the tribal population of the Country. Jaipal Singh Munda was one of the exceptional few amongst the Munda tribe to be educated and had attained enough national fame to be called to the

Constituent Assembly for putting forth the contentions on behalf of the tribal population of India. Though the connotations throughout the Constituent Assembly Debates remark him as 'Bihar: General', he was a strong voice for the tribal community during the debates.

One such famous and fiery speech he made during the debates on deciding the fate of forest dwellers in new India is worth quoting in its entirety, which passionately grieves and denotes the plight of the Forest dwellers at the time of India's independence. Upon a resolution proposed by Pt. Jawar Lal Nehru being insinuated to be adopted by the Assembly as a guideline to be kept in mind while drafting the Constitution, the relevant part of which read: "WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes;" Mr Jaipal Singh Munda said:

"Mr. Chairman, Sir, I rise to speak on behalf of millions of unknown hordes--yet very important--of unrecognised warriors of freedom, the original people of India who have variously been known as backward tribes, primitive tribes, criminal tribes and everything else, Sir, I am proud to be a Jungli, that is the name by which we are known in my part of the Country. Living as we do in the jungles, we know what it means to support this Resolution. On behalf of more than 30 millions of the Adibasis (cheers), I support it not merely because it may have been sponsored by a leader of the Indian National Congress. I support it because it is a resolution which gives expression to sentiments that throb in every heart in this Country. I have no quarrel with the wording of, this Resolution at all. As a jungli, as an Adibasi, I am not expected to understand the legal intricacies of the Resolution. But my common sense tells me, the common sense of my people tells me that every one of us should march in that road of freedom and fight together. Sir, if there is any group of Indian people that has been shabbily treated it is my people. They have been disgracefully treated, neglected for the last 6,000 years. The history of the Indus Valley civilisation, a child of which I am, shows quite clearly that it is the new comers--most of you here are intruders as far as I am concerned--it is the new comers who have driven away my people from the Indus Valley to the jungle fastnesses. This Resolution is not going to teach Adibasis democracy. You cannot teach democracy to the tribal people; you have to learn democratic ways from them. They are the most democratic people on earth. What my people require, Sir, is not adequate safeguards as Pandit Jawahar Lal Nehru has put it. They require protection from Ministers, that is position today. We do not ask for any special protection. We want to be treated like every other Indian. There is the problem of Hindusthan. There is position of Pakistan. There is the

problem of Adibasis. If we all shout in different militant directions, feel in different ways, we shall end up in Kabarasthan. The whole history of my people is one of continuous exploitation and dispossession by the non-aboriginals of India punctuated by rebellions and disorder, and yet I take Pandit Jawahar Lal Nehru at his word. I take you all at your word that now we are going to start a new chapter, a new chapter of Independent India where there is equality of opportunity, where no one would be neglected. There is no question of caste in my society. We are all equal. Have we not been casually treated by the Cabinet Mission, more than 30 million people completely ignored? It is only a matter of political widow-dressing that today we find six tribal members in this Constituent Assembly. How is it? What has the Indian National Congress done for our fair representation? Is there going to be any provision in the rules whereby it may be possible to bring in more Adibasis and by Adibasis I mean, Sir, not only men but women also? There are too many men in the Constituent Assembly. We want more women, more women of the type of Mrs. Vijayalakshmi Pandit who has already won a victory in America by destroying this racialism. My people have been suffering for 6,000 years because of your racialism, racialism of the Hindus and everybody else." (Constituent Assembly Debates, 1946, Vol I, p. 12)

The framers of the Constitution paid sincere heed to the problems of the tribal population whereby the rights and protection accorded to the tribal population of the Country, which then constituted about 5% of the national population,[5] can be found under Part III, Part IV and Part X of the Constitution of India, while Schedule V and Schedule VI to the Constitution of India had been inserted specifically for areas inhabited by the Aboriginals who had not assimilated with the mainstream society.

The Scheduled Tribe:

As discussed before, there has been an ambiguity in the nomenclature of the dwellers of the forest. Before the adoption of the Constitution of India, there was an obscurity in the taxonomy of the forest dwellers being addressed as Adivasi, Aboriginals, Indigenous tribes,

[5] According to tribes recognized under the Constitution (Scheduled Tribes) Order, 1950, the tribal population of India in 1950 was 178.75 lakhs, consisting of 245 tribes, with the tribal population in the States being follows: (population in lakhs): Assam 17.15; Bihar 42.10; Bombay 30.37; Hyderabad 2.37; Madhya Bharat 9.49; Madras 5.96; Madhya Pradesh 24.59; Mysore .10: Orissa 29.25; Punjab .15; Rajasthan 4.47; Saurashtra .73; Travancore and Cochin .23. See Dr. B. H. Mehta Historical Background Of Tribal Population available at https://ijsw.tiss.edu/collect/ijsw/import/vol.14/no.3/236-244.pdf (Last Accessed on 02.04.2022)

etc. In the census of 1931, the tribes were described as hill tribes, jungle tribes, border tribes, etc (Census, 1931), while in the census of 1941, the tribes were generalized into a single category (Census, 1941). The Constitution of India under Article 366(25) defines Scheduled Tribes as a community or class of people recognized as per procedure laid down under Article 342 of the Constitution of India. Thus, all and any legislation enacted towards the rights and protection of such Scheduled Tribes emanates and finds its meaning within the Constitution of India.

As per the definition clause under Article 366 (25) of the Constitution of India, the term 'Scheduled Tribes' refers to those "tribes or tribal communities or parts of or groups within tribes or tribal communities which have been designated as such by the President of India through the identification process as envisaged and provided under Article 342 of the Constitution of India." (Art 366(25), The Constitution of India, 1950)

As per Article 342 of the Constitution of India, the declaration of a tribe as a Scheduled Tribe is the discretion of the President of India, which can be exercised in consultation with the Governor of the State. The Parliament has been granted the power to exclude, but not include, any tribes or community from the list of scheduled tribes. Though the criteria to be followed by the President of India for recognizing a tribe as a Scheduled Tribe has not been spelt under the Constitution of India, the convention and practice for the same has become established. As per a reply given by the Government before the Parliament of India, the criteria presently followed for the specification of a community as a Scheduled Tribe are ("PIB", 2017):

(i) indications of primitive traits,

(ii) distinctive culture

(iii)geographical isolation

(iv)shyness of contact with the community at large, and

(v) backwardness

The definition of Scheduled Tribe under the Constitution has been a hotly debated one. There have been political disputes for the inclusion of certain tribes in the list of Scheduled Tribes, whereby many of such contesting tribes have not been accorded the status and thus are deprived of the Constitutional safeguards and privileges, consequently being denied the perks under beneficial legislations.

The definition under the Constitution is not an elaborative one and does not in itself define the norms and parameters for inclusion or exclusion from this special class. Under international instruments, self-determination and self-identification have been significant criteria for recognition as Aboriginal, which has been left out even from the conventional yardstick adopted by the government. Furthermore, the inclusion within the definition can be area-specific, thereby meaning that a community may be recognized as Scheduled Tribes in one State but may not be so in another. It can choose to include a class or a sub-cast of a tribe within its definition while excluding the others. The authority of the President of India to decide the tribes to be brought within the Schedule is exclusive, though this is done with the recommendation of the Centre and State legislations (Bhaiyalal vs. Harikishan, 1965). The Courts have no jurisdiction to determine the rationale behind such inclusion or exclusion or add any class or sub-caste to the list (Vinay vs. State, 1997). There cannot be any claim of being a tribal if the same has not been recognized under the Constitution (Scheduled Tribes) Order (Sunil vs. State, 2022). Thus, the definition may not truly reflect the aboriginal or indigenous population of the country but, at best, is an administrative set-up devised under the Constitution to define a class which has been identified as such by the Legislature.

As per the information available from the Ministry of Tribal Affairs ("List of Scheduled Tribes", 2010), there are today 726 tribes which have been recognized as Scheduled Tribes under Article 342 of the Constitution of India, with several sub-tribes and communities within them and some tribes recognized as such only within a specific geographic area of the State. The list is frequently revisited and thus amended to include and exclude the tribes, with the latest amendment to the Constitution (Scheduled Tribes) Order, 1950, being done on 8th April 2022.

Fundamental Rights:

Part III of the Constitution of India guarantees its citizens fundamental rights, being inspired by the Bill of Rights adopted by the United States of America. These are the inalienable rights accorded to every citizen of India and are justiciable in a court of law under Article 32 and Article 226 of the Constitution of India. The State, as under Article 12 of the Constitution of India, cannot violate any of these fundamental rights, except otherwise as provided in Part III itself.

Article 14 of the Constitution of India guarantees equality before the law. As such, the State has to afford all its citizens equality before the law or the equal protection of the law, thus prohibiting discrimination based on religion, race, caste, sex or place of birth. However, the right to equality is not merely formal in nature but has been read to be a substantial one by the Constitutional Courts of the country. Thus, through a reasonable classification, the legislature can affect positive discrimination or affirmative action in favour of the underprivileged to support them in attaining equality (Kailas vs. State, 2011). Article 15 and Article 16 of the Constitution of India specifically carve out the Scheduled Tribes as a special class, which enables the State to cause affirmative action in their favour to ensure their substantive equality (Ajit vs. State, 1999). Part III of the Constitution thus accords the protection of all the laws available to all the citizens of India, while allowing for reasonable classification in favour of the tribes.

In furtherance of such an even break, Article 15 (4) of the Constitution of India explicitly spells that nothing shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled Tribes. Similarly, the State can ensure affirmative action through reservation in public service for the Scheduled tribes if they are not adequately represented (Art 16, The Constitution of India, 1950). Thus, the Constitution of India has provisions for providing positive discrimination in favour of the Scheduled Tribes while ensuring equality. Such special classification delineated within Part III of the Constitution has been the foundation of several affirmative actions effected throughout the Constitution and other special statutory legislations towards ensuring adequate rights for the underprivileged and isolated community of tribes in India.

Article 19 of the Constitution of India guarantees the following freedom and rights:

"Protection of certain rights regarding freedom of speech etc.

(1) All citizens shall have the right:

(a) to freedom of speech and expression;
(b) to assemble peaceably and without arms;
(c) to form associations or unions;
(d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India; and
(f) omitted
(g) to practise any profession, or to carry on any occupation, trade or business"

The framers of the Constitution have carved out exceptions to these fundamental rights in the interest of the Scheduled Tribes. As such, under Article 19 (5) of the Constitution of India, the State may make any law restricting the rights provided under Article 19(1)(d) and Article 19(1)(e) for the protection of the interest of the Scheduled tribe. Thus, the freedom to move throughout the territory of India and the freedom to reside and settle in any part of the territory of India can be restricted by the State if it deems so fit for the protection of the members of the Scheduled Tribe. The Constitution of India has protected the distinct language, culture and script of the tribal community under Article 29.

Article 21 of the Constitution of India reads: "Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law" (Art 21, The Constitution of India, 1950). This one-line provision containing only eighteen words can be assertively regarded as the most incredible tool at the hands of the judiciary in ensuring human rights to the citizens of India and has been characterized as 'the procedural Magna Carta protective of life and liberty' by the Supreme Court of India (Francis vs. Administrator, 1981). As discussed earlier, the Supreme Court has read several international human rights instruments into Article 21 of the Constitution of India, thus successfully evolving the vista of fundamental rights in India to confirm with international standards.

In *Kharak Singh vs. The State of U. P*. (1963), while relying on the celebrated case of *Munn vs. Illinois* (1876), the Supreme Court fervently observed that the right to life does not mean the right to mere animal existence but includes the right to live with dignity. This induction of 'dignity' as a part of the right to life has been a watershed moment in facilitating the development of Article 21 as the cornerstone for the expansion of fundamental rights. Though the term 'dignity' and 'personal liberty' has been utilized and interpreted by the Supreme Court to encompass several rights under the umbrella of Fundamental Rights and thus has varied from case to case based on its peculiar facts, for the purpose of this paper the right to live with dignity has been succinctly recognized by the Supreme Court as (Puttaswamy vs. UoI, 2007):

(i) respect for one's capacity as an agent to make one's own free choices;

(ii) respect for the choices so made; and

(iii) respect for one's need to have a context and conditions in which one can operate as a source of free and informed choice.

The recognition and adoption of the above description of 'dignity' by the Constitutional Bench of the Supreme Court of India and thus its inclusion as a part of Article 21 of the Constitution of India can prove to be a significant milestone for the recognition of several rights demanded and contested by the forest dwellers for decades. This would guarantee them the right to enjoy a quality of life (Hinch vs. Kamla, 2000) rather than live a life of fear and desolation. A perusal of the description would show that the right to live with dignity includes the right to self-determination and free and informed choice. It grants autonomy over free choice, which can mean choosing distinction. As such, the right to self-determination and free choice has been explicitly recognised as a fragment of Part III of the Constitution of India under Article 21 by the Supreme Court in the matter of transgender rights (NLSA vs. UoI, 2014), which can be extended to protect the rights of the forest dwellers.

The terms 'life' and 'personal liberty' has been given broad meaning to encompass several rights within this provision, including some positive obligation upon State, such as right to a wholesome environment (Municipal Council vs. Vardichand, 1980), right to rehabilitation (Jayal vs. UoI, 2004), right to livelihood (Olga Tellis vs. BMC, 1985), right to shelter (State vs. Narasimha, 1995), right to education (Unnikrishnan vs. State, 1993), right to clean air and

water (Subhash vs. State, 1991), right to economic equality (LIC vs. CERC, 1995) and several other fundamental human rights which were deemed to be the bare necessities for a dignified existence in any civilised society (Chameli vs. State, 1996). In the celebrated judgement of *Samatha vs. State of Andhra Pradesh* (1997), the Supreme Court held that the tribals have a fundamental right to social and economic empowerment. This social and economic power was secured by creating the Scheduled areas and hence the Court had held the land in such areas to be inviolable for upholding the fundamental rights of the tribals. Thus, the tribal communities have been granted both general as well as special rights and privileges under Part III of the Constitution, where the State can also curb the rights of the public in favour of the Scheduled Tribe.

Though several Acts, as discussed elsewhere in this paper, aspire to grant such rights to forest dwellers, their inclusion as a fundamental right under Part III of the Constitution creates a negative obligation on the State to 'guarantee' these rights, which can thus be enforced by the Constitutional Courts under Article 32 and Article 226 of the Indian Constitution. Adopting the same standard of definition and recognition for forest dwellers' rights, as has been interpreted for others, would ensure redressal of the historic injustice suffered by them. Furthermore, such judicial inclusion of Rights will also foster their entitlements in India's highest castle and fortress of human rights, which is Part III of the Indian Constitution.

The Directive Principles of State Policy:

The Directive Principles of State Policy are contained under Part IV of the Constitution of India. These affirmative directions have been considered fundamental in the governance of the Country and thus have served as guiding principles for the State to frame laws (Art 37, The Constitution of India, 1950). Due to the nascent and fragile nature of the Indian economy in 1950, these principles had been made non-justiciable, with a vision for future the Governments to strive to achieve and ensure these rights to its people.

Though the Directive Principles of State Policy have not been made justiciable under the Constitution of India and were treated as such by the Supreme Court of India during its early days, today they have been considered to be equally crucial as the Fundamental Rights in the governance of the Country (Olga Tellis vs. BMC, 1985). The Directive Principles of State

Policy have to be read in harmony and furtherance of the fundamental rights since they have been deemed supplementary and complimentary to each other (Dalmia vs. UoI, 1996).

As such, Article 46 of the Constitution of India under the Directive Principles of State Policy directs the Government to promote the educational and economic interest of the Scheduled Tribe and endeavour to protect the members of the Scheduled Tribe from social injustice and all forms of exploitation. Article 40 can also be read to support the right of self-governance by the Tribes in their territory and upon their internal and local matters.[6] Article 39 requires the State to ensure that the ownership and control of the community's material resources are distributed to best serve the common good and provide adequate means of livelihood. Prominently, the provision requires the State to ensure that its economic policies do not result in the concentration of wealth in the hands of the few while causing deprivation to the others (Art 39, The Constitution of India, 1950).

Hence, while formulating the Directive Principles of State Policy, the framers of the Constitution had a long-term vision and aspiration for the Scheduled Tribe community, and thus, the Union and State Governments have been made duty-bound to endeavour towards their upliftment through education and promotion of economy. It is true that the aforesaid provisions of the Directive Principles of State Policy are not enforceable by any Court as provided under Article 37 of the Constitution, but are nevertheless fundamental in the governance of the Country and the State must endeavour to apply these principles in while formulating policies for the Scheduled Tribes.

The Scheduled and Tribal Areas:

Part X of the Constitution of India, titled ‘The Scheduled and Tribal Areas’, has been inserted explicitly within the Constitution of India to lay down the guidelines for administrating such territories which are majorly resided by members of Scheduled Tribes and thus have been declared as such. Article 244 of the Constitution of India directs the applicability of Schedule V to the Constitution of India to all the Scheduled and Tribal Areas anywhere in the Union of

[6] See Article 40 of the Constitution of India, 1950 provides ‘Organisation of village panchayats’ which states that “the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”

India, except for Assam, Meghalaya, Tripura and Mizoram, which are governed under Article 244A read with Schedule VI to the Constitution of India.

Due to their cultural distinction and constant rebellion against British intervention, the areas predominantly inhabited by tribal forest dwellers were declared to be Excluded and Partially Excluded areas and thus exempted from the application of British Laws under the Scheduled Districts Act, 1874 read with the Government of India Act, 1935 and the Government of India (Excluded and Partially Excluded Areas) Order, 1936. Partially excluded areas were those tribal-dominated areas which were isolated and deemed backwards and thus were thought fit to be governed by the Crown through its agency. Excluded areas were such tribal-dominated parts with a developed local self-governance system, and thus, the representatives of the Crown were mere figureheads in such areas.

It is interesting to note here that erstwhile areas under direct control of the British Government, being the Presidency areas, were handed over by the British to the new Government of India during Independence. Being the Residency areas, the princely states acceded to the Union of India through deeds of accession signed by their respective rulers. However, the parts of the Country dominantly resided and ruled by the tribals were never formally taken over by the government. They were assumed to have assimilated into the Union of India.

There were serious debates in the Constituent Assembly between adopting “identity-based isolation” or “development-based integration” approach for such areas predominantly inhabited by the tribals (Wahi & Bhatia, 2018, p. 19). The Panchsheel formulated by Pt. Jawahar Lal Nehru discoursed, “People should develop along the line of their own genius and we should avoid imposing anything on them” (Nehru, 1953, p. 231). This ideology resonates with the doctrine of self-determination and thus was put forth for discussion before the Constituent Assembly for its adoption in shaping the formulation of the Scheduled Areas. The debate was between giving Constitutional tools to the tribals for asserting their presence in society by incorporating affirmative action towards them under the Constitution and thus assimilating them with the mainstream society; or giving them autonomy and isolation into their way of life by keeping them away from the society, as such intervention had historically led to their exploitation.

Indeed, even today, a 'choose-only-one' approach out of these two options would be extremely difficult to make, with neither having a happy ending. While on one hand, leaders like Jaipal Munda complained about the 6000 years of injustice faced by the tribals due to foreign intrusion and imposition (Constituent Assembly Debates Proceedings, 1946), on the other, leaders liked K.M Mushi and Shibban Lal Saksena deemed such separation of Scheduled Tribe from the general population as a humiliation for these tribes that ought to be done away with by bring them in one with the Nation (Constituent Assembly Debates Proceedings, 1949). Those who wanted absolute assimilation viewed British idea of isolation as a sinister design to keep ruling these areas by avoiding any rebellion (Constituent Assembly Debates Proceedings, 1949).

It is imperative here to assess the vein of the era and determine the social forces at work when the Constitution of India was being drafted. The Country had faced serious atrocities at the hands of the British and, after independence, wanted to grow with the idea of 'unity' as a nation. India had faced the burn of their own communal discord, which the British had successfully exploited under their policy of divide and rule for centuries. Discrimination based on caste, creed and race was rampant and had been identified as an evil sought to be irradicated by the forward-thinking legislators. Assimilation and integration were the central themes of the period. The leaders of the new nation sought to assimilate Presidency areas and Residency areas into one single nation and wanted to integrate its diverse population to be its unified citizens.

Thus, after much deliberation upon the future of the forest-dwelling tribes in an independent India and elaborate discussions regarding the approach to assimilate the forest dwellers with the modern growing India or to be left to self-govern, the framers of the Constitution deemed it fit to keep such areas under Special category and thus brought these areas under the Fifth and Sixth Schedules, together referred as the Scheduled Areas.

These scheduled areas are those geographical and geopolitical areas which are predominantly inhabited by forest-dwelling tribes. The list has been updated by order of the President of India, with a total of ten orders being issued to this effect to date ("Report by Ministry of Tribal Affairs", p. 2). The Order for the State of Chhattisgarh was issued on 20.02.2003 under The Scheduled Areas (States of Chhattisgarh, Jharkhand and Madhya Pradesh) Order, 2003 (C.O. 192), whereby as of 20.03.2003, thirteen out of sixteen districts in the State of

Chhattisgarh had been declared to wholly or partially constitute Scheduled areas under Article 244 of the Constitution of India. Since the scope of this paper is limited to the State of Chhattisgarh, which is governed under Article 244 and the Fifth Schedule to the Constitution of India, a detailed study of Article 244A and the Sixth Schedule will not be ventured into.

As per Part C of Schedule V to the Constitution of India, the power to declare an area as a Scheduled Area rests with the President of India, whereby the President of India may:

(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;

(aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;

(b) alter, but only by way of rectification of boundaries, any Scheduled Area;'

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;

(d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas (Sec 6, Sch V, The Constitution of India, 1950);

The declaration of any area as a Scheduled Area is the exclusive domain of the President (Amarendra vs. State, 1983; State vs. Ashok, 2008). Similar to the definition of Scheduled Tribe under the Constitution, though the criteria for declaration of an area as a Scheduled Area has not been spelt under the Constitution of India, the convention and practise for the same has become well established as being followed since 1950. Thus, the criteria for declaring any area as a "Scheduled Area" under the Fifth Schedule are ("Report by Ministry of Tribal Affairs", p. 1):

1. Preponderance of tribal population,

2. Compactness and reasonable size of the area,

3. A viable administrative entity such as a district, block or taluk, and

4. Economic backwardness of the area as compared to the neighbouring areas.

While the Sixth Schedule gives great autonomy to the areas included under Article 244 A of the Constitution of India, the Fifth Schedule adopts the integration policy. The tribal population included in the Sixth Schedule were considered to be self-sufficient to take care of their own affairs, and thus, the Regional and District Councils of these areas were given powers and autonomy in legislative (Sec 3, Sch V, The Constitution of India, 1950), judicial (Sec 4 & 5, Sch V, The Constitution of India, 1950) and executive (Sec 6, Sch V, The Constitution of India, 1950) functions along with fiscal authorities and responsibilities, including the collection of taxes and preparation of the budget for their respective Council (Sec 8, Sch V, The Constitution of India, 1950). However, the generalised Fifth Schedule deemed the tribal population of the rest of the Country to be incapable of managing their own affairs. It thus did not grant such autonomy to the areas declared under Article 244 of the Constitution of India (Skaria, 1997).

While deliberating and deviating from the concept of an excluded area of total isolation, as envisaged by the British Government, the framers of the Constitution sought to bring the forest dwellers to the mainstream national community while aspiring to protect their distinct identity. Thus, the Fifth Schedule extended the executive powers of the State within these areas (Sec 2, Sch 5, The Constitution of India, 1950). As such, the Governor has been bestowed with the responsibility to administer these areas and has been given the authority to formulate regulations for its peace and good governance (Sec 5(2), Sch V, The Constitution of India, 1950).

The power of the Governor under the Fifth Schedule is two-fold. The power under Section 5(1) is an extraordinary one, whereby the Governor of the State can decide upon the applicability or exclusion of any law enacted by the Parliament of India or the State Legislature over the Scheduled Area in the State (Sec 5(1), Sch V, The Constitution of India, 1950). The Governor may, in exercise of this powers, repeal or amend any Act of Parliament or the Legislature of the State or any existing law which is for the time being applicable over its jurisdiction (Sec 5(3), Sch V, The Constitution of India, 1950). A bare reading of the

provision reflects an unfettered legislative competence, where the Governor is not required to consult anyone to exercise this power nor seeks the assent of the President of India for its execution. This can be done by merely issuing a public notification, which has the effect of amending the law in force. However, while exercising this power, the Governor cannot legislate, but is only competent to modify the law enacted by the competent legislature (SK Gupta vs. KP Jain, 1979). It has been held that the power to modify is limited to additions and omissions and cannot extend to rewriting the statute so as to change the substance of the enacted law (Puranlal vs. President, 1962).

Under Section 5(2) and onwards, the Governor can frame regulations for the peace and good governance of the area. The Governor can exercise this legislative power to make such regulations with the aid and advice of the Tribes Advisory Council of the State (Sec 4, Sch V, The Constitution of India, 1950). Such legislative regulations by the Governor can be made applicable only after the assent of the President of India (Sec 5(5), Sch V, The Constitution of India, 1950). Thus, the Constitutional Bench of the Supreme Court, in a recent case, has propounded that though the Governor is competent to legislate upon the subject matters mentioned under Section 5(2) of the Fifth Schedule in consultation with the TAC, the power under Section 5(1) of the Fifth Schedule is limited to modification of the Statute (Chebrolu vs. State, 2021).

Thus, under the Fifth Schedule, the Governor has a significant role to play in the governance of the Scheduled Area, which was that of the "sole legislature for the Scheduled Areas and the Scheduled Tribes" (Ram vs. State, 1969, p. 11), until the enactment of The Panchayats (Extension to The Scheduled Areas) Act, 1996. The Governor is responsible for ascertaining and ensuring the best interest of the tribes residing in such scheduled areas. He is required to furnish a report to the President of India detailing the particulars of the administration of such special areas (Sec 3, Sch V, The Constitution of India, 1950). The exact configuration and parameters of the report to be submitted by the Governor have not been defined under the Constitution, creating uncertainty and ambiguity regarding the yardstick to be followed by the Governor. The guidelines to the Governor under the Constitution for such administration are also very vague, leaving a lot to the discretion of the Governor and thus to that of the incumbent Government.

Under the Schedule, the Governor has been empowered to frame regulations for the ‘peace and good governance’ of the tribes residing in Scheduled Areas. The phrase ‘peace and good governance’ has been explained by Lord Halsbury to mean "an utmost discretion of enactment for the attainment of the objects pointed to” and has been held to embrace the widest power to legislate towards such a goal (Ram vs. State, 1969, p.10). Thus, the Governor's powers to frame regulation are legislative in nature. The Governor is competent to make regulations for the Scheduled Area under its jurisdictions on all such subjects upon which the Parliament or the State Legislative Assembly can legislate.

The powers of the Governor under Section 5 of the Fifth Schedule are significantly different from those exercised by the agents of the Crown under excluded and partially excluded areas. Before independence and as under the Government of India (Excluded and Partially Excluded Areas) Order 1936, all the provincial laws were deemed to be inapplicable to these special areas unless explicitly made applicable by the agents. Such was done by assessing the local culture and parlance of the population and after gauging the effect that such a law may have on them. However, under the Fifth Schedule, this has been reversed. Now, all the Central and State Acts would apply to the Scheduled Areas by default unless the same is deemed not fit to be applied by the Governor and thus is explicitly made inapplicable by promulgating a regulation in this regard.

Several researchers suggest that though the powers of the Governor are extraordinary in nature, such powers are rarely exercised by the Governor, while the annual reports are often nebulous and unproductive (Khanna et al., 2010; Wahi & Bhatia, 2018; Farha, 2019). It has been observed that the reports sent by the Governor are “repetitive, casually and haphazardly constructed and tend to borrow heavily from reports of the tribal welfare department, merely listing out the schemes and programmes for tribal development without even examining their implementation and efficacy on the ground. Pressing issues such as the impacts of insurgency and counter- insurgency on tribal populations and displacement by big industry rarely find mention. The Governor’s Reports offer quantitative rather than qualitative or analytical data about the status of tribal administration in the concerned States” (Xaxa Committee, 2014, p. 172). The decision of the Governor or the President of India is not independent of the opinion and assertion of the respective Government, primarily due to practical and political reasons.

Moreover, it is not open for the Courts to consider whether any regulation made by the Governor would conduce to peace and good governance (Girindra vs. Birendra, 1927). To add to it, it was submitted before the High Court of Chhattisgarh that such powers of the Governor under the Fifth Schedule are bound by the advice of the Council of Ministers and that the Governor had no discretion to exercise such powers without such aid (BK Manish vs. State, 2013). However, it was later clarified by the Central Government that the Governor has discretion in exercising powers under the Fifth Schedule. A review petition against the judgement of the High Court of Chhattisgarh is pending before the Supreme Court of India (Jitendra, 2013). Thus, the very purpose of creating a separate area under the Fifth Schedule, for granting it protection from unwarranted administration and sovereign assertion, has become redundant. An honest and sincere exercise of such powers by the Governor, without any influence by the Government or external interests, can be a game changer in ensuring the implementation of the vision of the framers of the Constitution in protecting their interests.

The second most crucial authority under the Fifth Schedule is the Tribes Advisory Council. While realising the deprived status of the Provincial Government and the vulnerable status of the forest dwellers, the framers of the Constitution wanted the Centre to be responsible for protecting this deprived class. However, it was deemed impossible for the Centre to make decisions for the good governance of these areas without any input from the grassroots level. Thus, the Tribes Advisory Council was fashioned as a bridge between the affected and the policymakers to apprise the Governor of the realities and thus consult on such benevolent regulations (Iyengar et al., 1966). The duties prescribed for the Tribes Advisory Council are yet again vague, which reads as: “It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor” (Sec 4(2), Sch V, The Constitution of India, 1950). To add canons to this function, the Governor has been empowered to frame rules for all matters incidental to the working of this Council (Sec 4(2), Sch V, The Constitution of India, 1950). Thus, the duty of the Tribes Advisory Council is to ‘advise’ the Governor, on being called upon, over such matters which are deemed necessary by the Governor for the welfare and advancement of the Scheduled Tribes, limited to the framing of regulations under Section 5(2) of the Fifth Schedule to the Constitution of India. The Governor is not required to seek consultation from the Tribes Advisory Council, nor is the same binding upon the Governor in exercising powers under Section 5(1) of the Fifth Schedule to the Constitution of India.

Thus, the functioning of the Tribes Advisory Council entirely depends on the Governor, which, as discussed, has not been very effective. Research reports insinuate that the meeting of the Tribes Advisory Council is rarely called upon by the Governor, and in the very few meetings that have been held, they have lacked a productive agenda and have failed to give any constructive advice (SCSTRTI, 2013; Wah & Bhatia, 2018). Moreover, even if the Tribes Advisory Council does come up with a resolution aimed at the welfare of the Scheduled Tribes, the same would be a bit of mere advice to the Governor and it would ultimately depend on the will of the Governor to act upon such advice. Thus, the Tribes Advisory Council, even in its feeble role as an advisor, fails in its envisioned noble purpose due to its parturition from the Government. Such complete dependency of the Tribes Advisory Council upon the Governor and the absolute discretion of the Governor to accept or reject its advice make it a mere showpiece without much power.

This latency and futility of the Tribes Advisory Council was foreseen by Jaipal Singh Munda when the original draft of the Scheduled Area proposed by the Advisory Committee on Fundamental Rights, Minorities and Excluded Areas was replaced by a new one (which was eventually adopted). He expressed his anguish by claiming the new draft has emasculated the Tribes Advisory Council since "the whole pattern of the original draft was to bring the Tribes Advisory Council into action. It could initiate, originate things, but, somehow or other, the tables have now been turned. The initiative is placed in the hands of the Governor or Ruler of the State" (Constituent Assembly Debates, 1949, p. 12). Munda was also agonised by the fact that the Tribes Advisory Council had been reduced to the status of a mere consulting body while demanding that the Tribes Advisory Council should be "effective and have a real say in what is being done" (Constituent Assembly Debates, 1949, p. 12). Jaipal Singh Munda thus demanded that the Tribes Advisory Council should have a dominant role to play in the administration of the Scheduled Area and that the recommendation of the Tribes Advisory Council in adopting or rejecting a Central or State legislation, or its provisions, should be binding on the Governor. He thus punchily stated, "What the tribals want is not a council but a guarantee by the Constitution that means of livelihood, free education and free medical facilities shall be provided for all the tribals" (Iyengar et al., 1966, p. 581).

Yudhisthir Mishra, a member of the Constituent Assembly, also expressed his concerns about the role of the Tribes Advisory Council under the draft. He contended that the very purpose

of the Fifth Schedule would be defeated if the Trines Advisory Council would function only upon being called upon by the Governor. He demanded that "the whims and fancies of the executive authority should not limit the advisory power of the Council" (Constituent Assembly Debates, 1949, p. 12). Yudhisthir Mishra thus sought power for the Tribes Advisory Council to give its opinion on matters that it deemed necessary for the welfare of the Scheduled Tribes, even if the matter has not been referred to it by the Governor. He observed that the Tribes Advisory Council had no say in the administration of the Scheduled Area, and for the minimal role that it had, the same was only advisory in nature, thus making the Council a "nonentity" (Constituent Assembly Debates, 1949, p. 12).

Thus, the draft provision adopted and today incorporated under the Constitution of India can be irrefutably assessed and concluded by quoting the views of Jaipal Singh Munda, whereby he rightly anticipated that "Tribes Advisory Council should be a reality and not a farce. Let us not give it a big name, without any powers to do things" (Constituent Assembly Debates Proceedings, 1949, p. 12).

Despite its legislative and hands-on shortcomings, the Fifth Schedule to the Constitution of India has been crucial in formulating one of the greatest landmark judgements in the history of recognition of forest rights in India. The Fifth Schedule to the Constitution of India was deeply studied and interpreted by the Supreme Court in *Samatha vs. State of Andhra Pradesh* (1997). Here, the Supreme Court considered whether government land within a Fifth Schedule area could be transferred to a non-tribal 'person' for mining under the Andhra Pradesh Scheduled Area Land Transfer Regulation (1 of 1959), whereby Section 3 of The Andhra Pradesh Scheduled Area Land Transfer Regulation (1 of 1959) prohibited any transfer of land within a Scheduled Are from a member belonging to a Scheduled Tribe to any other 'person' who did not belong to the Scheduled Tribe. Thus, the Supreme Court was posed with a question as to whether the Government is a *persona ficta* and thus can a government land within a Scheduled Area be transferred to anyone other than a Scheduled Tribe?

In this one-of-a-kind and progressive judgment on such issue, the Supreme Court held that the word 'person' used under Section 3 of the Regulation would include the Government. Thus, any lease granted to a non-tribal, even on the Government land situated in a Scheduled Area, violates Section 3 and is void. The Supreme Court delved into the historical account of

the creation of the Excluded and Partially excluded areas and thus concluded that these areas were created to protect the unique identity of the forest dwellers and, thus, the framers of the Constitution while incorporating the Scheduled Areas within the Constitution wanted to prevent any external intrusion into their lands. While interpreting the object of the inclusion of the Scheduled Areas under the Constitution, The Supreme Court thus held that "The object of the Fifth Schedule and the regulation is to preserve tribal autonomy, their culture and economic empowerment to ensure social, economic and political justice for preservation of peace and good Government in the Scheduled Area. Therefore, all relevant clauses in the Schedule and the Regulation should harmoniously and widely be read so as to elongate the aforesaid constitutional objectives and dignity of person to the Scheduled Tribes, preserving the integrity of the Scheduled Areas and ensuring distributive justice as an integral scheme thereof" (Samatha vs. State, 1997, p. 258).

Furthermore, elucidating upon the importance of creation of the Scheduled Areas and its status under the Constitution of India, the Court held: "Thus, the Fifth and Sixth Schedules an integral scheme of the Constitution with direction, philosophy and anxiety is to protect the tribals from exploitation and to preserve valuable endowment of their land for their economic empowerment to elongate social and economic democracy with liberty, equality, fraternity and dignity of their person in our political Bharat." (Samatha vs. State, 1997, p. 244).

Even after 30 years of its pronouncement and even before the enactment of any of the beneficent legislations, the case of *Samatha vs. State of Andhra Pradesh* (1997) remains a beacon on the issue of forest rights. The judgement introspects upon several vital principles of the Constitution and has deeply inferred the intention of the framers of the Constitution to conclude that "the Constitution intends that the land always should remain with the tribals" (Samatha vs. State, 1997, p. 257).

However, though the Supreme Court Judgement in *Samatha vs. State of Andhra Pradesh* has not been overruled to date, the Judgement has been questioned and its efficacy has been doubted by the Court itself, which has often been distinguished on facts and law in subsequent cases (BALCO vs. UoI, 1997). The Judgement also provoked a hostile reaction from the Ministry of Mines, which suggested an amendment in the Constitution to nullify the decision ("Note for Committee of Secretaries…..", 2010). Most of the State Governments thus amended their law to exclude land acquisitions by the Government from any embargo

upon the alienation of tribal land and thus made it an exception. Hence, the Judgement today has been rendered as merely an academic and moral victory for the forest dwellers, with seldom precedential reliance upon the true spirit of the Judgement.

National Commission for the Scheduled Tribe:

For the implementation of the provisions under the Constitution of India thus incorporated for the protections and upliftment of the Scheduled Tribes and subsequent beneficent legislations enacted in such spirit, an Agency for monitoring and ensuring the safeguards was fostered under Article 338 A of the Constitution of India, which was incorporated through the Constitution (Eighty-Ninth Amendment) Act, 2003 on 28th September 2003. Such a commission specifically crafted to address the needs and grievances of the Scheduled Tribes was titled as 'National Commission for the Scheduled Tribes' and is bestowed with the responsibility to investigate and enquire into the effectiveness of the safeguards provided for the Scheduled Tribes within the Constitution of India and other such acts in place to do so (Art 338A(4)(a), The Constitution of India, 1950) to investigate into specific complaints of deprivation of such safeguards (Art 338A(4)(b), The Constitution of India, 1950), to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress (Art 338A(4)(c), The Constitution of India, 1950) and also to make in such recommendations as to the measures that the Union or any State should take for the effective implementation of such safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes (Art 338A(4)(e), The Constitution of India, 1950). The National Commission for the Scheduled Tribes has been conferred with the powers of a civil court to effectively carry out its functions and duties.

Overview:

The Constitution of India is the heart and soul of India, delineating the authorities and governing the nation's laws. Special consideration towards the Scheduled Tribes under the Constitution of India marked the era of their recognition as citizens of India, a fresh breath from their earlier status as the enemy of the Crown before independence. The Constituent Assembly held detailed discussions about their future, and thus, the framers of the

Constitution recognised such tribes as a special class and conferred them with special privileges.

As many as 209 Articles under the Constitution of India are directly relevant to Scheduled tribes, ranging from recognising their special status to ensuring their representation in education, public employment and legislature at various levels through positive discrimination. They have a unique status within the Constitution and have been treated as a distinctive class with extraordinary attention under Part III and Part IV of the Constitution of India.

The rights guaranteed under Part III of the Constitution of India have been rapidly expanded by the Constitutional Courts of the country to mean beyond its mere words. Today the right to self-determination and the right of free and informed choice have been recognized as emanating from Article 21 of the Constitution of India. However, the very same courts have also held that the issue of violation of fundamental rights, more specifically that of the violation of Article 21 of the Constitution of India, cannot be a ground for deterring land acquisitions, since the latter involves the greater common good (KT Plantation vs. State, 2011). The courts often rely on colonial precedents to refuse entertaining issues of violation of fundamental rights in land acquisition and also while testing the constitutionality of such land-depriving legislation. This is hard to digest in light of the mandate under Part III of the Constitution itself and the golden doctrine of basic structure evolved by the Supreme Court. This question needs to be revisited by the Supreme Court in light of the recent inclusion of the right of self-determination and the right of free and informed choice as a part of Article 21. Furthermore, the special recognitions and instructions under Part IV of the Constitution of India are non-justiciable before a Court of law and thus depend on the Government for their implementation.

Also, as discussed earlier, though the Fifth Schedule to the Constitution of India is a critical piece of legislation that can solve all the difficulties faced by the forest dwellers, the same has been rendered as a dead letter due to the authorities' inadequate functioning. The Governor has been made all-powerful by the Constitution of India to override any law which hampers the peace and good governance of the Scheduled Area and has been made competent to restore the balance between national interest and the interest of the forest dwellers by modifying both Central and State legislations, in view of the local needs and demands.

However, the Governor has often been found to have failed to exercise this power, thus subverting the autonomy of the Scheduled Areas (Farha, 2019). The reports sent by the Governor to the President are stereotypical, without any honest assessment of the actual problems faced by the tribes living in the Schedule areas, and thus have now become a redundant exercise (Xaxa Committee, 2014). In a confidential report sent by the National Commission for Scheduled Tribes to the President of India, it had recommended that the Governors be made more accountable towards dispensing their special duties under the Fifth Schedule Areas, with a uniform standard to be set for the exercise of such powers. However, the Government never considered the report, as it would not have served its interest (Jitendra, 2013). The growing nature of political appointments to the post of the Governor of a State and the President of India, with strict political allegiance to the party at the Center, has dispersed any hope of an impartial assessment by the Governor.

The failure of the Tribes Advisory Council had been aptly foreseen by Jaipal Munda even before its inclusion under the Constitution of India. Its weak nature of rendering only advice, and that too only when called upon to do so by the Governor, has defaced its role as a representative body of the forest-dwelling population. It has no powers to initiate or originate issues or regulations for the welfare of the Scheduled Areas, but is dependent upon the Governor, which, as ascertained, seldom floats such regulations in the exercise of its power. Moreover, the Tribes Advisory Council is constituted mainly of the Members of the Legislative Assembly, with no representation from the people belonging to the Scheduled Areas or affected areas. Hence, the Council cannot be expected to act fairly in curbing the application of the laws and regulations of the Government. The lack of accountability and the weak nature of their authority under the Fifth Schedule fails to motivate these legislators to raise their voices and address the practical issues disturbing the peace and good governance of the Scheduled Areas in the State.

Earnest interpretation of Part III and Part IV of the Constitution of India by the Judiciary and sincere functioning by the Governor and Tribes Advisory Council can significantly solve the difficulties faced by the forest dwellers. The Constitution of India lays down the foundation stone for the rights and privileges thus accorded to the forest-dwelling tribes in India, which has paved the way for further adoption of legislations to ensure its effective implementation, in letter and in spirit.

Forest Policy, 1952

After the Independence of India and the adoption of the Indian Forest Act, 1927 by the Government of India, the first legislation concerning forests in India was the Forest Policy of 1952 ('FP, 1952'). This superseded the Forest Policy of 1894, but did not deviate much from the Colonial policies and carried the same undertone of utility and exploitation. The statement of the Forest Policy of 1952 makes this evident and apparent while declaring that "the fundamental concepts underlying the existing forest policy still hold good" (Clause 2, FP, 1952). Forest was looked up to as a resource for exploitation and thus was deemed to serve the paramount need of the Country by aiming to achieve "the realisation of the maximum annual revenue in perpetuity" (Clause 3(6), FP, 1952) from the forest. The policymakers never considered the inherent value of the forest. In the name of National Interest, monopoly over the forest was asserted, while declaring that the "accident of village being situated close to a forest does not prejudice the right of the country as a whole to receive the benefits of a national asset" (Clause 7, FP, 1952) The forests of India were thus divided into four categories based on their function to fulfil the commercial demand of the Nation, being (Clause 4, FP, 1952):

A. Protection forests, i.e., those forests which must be preserved or created for physical and climatic considerations;

B. National forests, i.e., those which have to be maintained and managed to meet the needs of defence, communications, industry, and other general purposes of public importance;

C. Village forests, i.e., those which have to be maintained to provide firewood to release cow-dung for manure, and to yield small timber for agricultural implements and other forest produce for local requirements, and to provide grazing for cattle;

D. Tree-lands, i.e., those areas which though outside the scope of the ordinary forest management are essential for the amelioration of the physical conditions of the country.

Even though the policy's language is softer and much more accommodating, the practice of grazing (Clause 21, FP, 1952), sheep and goat feeding (Clause 22, FP, 1952) and shifting cultivation (Clause 23, FP, 1952) had been strictly deprecated.

Thus, this concise policy maintained the exertion of complete control over forests. In continuation of the Colonial policies of centralised retention of power, the Policy dictated the forest dwellers and recognition of even the minimum rights was a mere rhetoric with no practical application. It enforced absolute superintendence over the forest, in the name of scientific conservation of forest, which "inevitably involves the regulation of' rights and the restriction of the privileges of user depending upon the value and importance of the forest, however, irksome such restraint may be to the neighboring areas" (Sec 7, FP, 1952). The Forest Policy of 1952 had an assimilist approach since it envisioned ceasing the rights of the forest dwellers over the forest, whereby "national interests should not be sacrificed because they are not directly discernible, nor should the rights and interests of future generations be subordinated to the improvidence of the present generation" (Sec 7, FP, 1952).

FOREST POLICY, 1988

The Forest Policy of 1952 was replaced by the Forest Policy of 1988 ('FP, 1988'), which was a shift from the monopolistic and exploitative attitude of the Government, towards developing an action plan for conservation, preservation and public participation in forest management. As per the text of the currently applicable forest policy in India, the aim of the policy is not profit maximisation, as was under the policy of 1952, but is a significant departure towards preservation and restoration of ecological balance. It seeks to meet the subsistence requirement of the forest dwellers and recognises their right over minor forest produces of the forest (Sec 2(1), FP, 1988). The policy seeks to achieve these aims by generating public support and movement for the conservation of forests (Sec 2(1), FP, 1988).

Though the policy did not deliberate upon the rights of the forest dwellers over the lands on which they reside, sustainable generation of minor forest products has been acknowledged as a means of sustenance for the tribal population and other communities dwelling in and around the forest and thus has been recognised as a means of employment and income for such dependent population (Sec 3(5), FP, 1988). The policy also paid heed to the grazing needs of the community residing in the forest, which was sought to be balanced with the forest's

carrying capacity (Sec 3(5), FP, 1988). Furthermore, it was contemplated that where the requirements of the forest dwellers to feed their cattle could not be met by such proportionate and determined grazing rights and concessions, social forestry should be developed outside the reserved forest to meet such necessities (Sec 4(1), 4(3), FP, 1988).

The policy inculcated the principles of Joint Forest Management by aiming to motivate the holders of customary rights in the forest area to associate themselves with the protection and development of the forest from which they draw benefit. Such rights and concessions enjoyed by the tribals and other forest dwellers, who were primarily dependent on the forest's resources for their bona fide use, are sought to be protected with the Policy (Sec 4(3), FP, 1988). The policy sincerely recognised such rights and concessions, holding that "Their domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce" (Sec 4(3), FP, 1988). Such requirements of the forest dwellers were kept above the industrial utility and were prohibited from being sacrificed for commercial gain (Sec 4(9), FP, 1988).

The Policy of 1988 has paid special heed towards acknowledging the symbiotic relationship between the tribal community and the forest in a separate clause titled 'Tribal People and Forests' (Sec 4(6), FP, 1988). Under this, all the agencies responsible for forest management have been tasked with engaging the tribal community in the cause of protecting, regenerating and developing the forests while employing such forest dwellers (Sec 4(6), FP, 1988). The formal acknowledgement of the symbiotic sustainability between the forest dwellers and the forest lifted the veil from the misconception of protection in isolation. The recognition of the role of forest-dwelling communities in forest conservation introduced changes in the jurisprudence of forestry, which now sought to involve communities in its conservation.

Overview:

The Forest Policy of 1988 initiated formal recognition of the rights of the forest dwellers over forest resources and thus, while acknowledging the symbiotic relation between the tribes and the forest, laid the foundation of the Joint Forest Management in India. This was a sincere shift from the earlier approach of the Governments to take absolute control over the forest and treat the forest dwellers as encroachers. The long-standing debate of rights or privileges

over necessary forest produce was settled in favour of the forest dwellers, who had been declared to have the first charge over the minor forest products for their bona fide needs.

With the success of participatory forestry, the Government of India formally introduced the concept of Joint Forest Management soon after through a notification dated 1st June 1990 (Circular Concerning Joint Forest Management, 1990). Though, yet again, granting of right over the land was deprecated, the usufruct sharing model was floated by the Government, whereby the forest department was to supervise and bear expenses for the regeneration of degraded forest lands, which was to be undertaken by the local communities and who would be entitled get the share in the usufruct through the sale of forest products. The arrangement under JFM has been regarded as akin to a sharecropping arrangement between the forest dwellers and the forest department, which is dominated by the forest department under a top-down approach (Hazra, 2002).

However, after the enactment of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006, these Joint Forest Management Committees have now become a hindrance to the implementation of the Act. While executive notifications have created Joint Forest Management Committees, the Gram Sabha and the Forest Rights Committee derive their authority from the Statute, thus superseding the former. Nonetheless, the Joint Forest Management Committees have often been found to be usurping the powers of the Gram Sabha and the Forest Rights Committee, while acting as the supreme authority over the forest (SCSTRTI, 2013).

The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 recognised the right of the forest dwellers over the forest land and thus bestowed significant powers and responsibilities on the Gram Sabha, including management of the forest within their jurisdiction. The Act recognised community forest rights and community resources, which are to be bestowed upon the Gram Sabha. However, instances have been pointed out whereby the State government has conferred Community Rights over to the Joint Forest Management Committees, which has been condemned as absolutely illegal and against the spirit of the Act (Relan, 2010). The practice of granting community forest rights to the Joint Forest Management Committees instead of Gram Sabha, without any provision under the Statute, has been depreciated by the Ministry of Tribal Affairs as well (Secretary to GoI, 2015).

This is moreover bothersome since the JFMC is constituted of both the forest department and the forest dwellers, with the dominance of the forest department in controlling the functioning of the JFMC. There is no mention of any interference by the forest department in the recognition of rights or management of forest either under the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 or the Panchayats (Extension to the Scheduled Areas) Act, 1996. Nonetheless, the Joint Forest Management Committees, with the involvement of forest officers, dominate the Gram Sabha in steering their decisions and hence sullies the devolution of power under the beneficent legislations (Tatpati, 2013). In its letter dated 29th October 2010, the Ministry of Environment and Forest recommended the State Governments to bring Joint Forest Management committees under the supervision of the Gram Sabha and thus to incorporate such committees within the Gram Sabha (Faizi & Ravichandran, 2016). However, due to the involvement of the Forest Department, with the Beat Guard of the Forest Department heading the Joint Forest Management Committees, there is a severe lack of trust between the forest dwellers and the Joint Forest Management Committee.

Though the conceptualisation of Joint Forest Management Committees was a revolutionary idea when introduced in 1988, it has now become obsolete and contrary to the right to self-determination. To avoid any dichotomy of authority over the management of forests, the Joint Forest Management Committees must be dissolved by executive action and thus be replaced with the Forest Rights Committee in undertaking participatory forestry.

The Panchayats (Extension to The Scheduled Areas) Act, 1996

The unique nature of villages in India and their social, administrative, anthropological and economic character have been the subject of detailed study and research by many scholars. The Governance of the villages in India has been historically debated, which has altered its form and manner with changing times. Though the history of the Panchayat Raj in India is lengthy yet engaging, the future is even more fulfilling and promising. During the composition of this thesis, the State of Chhattisgarh has promogulated the Chhattisgarh Panchayats (Extension to The Scheduled Areas) Rules, 2022, which has affected The

Panchayats (Extension to The Scheduled Areas) Act, 1996, to the Scheduled Areas in the State of Chhattisgarh.

The reading of the extension of Panchayat Raj in the Scheduled Areas is a conjunctive study between the Fifth Schedule to the Constitution of India and Part IX of the Constitution of India. Also, since the legislative competence towards the subject of Local Government has been kept under Entry 5 of List II under the Seventh Schedule to the Constitution of India, the State Government is empowered to enact laws related to local self-governance. As this paper has already discussed in detail the Fifth Schedule to the Constitution of India, this part will glance at the laws constituting and thus governing the local bodies. The scope of this paper is limited to the State of Chhattisgarh, and also, since 'Local Body' is a State subject under the Constitution of India, the principal legislation governing the field under Part IX of the Constitution of India would be the Chhattisgarh Panchayat Raj Adhiniyam, 1993 and its ancillary rules. Since the Chhattisgarh Panchayat Raj Adhiniyam, 1993 is imperative legislation for understanding the scope of The Panchayats (Extension to The Scheduled Areas) Act, 1996, it is being included and deliberated under the Union Laws. Thus, this part expects to understand the interplay between the Fifth Schedule to the Constitution of India, Part IX of the Constitution of India, The Panchayats (Extension to The Scheduled Areas) Act, 1996, Chhattisgarh Panchayat Raj Adhiniyam, 1993 along with a study of the recently enacted Chhattisgarh Panchayats (Extension to The Scheduled Areas) Rules, 2022 under the State laws and policies.

The existence of self-sufficient village communities can be traced back to the ancient history of India, where such hamlets or 'Kasba' and villages were self-reliant in their needs and administration. The texts of the epic era depicted these self-organised structures of villages such as Sabha and Samiti. The resourcefulness and autonomy of the Indian Villages in their administration are reflected in the observations made in this regard by Sir Charles Metcalfe as: "The village communities are little republics, having nearly everything that they want within themselves, and almost independent of any foreign relations. They seem to last where nothing else lasts. Dynasty after dynasty tumbles down; revolution succeeds to revolution; Hindoo. Pathan. Moghul. Mahratta. Sikh, English. are all masters in turn, but the village communities remain the same" ("Report from the Select Committee of the House of Commons on the Affairs of the East-India Company")

The Tribal Community was even more advanced in their self-governance as being autonomous, with tribal families enjoying the status of land owners ("Report of the Committee of members of Parliament and Experts Constituted to Make Recommendations on Law Concerning Extension of Provisions of the Constitution (Seventy-Third Amendment) Act, 1993 to Scheduled Areas"). The history of control over forests and their resources is the history of destroying the autonomy of the forest dwellers in their self-sufficiency and self-governance. As discussed above and thus without any repetition, the disruption into the self-contained communal functioning per their ancient traditional culture led to severe discontent and thus witnessed several upheavals from the tribal population living in the Jungles. Their autonomy over their resources and their traditional administration was completely raptured by the forest policies, whereby their customary rights were reduced to 'privileges' in 1894 and were further downgraded to 'concessions' after independence in 1952. The British Government soon realised that it would not be safe to insinuate political interference over these tight-packed communities and that their divisive doctrine of divide and rule would not work here. Accordingly, the British Government decided to leave alone such areas with dense tribal populations, which displayed hefty resistance against external administration. Thus, the Scheduled Districts Act, 1874 was introduced to empower the local government to tailor any Central or Provincial law so as to suit the local needs and sentiments. Subsequently, the Government of India Act, 1919 categorised these tribal areas into "excluded area" and "partially excluded area", whereby the former protected the autonomy of the local administration in such areas, and the latter was subject to the laws enacted by the State subject to the modifications by the Governor or Governor-General. This recognition of feeble distinction was adopted under the Constitution of India as being the Fifth and Sixth Schedule to the Constitution of India. As under the scope of this paper, the Fifth Schedule has been elaborately discussed above, but would thriftily feature here to understand its interplay with other laws.

Part IX of the Constitution of India

Part IX to the Constitution of India was added by the Constitution (Seventy-third Amendment) Act, 1992, which was adopted by the then Indian National Congress Government led by Prime Minister P.V. Narasimha Rao. The Statement of Objects and Reasons appended to the Constitution (Seventy-second Amendment) Bill, 1992 acknowledged the prior existence of Panchayati Raj Institution in India and thus stipulated

the need for its Constitutional recognition as a cog of the government. The bill observes that these institutions, without any legal foundation, are infested with problems such as the absence of a regular election, lack of appropriate representation and lack of financial recourses, which impedes the status and dignity of these local bodies (The Constitution (Seventy-second Amendment) Bill, 1991). Thus, "the amendment to the Constitution sought to strengthen the Panchayat system by giving a uniform constitutional base so that the Panchayats become vibrant units of administration in the rural area by establishing strong, effective and democratic local administration so that there can be rapid implementation of rural development programmes" (Bondu vs. BDA, 2010).

The Constitutional amendment takes its que from Article 40 under Part IV of the Constitution of India, being Directive Principals of State Policy, which stipulates the organization of village panchayats and thus seeks to endow powers and authority upon it to effect self-governance (Statement of Objects and Reasons of Constitution (Seventy-third Amendment) Act, 1992). Thus, the Constitution of India was amended and Part IX was added to it with effect from 24th April 1993.

The Part IX of the Constitution of India starts at Article 243, which defines the Panchayat to be "an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas" (Art 243(d), The Constitution of India, 1950) and is sought to be established by the State at 3 stages, being village, intermediate and district levels (Art 243B, The Constitution of India, 1950). Article 243 also defines Gram Sabha as "a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level" (Art 243(b), The Constitution of India, 1950) which may exercise such powers and functions at Village level as the State Legislature may prescribe (Art 243A, The Constitution of India, 1950).

The Constitution of India has laid down the structure of the Panchayat and thus has sought to bring about uniformity in these traditional institutions. However, the composition of the Panchayat has been left to the wisdom of the State Legislature, with broad guidelines for the States to implement such legislations. As such, all the seats in Panchayat are to be filled by direct election from the area thus being represented by them (Art 243C (2), The Constitution of India, 1950). The Chairperson of the Panchayat at the village level may be elected as the State law may provide, while the Chairperson of a Panchayat at the intermediate level or

district level must be elected by and from amongst the elected members thereof (Art 243C (5), The Constitution of India, 1950). Panchayat Elections at all levels are to be conducted by the State Election Commissioner, who is appointed by the Governor and has been made free from political interference (Art 243K, The Constitution of India, 1950). The Constitution of India defines the tenure of such elected and constituted Panchayat to be no longer than five years from the date of its first meeting unless dissolved sooner (Art 243E (1), The Constitution of India, 1950). The Constitution prescribes the reservation of seats at Panchayat and that of the Chairperson at all three tiers of Panchayat in detail. As such, the Constitution mandates reservation of seats for members of Scheduled Caste and Scheduled Tribe in a proportion of their population within the concerned jurisdiction and dictates one-third horizontal reservation, in such reserved seats or otherwise, towards women (Art 243D, The Constitution of India, 1950).

Part IX of the Constitution of India also proposes the Panchayat's powers, authority and responsibilities, which could be brought into effect by the State Legislature. The Constitution envisions making the Panchayats competent for self-governance and thus directs the State Government to endow them with such powers and authority which may be necessary for them to function as institutions of self-governance. By the Constitution (Seventy-third Amendment) Act, 1992, the Eleventh Schedule to the Constitution of India was added, detailing the subjects that may be devolved upon the Panchayat (Art 243G, The Constitution of India, 1950). The State Legislation has thus been expected to endow the Panchayat with the power and responsibility to prepare and implement the plans for economic development and social justice, including on the subjects proposed under the Eleventh Schedule to the Constitution of India (Art 243G, The Constitution of India, 1950). To enable the Panchayat to be self-sufficient, the Legislature of the State may make provision for providing funds to the Panchayat by allowing them to levy, collect and thus appropriate such taxes, duties, tolls and fees as may be deemed fit; and also assign such levies to the Panchayat which the State Government has collected (Art 243H, The Constitution of India, 1950). The State may also make provisions for grant-in-aid to the Panchayats from the Consolidated Fund of the State (Art 243H (2), The Constitution of India, 1950). The 29 subjects concerning local issues, encompassed under the Eleventh Schedule to the Constitution of India, towards which the power and functions are sought to devolve from the State Government to the Panchayat are (Sch 11, The Constitution of India, 1950):

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

The list of subjects encompasses issues of day-to-day affairs of a village, for which the Panchayat has been sought to be made competent by the Constitution of India. However, the Constitution (Seventy-third Amendment) Act, 1992 had excluded the application of Part IX of the Constitution of India on Scheduled Areas (Art 244(1), The Constitution of India, 1950) and tribal areas (Art 244(2), The Constitution of India, 1950), while reserving the right of the Parliament to extend the provision of Part IX to the Scheduled Areas and tribal areas, with exceptions and modifications, by legislative enactment (Art 243M(4)(b), The Constitution of India, 1950). Thus, though all the States of India were directed and expected to constitute Panchayat in rural areas as per the instructions and formulations provided under Part IX of the Constitution of India, the Scheduled Areas were kept excluded from such endeavours. This paved the way for the constitution of the Bhuriya Committee and the introduction of the special enactment with considerate provisions for such special areas, being the Panchayats (Extension to The Scheduled Areas) Act, 1996.

The PESA, 1996

A Committee of the Members of Parliament and Experts was constituted by the Government of India to ascertain the application of Part IX of the Constitution of India to the areas Scheduled under Fifth and Sixth Schedules to the Constitution of India. The 'Report of the committee of the Members of Parliament and experts constituted to make recommendations on law concerning extension of provisions of the Constitution (seventy-third amendment) Act, 1992 to Schedule Areas' ('Report, 1995') was submitted by the Committee under the Chairmanship of Dilip Singh Bhuriya, a Member of Parliament from Ratlam, Madhya Pradesh, erstwhile including the State of Chhattisgarh, and is often referred to as the Bhuriya Committee.

The Committee made a detailed recommendation on the tweaking of the law of Panchayat, as prescribed under Part IX of the Constitution of India, to suit the unique characteristics of tribal societies and tribal areas. The Committee examined the policies that sought to bring the tribes into mainstream of the society and found that "tribespeople have reservations about it, as being not only paternalistic and patronizing but also prejudicial to the indigenous and tribal peoples' ethnic identity and mores, and violative of their rights" (Report, 1995, p. 16). Thus, the committee recognized that the assimilation approach adopted by the Government was not

welcome by the people who sought to benefit from it, but rather found that the tribes wished to preserve the integrity of their culture and personality, thus concluding that "the tribal people should be allowed to develop along the lines of their own genius" (Report, 1995, p. 16).

Thus, while recommending such changes, the Committee suggested that "while shaping the new Panchayati Raj structure in tribal areas, it is desirable to blend the traditional with the modern by treating the traditional institutions as the foundation on which the modern super-structure should be built" (Report, 1995, p. 15).

The Committee acknowledged the already existing traditional democratic setup in egalitarian tribal societies and recommended the recognition of such indigenous institutions and ethos while considering democratic decentralization in tribal areas (Report, 1995, p. 16). It recommended the continuance of time-honoured customary usage and arrangements in tribal areas and thus sought the continued validity of traditional tribal conventions and laws (Report, 1995, p. 16). Pertinently, the Committee displayed its concern for minority tribal communities, which may be construed as PVTGs, and thus recommended their nomination to the Panchayat since they may fail to be elected due to their seclusion (Report, 1995, p. 17). Also outstandingly, the Committee recommended that the Panchayats in Fifth Schedule areas should be given autonomy similar to that of District Councils under Sixth Schedule areas and thus emphatically recommended the recognition and continuation of traditional jury-based legal system evolved by the tribal societies (Report, 1995, p. 17).

The Committee held its first meeting on 15th July 1994 and thus submitted its report in 33 pages to the Ministry of Rural Development, Government of India on 17th January 1995.

The Panchayats (Extension to The Scheduled Areas) Act, 1996 (Act 40 of 1996) ('PESA, 1996') was thus enacted and notified on 24th December 1996. This short Act with only 5 Sections extended the provisions of Part IX of the Constitution of India to the Scheduled areas, while prescribing exceptions and modifications towards such extension (Sec 3, PESA, 1996).

The exceptions and modifications to Part IX of the Constitution of India delineated under the Panchayats (Extension to The Scheduled Areas) Act, 1996 are consistent with the suggestions

of the Bhuriya Committee. The Act recommends the State Legislature to make laws on Panchayat for the Scheduled areas in consonance with the customary law, social and religious practices and traditional management practices of community resources (Sec 4(a), PESA, 1996). Gram Sabha was placed on a higher pedestal than the Gram panchayat, declaring them competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution (Sec 4(d), PESA, 1996). The Act bestowed the Gram Sabha with the authority to administer their social and economic development with superintendence over the Panchayat, thus transferring the power to the people rather than the institution (Sec 4(e), Sec 4(f), PESA, 1996). The Act prescribes the minimum benchmark to be adopted by the State while formulating the local bodies under Part IX of the Constitution of India, while the State may increase the powers and functions of the Gram Sabha and Gram Panchayat within in its jurisdiction under its state legislation within the framework of The Panchayats (Extension to The Scheduled Areas) Act, 1996.

The Act mandates consultation with Gram Sabha before the acquisition of land in the Scheduled Areas towards development projects and also before the rehabilitation of such persons affected by it (Sec 4(i), PESA, 1996). Recommendation of Gram Sabha was made mandatory for the grant of mineral concessions towards minor minerals within their jurisdiction (Sec 4(k), Sec 4(l), PESA, 1996). The Act provided reservation towards the adequate representation of members of Scheduled Tribes in Panchayats of Scheduled Area (Sec 4(g), 4(h), PESA, 1996).

The Panchayats (Extension to The Scheduled Areas) Act, 1996 can also be found to be in consonance with the spirit of international instruments thus devolving the right of self-determination and self-governance upon the indigenous population, including the vesting of the right of the tribal community over their land, forest and other natural resources. The Panchayats (Extension to The Scheduled Areas) Act, 1996 is a very progressive Act, if realized to its spirit. The Act bestows the implementation over to the State, whereby there has been a hesitation in its sincere application since it requires devolving the power of the State onto the people. Though brought into force after more than a quarter of a century from the date of enforcement of The Panchayats (Extension to The Scheduled Areas) Act, 1996, the Chhattisgarh Panchayats (Extension to The Scheduled Areas) Rules 2022 is a welcome move by the Government of Chhattisgarh. The Supreme Court, while upholding the Constitutional

validity of the Act, observed that the Act gave effective voice and control to the tribals through the democratic decentralization of governance, which empowered them to control their own interest (UoI vs. Rakesh, 2010).

The Chhattisgarh Panchayat Raj Adhiniyam, 1993 has already incorporated most of the recommendations and mandates under the Panchayats (Extension to The Scheduled Areas) Act, 1996. Such laws not repugnant to the provisions and spirit of the Act of 1996 were protected by the Panchayats (Extension to The Scheduled Areas) Act, 1996 (Sec 5, PESA, 1996) and thus the Chhattisgarh Panchayat Raj Adhiniyam, 1993 is the prime legislation governing the Panchayats of the area under study.

Chhattisgarh Panchayat Raj Adhiniyam,1993:

The present State of Chhattisgarh was a part of the erstwhile State of Madhya Pradesh. The State of Madhya Pradesh came into existence in 1956 and thus enacted the Madhya Pradesh Panchayat Raj Act in 1962. The Madhya Pradesh Panchayat Raj Act 1962 was repealed and replaced by the Madhya Pradesh Panchayat Raj Act 1981, which was subsequently replaced by the Madhya Pradesh Panchayat Raj Act 1990. After the amendment of the Constitution of India in the year 1993 and the introduction of Part IX to the Constitution of India by the Indian National Congress ruled Central Government, the State Government of the same party at Madhya Pradesh repealed the Madhya Pradesh Panchayat Raj Act 1990 and immediately enacted the Madhya Pradesh Panchayat Raj Act of 1993 (No. 1 of 1994) on 25th January 1994 in consonance with Part IX of the Constitution of India. When the State of Chhattisgarh was carved out of the State of Madhya Pradesh in the year 2000, the Government of Chhattisgarh, while exercising the powers under Section 79 of the Madhya Pradesh Reorganization Act, 2000 (No. 28 of 2000), adopted the Madhya Pradesh Panchayat Raj Act 1993, renaming the same as Chhattisgarh Panchayat Raj Act 1993 thus coming into effect from 1st November 2000 under the Adaption of Laws Order, 2001 ("Notification No. 616/21-A/Vett/2002", 2001).

The Chhattisgarh Panchayat Raj Act 1993 ('CPRA, 1993') is an elaborate Act with more than 132 Sections, more than 87 Rules and 10 Sub-Rules enacted under it. However, keeping in view the scope of this paper, only those relevant provisions of the Chhattisgarh Panchayat Raj Act 1993, which succour in understanding the structure, powers and functions of such

local bodies and apply to forest lands and Scheduled areas are hereby examined and discoursed.

The Act of 1993 provides that the Chhattisgarh Panchayat Raj Adhiniyam, 1993 extends to Scheduled Areas subject to the exceptions and modifications as provided in Chapter XIV-A of Act, 1993 (Sec 1(2), CPRA, 1992). Hence, applying the Act of 1993 to the area currently under study is subject to modifications as under Chapter XIV-A of the Act, which confers additional powers upon the Gram Panchayat in such Scheduled Areas and delineates specific reservations for members of Scheduled Tribe. This proviso and Chapter XIV-A to the Act was introduced after the enactment of The Panchayats (Extension to The Scheduled Areas) Act, 1996 and thus was brought to bring the Chhattisgarh Panchayat Raj Adhiniyam, 1993 in consonance and conformity with the law. The Madhya Pradesh Panchayat Raj (Dwitiya Sanshodhan) Adhiniyam, 1997 (Act no. 43 of 1997) and The Panchayati Raj (Sansodhan) Adhiniyam Act, 1999 (Act no. 05 of 1999) thus brought major changes to the Act of 1993 for its implementation in Scheduled Areas in the spirit of the Panchayats (Extension to The Scheduled Areas) Act, 1996 and Part IX of the Constitution of India.

The Gram Sabha, as defined under the Act, comprises of all the resident members of the village, who are registered in the electoral roll (Sec 2(viii), Sec 129A(a), CPRA, 1993). In Scheduled Areas, the Gram Sabha can comprise of a habitation or a group of habitations or hamlets comprising a community and managing its affairs per traditions and customs (Sec 129B(2), CPRA, 1993). Such a definition of Gram Sabha for forest areas encompasses the small hamlets and settlements, which otherwise would be left out under the common setting of a village, thus protecting the interest of the isolated PVTGs. The meeting of the Gram Sabha, being a meeting of all the residents of the village, has been mandated to be held at least once every three months (Sec 6(1), CPRA, 1993). While the quorum of a meeting of the Gram Sabha, in general, has to be one-tenth of the total members, with not less than one-third of members being women (Sec 6(1), CPRA, 1993), the quorum for Gram Sabha in a Scheduled area has been prescribed to be not less than one-third of the total members of that Gram Sabha, with not less than one-third members being women (Sec 129B(3), CPRA, 1993). The Gram Sabha can discuss and pass resolutions on any of the functions that ought to be carried out by the Gram Sabha under the Act (Sec 6(3)(6), CPRA, 1993).

The Act of 1993 delineates the issues on which the Gram Sabha or the people themselves can take decisions. Thus under the Act, the Gram Sabha thus has the following powers and functions (Sec 7, CPRA, 1993):

(a) to lay down the principles for identification of schemes and their priority for economic development of the village;
(b) to approve all plans including Annual Plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Gram Panchayat
(c) to consider the Annual Budget of the Gram Panchayat, and make recommendations thereon;
(d) to consider the report of audit and accounts of the Gram Panchayat;
(e) to ascertain and certify the proper utilization by the Gram Panchayat of the funds for plans, programmes and projects referred to in clause (b)
(f) to identify and select persons as beneficiaries under the property alleviation and other programmes;
(g) to ensure proper utilization and disbursement of funds and assets to the beneficiaries;
(h) to mobilize people for community welfare programmes
(i) to ensure active participation of people in implementation, maintenance and equitable distribution of benefits of development schemes in the village;
(j) to promote general awareness amongst the people;
(j-i) to exercise control over institutions and functionaries in social sectors transferred to or appointed by Gram Panchayat through that Panchayat;
(j-ii) to manage natural resources including land, water, forests within the area of the village in accordance with provisions of the Constitution and other relevant laws for the time being in force;
(j-iii) to advise the Gram Panchayat in the regulation and use of minor water bodies;
(j-iv) to control local plans, resources and expenditure for such plans; and
(k) to exercise and perform such other powers and functions as the State Government may confer on or entrust to under this Act or any other law for the time being in force in the State.

Also, under Chapter XIV-A additional powers have been conferred upon the Gram Sabha in a Scheduled Area, along with the aforementioned general powers and functions of the Gram Sabha, being (Sec 129C, CPRA, 1993):

(i) to safeguard and preserve the traditions and customs of the people, their cultural identity and community resources and the customary mode of dispute resolution;

(ii) to manage natural resources including land, water and forests within the area of the village in accordance with its tradition and in harmony with the provisions of the Constitution and with due regard to the spirit of other relevant laws for the time being in force;

(iv) to manage village markets and melas including cattle fair, by whatever name called, through the Gram Panchayat;

(v) to control local plans, resources and expenditure for such plans including tribal sub-plans, and;

(vi) to exercise and perform such other powers and functions as the State Government may confer on or entrust under any law for the time being in force.

The bare reading of the powers and functions bestowed under the Act and specifically provided under Chapter XIV-A for Gram Sabha makes the Gram Sabha a nodal agency for identifying the beneficiaries and the authority to decide upon its own development. This ensures the political capability of the people to manage and thus take care of their day-to-day rudimentary affairs, rather than depending on the bureaucrats and politicians high up and above. The special consideration towards the Village bodies in Scheduled Area is apparent and appreciable. This, along with the general powers conferred upon Panchayat, makes the Panchayat self-sufficient in overseeing the dealings directly concerning the forest, its economy and resources.

The Act prescribes the structure of the Panchayat Raj system into three tiers (Sec 8, CPRA, 1993):

ZILA PANCHAYAT (District Level)

JANPAD PANCHAYAT (Block Level)

GRAM PANCHAYAT (Village Level)

As per the arrangement under the Act of 1993, every village shall have a Gram Panchayat, which comprises of Panchs elected by the Gram Sabha (Sec 13, CPRA, 1993). These Gram Panchayats shall be under a Janpad Panchayat at the block level, and such Janpad Panchayats shall then be under a District Level body, being the Zila Panchayat. All the bodies of panchayat are constituted of elected public representatives, along with an executive member appointed by the Government being, Secretary for Gram Panchayat and Chief Executive Officers for Janpad Panchayat and Zilla Panchayat (Sec 69, CPRA, 1993). The Gram Panchayat elects its Sarpanch and Up Sarpanch (Sec 17, CPRA, 1993) and the Janpad Panchayat (Sec 25, CPRA, 1993) and Zilla Panchayat (Sec 32, CPRA, 1993) are presided by their respectively elected President and Vice President. The designation and demarcation of the area of a Panchayat, a Janpad or a Zilla is the exclusive power of the Governor while acting under the aid and advice of the Council of Ministers of the State. The residents have no right to be heard over the delineation of such boundaries (Ganesh vs. State, 2004; Hadima vs. State 2020).

The general scheme of reservation of seats towards the election of Sarpanch, Up Sarpanch or Panch at Gram Panchayat (Sec 17, C PRA, 1993) and also the scheme of reservation of seats towards the election of President, Vice President and members at Janpad (Sec 25, CPRA, 1993) and Zilla (Sec 32, CPRA, 1993) Panchayat level emphasises adequate representation of the Scheduled Tribes in equal proportion of their population in the area constituting the Panchayat bodies at all levels. However, for a Scheduled Area under Chapter XIV-A, at least half of all the seats at all levels of Panchayat have been reserved for the members of Scheduled Tribe, which may be increased at any level in proportion to the tribal population living in the concerned area. Also, all the seats of the Sarpanch at Gram Panchayat and that of the President at Janpad Panchayat or Zilla Panchayat, within a Scheduled Area, have been strictly reserved for the members of the Scheduled Tribes. The Constitutional validity of such a reservation of 100% of the seats towards the members of the Scheduled Tribe was challenged, whereby while upholding the reservation to be valid and constitutional, the Supreme Court held that the Act corrects the sufferings of the members of Scheduled tribes as pointed out by the Bhuriya Committee and thus observed that the Act gave effective voice and control to the tribals through the democratic decentralisation of governance, which empowered them to control their own interest (UoI vs. Rakesh, 2010).

Also, unlike the Gram Panchayat in general, whereby the Sarpanch is responsible for ensuring the quorum and thus presides over the meeting of the Gram Sabha, the meeting of Gram Sabha in a Scheduled Area is to be presided by a person belong to Scheduled Tribe specifically elected for the same and thus the presidency of the Sarpanch or Up Sarpanch or any member of the Panchayat over a Gram Sabha meeting in scheduled area has been strictly prohibited (Sec 129B (4), CPRA, 1993). However, under the rules framed for Gram Sabha meetings in Scheduled Areas, the Rule requires the Panchayat Secretary to maintain the register of such Gram Sabha meetings (Rule 14, Chhattisgarh Scheduled Area Gram Sabha (Formation, Process of Consolidation and Functioning) Rules, 1998). This provision is not in consonance with the spirit of the law since the very purpose of devolving the power to villages is to ensure effective meetings at a local stage. Studies have found that in Chhattisgarh, most of the Gram Sabha meetings are called at the Panchayat Level, which causes a usual lack of quorum due to the difficulty of commutation and lack of knowledge about the meeting at the hamlet and habitat level, thus frustrating the purpose of the Act (SCSTRTI, 2013).

As an exception to the general setup of the democratic process in the Country, the Gram Sabah has the power to recall their elected representatives of the Gram Panchayat. They may do so after half of the term of the elected representative has expired by a simple majority of voting through a secret ballot (Sec 21A, CPRA, 1993). This gives Gram Sabha the power to revoke their confidence in the elected representative and thus grants them autonomy over the administration.

The Gram Panchayat, being the grass root political body, has been conferred with authority to manage the routine affairs of the village and to upkeep the basic amenities of their area. This reduces the dependency of the villages on higher authorities for fulfilling the prime needs of the village and confreres the control upon the Gram Panchayat to take decisions on the utilisation of resources to meet the demands of the village. As such, apart from the general powers and functions prescribed under Section 7 of the Act of 1993 and the special powers to a Gram Panchayat in a Scheduled Area as prescribed under Section 129C of the Act of 1993, the following are consolidated and summarized functions and duties of the Gram Panchayat which have been delineated under various provisions of the Act (Sec 49, 49A, 54, 55, 56, 74, 96, 123, 124, CPRA, 1993) which culminates as under:

- sanitation, conservancy and prevention and abatement of nuisance;
- construction, repair and maintenance of public wells, ponds and tanks and supply of water for domestic use;
- construction and maintenance of sources of water for bathing and washing and supply of water for domestic animal;
- construction and maintenance of village roads, culverts, bridges, bunds and other works and building of public utility;
- construction, maintenance and clearing of public streets, latrines, drains, tanks, wells and other public places;
- filling in of disused wells, unsanitary ponds, pools, ditches and pits and conversion of step wells into sanitary wells;
- lighting of village streets and other public places;
- removing of obstructions and projections in public streets or places and in sites not being property or which are open to use of public, whether such sites arc vested in the Panchayat or belong to the State Government;
- regulating and control over entertainment shows, shops, eating houses and vendors of drinks, sweets meats, fruits, milk and of other similar articles;
- regulating the construction of house, latrines, urinals, drains and water closets;
- management of public land and management, extension and development of village site;
- regulating places for disposal of dead bodies, carcasses and other offensive matters;
- earmarking place for dumping refuse;
- regulation of sale and preservation of meat;
- maintenance of Gram Panchayat property;
- establishment and management of cattle ponds and maintenance of records relating to cattle;
- maintenance of ancient and historical monuments other than those declared by or under law made by Parliament to be of national importance, grazing lands and other lands vesting in or under the control of the Panchayats;
- establishment, management and regulation of markets and melas other than public markets and public melas;
- maintenance of records of births, deaths and marriages;

- rendering assistance in the census operation and in the surveys conducted by the State Government or Central Government or any other local authority lawfully constituted;
- rendering assistance in prevention of contagious diseases;
- rendering assistance in inoculation and smallpox vaccination and enforcement of other preventive measures for safety of human being and cattle prescribed by Government Department concerned;
- rendering assistance to the disabled and destitutes;
- promotion of youth welfare, family welfare and sports;
- establishment of Raksha Samiti for safety of life and property; prevention of fire and extinguishing fire and safety of property during outbreak of such fires; and providing the free food grains to the needy persons out of the grant made available for basic services;
- plantation and preservation of Panchayat forests;
- removal of social evils like dowry;
- granting loan for the purposes of providing medical assistance to indigent persons in serious and emergency cases; disposal of dead body of an indigent person or any member of his family; or any other purpose for the benefit of an indigent person
- carrying out the directions or orders given or issued by the State Government, the Collector or any other officer authorised by the State Government in this behalf with respect to the measures for amelioration of the conditions of the Scheduled Castes and Scheduled Tribes and Other Backward Classes and in particular in regard to the removal of untouchability;
- perform such functions as may be entrusted to it by the State Government, Zila Panchayat or Janpad Panchayat by general or special orders;
- perform other functions as it may desire to perform with prior approval of Janpad Panchayat
- the establishment, maintenance and supervision of fair price shops under public distribution system.
- prepare annual plans for economic development and social justice of Panchayat area and submission thereof to the Janpad Panchayat within the prescribed time for integration with the Janpad Panchayat plan;
- plan and manage basic civic amenities;
- select beneficiaries under various programme with the approval of Gram Sabha;

- implement, execute and supervise development schemes and construction work within the Gram Panchayat;
- ensure the execution of schemes, works, projects entrusted to it by any law and those assigned to it by the Central or State Government or Zila Panchayat or Janpad Panchayat;
- control and monitor beneficiary oriented schemes and programmes;
- promote general awareness amongst the people at large;
- organise voluntary labour and contribution for community work and promote the concept of community ownership.
- consider the application for establishment of colonies falling within the Gram Panchayat area as defined in Section 61-A;
- to carry out the recommendation made and decisions taken by the Gram Sabha;
- to plan, own and manage minor water bodies upto a specified water area situated within its territorial jurisdiction;
- to lease out any minor water body upto a specified area for the purpose of fishing and other commercial purposes;
- to regulate the use of water of rivers, streams, minor water bodies for irrigation purposes;
- to exercise control over institutions and functionaries in all social sectors transferred to or appointed by the Gram Panchayat;
- to exercise control over local plans resources and expenditure for such plans.
- to regulate establishment of workshops, factories and other industrial units;
- to ensure environmental control;
- Control erection of buildings
- Remove hindrances, obstructions and encroachment upon public streets and open sites
- Executing contracts for the works at Village
- Levy Cess on Land
- Make bye-laws and impose penalty for its breach
- Expel person who refuses to pay fees
- Recover expenses upon default of work

Thus, an appraisal of the powers conferred upon the Gram Panchayat would show that it can take decisions and thus take care of the rudimentary affairs of the village. The

aforementioned rundown of all the powers of a Gram Panchayat demonstrates that they have adequate powers of management over their habitat and thus introduces legal authority towards their autonomy. The Gram Panchayat can formulate policies concerning the basic civic amenities such as roads, water bodies, drainage, electricity, health and sanitation and has also been bestowed with the responsibility of maintaining records of the village and ensuring the preservation of the forest, public land and utilities in the village. The Gram Panchayat is empowered to prosecute offenders under the Act. It is also qualified to impose fine upon delinquents for contravention of the Act and the policies formulated by the Panchayat.

To facilitate the funds for the functioning of the Gram Panchayat, the State Government may assign taxes, tolls and fees levied and collected by the State Government and may also make grant-in-aid from the consolidated fund of the State (Sec 63, CPRA, 1993). Cess and Land Revenue realised upon the land within the jurisdiction of the Gram Panchayat is also paid to the Panchayat (Sec 76A, CPRA, 1993). The Panchayat is obligated to impose taxes on six subjects mentioned under Entry A of Schedule I to the Act of 1993. It may also impose tax on 14 other subjects mentioned under Entry A of Schedule II to the Act of 1993. Schedule III and Schedule IV to the Act of 1993 defines the vast scope of collection of lease and fees by the Gram Panchayat with a long list of subjects within its jurisdiction. All such funds received by the Panchayat must be deposited in a fund established for such collection, called the Panchayat Fund (Sec 63, CPRA, 1993). The Gram Panchayat prepares annual budget estimates, of its receipts and expenditure for the next financial year in a prescribed manner, which is approved by the appropriate authority (Sec 73, CPRA, 1993). The Grant can be refused on very limited grounds of being either invalid or in access of the powers of the Panchayat or where such resolution may cause loss of money or damage to property vested in panchayat or be prejudicial to public health, safety, convenience and peace (Sec 85, CPRA, 1993). However, even after sanctioning of the amount and the budget by the Government, the Panchayat Funds cannot be accessed only by the Sarpanch but requires the joint signature of the Sarpanch and the executive member the Secretary, of that Panchayat.

The Chhattisgarh Panchayat Raj Act, 1993 is a very elaborate Act running into 132 Sections and 4 Schedules. There are more than 87 Rules which have been formulated by the State Government controlling almost everything within the Act. The Act has been amended several times, which only adds up to that number. The limited purpose of studying this Act here is to

understand the powers, functions and duties thus entrusted upon the people's institution and the extent of autonomy in their administration. The Gram Sabha defined and constituted under the Act goes on to play a major role in other beneficent legislations like the Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006. Also, the scheme of reservation under the Act for Panchayat in Scheduled areas ensures robust representation of the Scheduled Tribes in the Government and thus in decision-making.

However, the Act fails in its purpose on its ground application. This is majorly due to over-complicated laws, which take away the spirit of simple self-governance demanded by the forest dwellers. The multiplicity of rules and laws opens loopholes to be exploited by those who seem to know about it, which is mostly the Panchayat Secretary. A common conclusion of almost all the empirical studies suggests severe lack of knowledge about Panchayat law among the dwellers, thus causing the failure of the Act in realising its full potential. The members of the Gram Sabha are either unaware of their powers or are unaware of the proceedings. The Gram Sabha is mainly dominated by the bureaucratic agents who dictate the terms to the Gram Sabha, which the poor villagers accept due to a lack of knowledge about the law ("Land and Governance under the Fifth Schedule", 2010).

The Chhattisgarh Panchayat Raj Act, 1993 also fails to deliver on its promise to consolidate the laws relating to Panchayat. Though the State Government has endeavoured to incorporate all the features of The Panchayats (Extension to The Scheduled Areas) Act, 1996, the same has been done through amendments in several other Acts, without mentioning such Acts or their concerned provision under the Chhattisgarh Panchayat Raj Act, 1993, thus hiding away the powers and functions of the Panchayat or Gram Sabha in other legislations. For example, the Chhattisgarh Excise (Amendment) Act, 1997 amended the Chhattisgarh Excise Act, 1915 to give autonomy to the Gram Sabha with regards to the matter under Section 4(m)(i) of the PESA Act, 1996.[7] The Chhattisgarh Minor Mineral Rules 1996 were amended to include the mandate under Section 4(m) of the PESA, 1996, thus requiring the recommendation of the Gram Sabha or Panchayat at the appropriate level prior to the grant of mining lease by the authorities (Rule 38, CG Minor Mineral Rules, 1996). The Chhattisgarh Land Revenue Code (Amendment) Act, 1997 amended the Chhattisgarh Land Revenue Code 1959 to include

[7] Chapter VIII A added to the Chhattisgarh Excise Act, 1915

Section 170B, which grants the Gram Sabha the power to revert the land to the tribal upon the sale of same to any non-tribal (Sec 170B, CGLRC, 1959). Another legislation in light of PESA is the Chhattisgarh Gram Nyayalaya Act, 1996, whereby a jury comprising of the members of the Gram Sabha, with one person being aware of the law, can decide the disputes in the village. However, the Act is rarely used due to its peculiar quorum. Though the Act prescribes that most matters be solved through reconciliation, it does not explicitly recognise the customary mode of dispute resolution.

These changes to the aforementioned laws and others are welcome to bring the primary legislations in consonance with The Panchayats (Extension to The Scheduled Areas) Act, 1996; however, it further adds to the complicated structure of laws governing the autonomy of the forest dwellers. The sheer absence of even a mention of such other laws from the primary legislation, the Chhattisgarh Panchayat Raj Act, 1993 seems misleading, dwindling the naïve forest dwellers in the legal ensnares of multifarious legislations.

Chhattisgarh Panchayat (Extension to Scheduled Areas) Rules, 2022:

The State of Chhattisgarh formulated the Chhattisgarh Panchayat (Extension to Scheduled Areas) Rules, 2022, ('CPESAR, 2022') while exercising powers reserved under Sub-Section (1) of Section 95 read with Section 129-A to 129-F of the Chhattisgarh Panchayat Raj Act, 1993. The Rules derive their authority from the Panchayat (Extension to Scheduled Areas) Act, 1996 read with Chhattisgarh Panchayat Raj Act, 1993 and are applicable to Scheduled Areas of the State. Most of the definitions under the Rules have been adopted from the Chhattisgarh Panchayat Raj Act, 1993 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to keep coherence amongst the legislations. The Chhattisgarh Panchayat (Extension to Scheduled Areas) Rules, 2022 was notified and implemented on 8th August 2022 ("Chhattisgarh Gazette (Extraordinary) Notification no. 4879/PGVV/22/2022", 2022) and is a very nascent legislation. Though the official English translation or Gazette notification in English is yet unavailable, I have tried my best to translate the provisions for their ideal assessment.

Under the Rules, the Gram Sabha has been made even more powerful and competent to protect their traditions and customs. The Gram Panchayat has been made subservient under the superintendence, direction and control of Gram Sabha (Rule 17(2), CPESAR, 2022) and

the Gram Sabha votes on the annual confidential report of its executive member, being the Secretary of Panchayat (Rule 8(6), CPESAR, 2022). The Gram Sabha can also advise the Gram Panchayat/concerned department regarding supervision, attendance, confidential report, disciplinary action of the field employees of the departments related to those subjects which have been delegated to Panchayat in their area (Rule 24, CPESAR, 2022). Thus, the true power of administration rests with the people, who have been made competent to take decisions for their village and community and also to ensure action in this regard. Apart from the functions of the Gram Sabha as under Section 7 and special functions in Scheduled Areas under Section 129-C of the Chhattisgarh Panchayat Raj Act, 1993, the Gram Sabha has further been bestowed with further power and authority to (Rule 6, CPESAR, 2022):

1. To regularly supervise the progress of the functions of the Gram Panchayat;
2. To review the status of unauthorized constructions and encroachments on the land of the village and to inform the Tehsildar regarding their removal;
3. Permission shall be taken from the Gram Sabha before granting concession for minor mineral prospecting license, mining lease and auction;
4. Protection, promotion and supervision of natural resources and environment.
5. To promote unity and harmony among all sections of the society.
6. The decision to enforce prohibition of alcohol or to regulate or restrict the sale and consumption of any intoxicant shall be binding.
7. To raise voluntary contributions in cash or labor etc. for community welfare programs and public works.
8. To supervise the field employees of the departments related to the 29 subjects mentioned in the 11th Schedule of the Constitution .
9. To advice on taking appropriate action to prevent alienation of land in the Scheduled Areas and to repatriate any unlawfully alienation of land belonging to a Scheduled Tribe.
10. To Protect the local cultural heritage, such as the place of gods and goddesses, systems of worship, institutions (eg gotul, dhumkudiya) and anthropomorphic social practices from any destructive practices.
11. The Gram Sabha can plan for its conservation and promotion, keeping in view the traditional knowledge and continuative and sustainable use of biodiversity .

In consonance with the provision under the Chhattisgarh Panchayat Raj Act, 1993, the Sarpanch or Up Sarpanch or any member of the Panchayat cannot be the President of the Gram Sabha, but has to be elected for that specific purpose with a tenure of one year and must belong to the Scheduled Tribe. The President can be recalled by the Gram Sabha by a simple majority after a lapse of six months from the date of assuming office (Rule 7, CPESAR, 2022).

Though the quorum for a general meeting of the Gram Sabha has been kept at one-third as also under Section 129B of the Chhattisgarh Panchayat Raj Act, 1993; for any decision regarding land acquisition, resettlement, land return and community resource, the quorum has been mandated to be at least half of the total members of the Gram Sabha (Rule 11(1), CPESAR, 2022). This is an important provision when read in conjunction with other Acts governing acquisition and resettlement since the true majority must agree to implement any such scheme. The decision has to be taken by the Gram Sabha unanimously, upon failure of which twice, the decision will be taken through a secret ballot and will be decided in favour of the majority of members (Rule 12, CPESAR, 2022). If any dissatisfaction with the decision is expressed in writing by at least ten per cent of the members or fifty members of the Gram Sabha, the issue shall be compulsorily reconsidered in the next meeting of the Gram Sabha (Rule 12(4), CPESAR, 2022). The decision of the Gram Sabha is amenable to appeal by any affected person or department, which shall be reconsidered by the Gram Sabha (Rule 14(1), CPESAR, 2022). Suppose there is no change under reconsideration or the Gram Sabha does not reconsider; in that case, the appeal can be made before the Sub-Divisional Officer Revenue (Rule 14(2), CPESAR, 2022). Hence, the ultimate authority is passed on to the bureaucracy, making the self-governance under the Rules a redundancy.

The Rules, 2022 encourages the Gram Sabha to constitute committees as per its requirement, under the supervision and guidance of the Gram Sabha (Rule 17, CPESAR, 2022). The Rule acknowledges special attention for facilitating conventions of women and minority groups, such as physically handicapped, third gender and senior citizen along with a Bal Sabha for children aged above 14 years and mandates the decisions taken by such groups to be discussed by the Gram Sabha (Rule 18, CPESAR, 2022).

Chapter 3 of the Rules 2022 delineates the functions of the committees thus proposed under the regulation. The Resource Planning and Management Committee (Rule 19, CPESAR,

2022) has been tasked with the responsibility of planning for the overall development of the village, supervising the implementation of the schemes and managing minor forest produce, minor minerals, minor water bodies and the community properties of the Gram Sabha (Rule 32(2), Rule 39(2), CPESAR, 2022). Similarly, the Peace and Justice Committee is the dispute resolution committee of the Gram Sabha, which the Gram Sabha can task to create a healthy environment in the villages by resolving disputes through mutual coordination and investigating the incidents disturbing the peace of the village (Rule 20, CPESAR, 2022). The Gram Sabha can authorise the Peace and Justice Committee to take immediate action against the offender and report it to the Gram Sabha. It can also be bestowed with the responsibility of taking necessary action for resolving irrigation disputes (Rule 27(2), CPESAR, 2022), restoration of land to tribals (Rule 37(2), CPESAR, 2022), stopping illegal mining within its jurisdiction (Rule 39(6), CPESAR, 2022) and conducting mediation for peaceful resolution of disputes (Rule 40, CPESAR, 2022). Both the committees are constituted of 10 members from the Gram Sabha, with a minimum of fifty per cent representation from members of Scheduled Tribe and women each. The Gram Sabha is free to further decide upon the proportional representation of different tribes and groups living in the village.

The Scheme of Rule, 2022 provides for funding towards the endeavours of the Gram Sabha in a manner similar to that under Chhattisgarh Panchayat Raj Act, 1993 and thus the Gram Panchayat can propose its annual budget on all 29 subjects under its jurisdiction as per Schedule XI to the Constitution of India (Rule 21(1), CPESAR, 2022). The funds accessible to the Panchayat have been divided into two categories, being the Panchayat Fund (Rule 23(1) Sub-Rule (1.1), CPESAR, 2022) similar to that under Chhattisgarh Panchayat Raj Act, 1993 and the other being Gram Sabha fund (Rule 23(1) Sub-Rule (1.2), CPESAR, 2022), whereby the amount of auction of minor minerals in the Gram Sabha area, royalty received from minor forest produce, pond lease, fine imposed by the Gram Sabha and the amount received from its own source of income ought to be kept. While the Panchayat fund can be accessed by a simple majority of the Panchayat and with the joint signature of the Sarpanch and Secretary of the Gram Panchayat, the Gram Panchayat Fund can be accessed only after being resolved for such by the Gram Sabha. Thus, in consonance with Section 7(b) of the Chhattisgarh Panchayat Raj Act, 1993, all plans including Annual Plans, programmes and projects for social and economic development must be approved by the Gram Sabha before implementation by the Gram Panchayat (Rule 22(1), CPESAR, 2022). This creates a separate

administrator-free fund for the Gram Sabha so as to take care of their immediate needs and is a commendable provision in furtherance of their autonomy.

Chapter 5 of the Chhattisgarh Panchayat (Extension to Scheduled Areas) Rules, 2022 touches upon the subject of *Jal, Jungle and Jameen*, being Water, Forest and Land, which is at the core of tribal sentiments and has historically been the cause behind conflicts with the Government. Chapter 5 of the Rules 2022 thus delineates the powers and duties of the Gram Sabha within their jurisdiction to manage, supervise and promote critical natural resources, being water, forest, land, mines and minerals. Though not directly affecting the topic under research, a slightly detailed understanding of the powers devolved upon the Gram Sabha on such typically sensitive issues is required at this stage.

Management of Water:

All the water bodies, water structures, coastal areas, ponds, lakes, puddles or debris within the village limits and with an area of up to 10 hectares can be managed, used and protected by, or in consultation with, the Gram Sabha (Rule 26(1), CPESAR, 2022). Water bodies with an area between 10 to 100 hectares and 100 to 200 hectares are to be managed by Janpad Panchayat and Zilla Panchayat, respectively (Rule 26(2), CPESAR, 2022). Moreover, any use and distribution of irrigation water by the Government from the water bodies within the village must be done in consultation with the Gram Sabha (Rule 27(1), CPESAR, 2022). If the Gram Sabha fails to resolve any dispute with the Government in such water distribution, the Collector of the District shall be the final authority to decide, making it an overriding farce. The Gram Sabha can also control and regulate the ancillary activity of fishing in such water bodies which are up to 10 hectares (Rule 28, CPESAR, 2022). While doing so, the Gram Sabha may follow their local traditions and keep the villagers' nutritional level in view (Rule 28, CPESAR, 2022). Thus, the provision on managing water and water bodies is very short, with fewer details on particulars.

Management of Forest:

The rights of forest dwellers to collect and manage Minor Forest Produce have been crystalised under section 3(1)(c) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The Rules 2022 thus recognises the

ownership of the Gram Sabha over the minor forest produce from the forest within the village (Rule 30(1), CPESAR, 2022). The Gram Sabha can consent to the establishment of processing units for such minor forest produce (Rule 30(4), CPESAR, 2022) and thus can dispose of the minor forest produce as permitted under Rule 2(1)(d) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007. The Gram Sabha can market non-nationalised minor forest produce either by itself or through a group or federation formed by the government. It can also seek fixation of minimum selling price for such products in consultation with the forest department (Rule 31, CPESAR, 2022).

The responsibility of conservation, promotion and management of the Forest has been bestowed upon the Gram Sabha within its jurisdiction (Rule 32(2), CPESAR, 2022), towards which the Gram Sabha is competent to formulate suitable programmes in a sustainable manner (Rule 32(4), CPESAR, 2022). This is in consonance with the principle of participatory conservation and management as promogulated under Section 3(1)(i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and also under the Chhattisgarh State Forest Policy, 2001. The Gram Sabha can also regulate the consumption of forest produce towards its sustainable use. It thus can make arrangements for meeting the community's needs towards grazing, firewood, dry and dead wood, bamboo for making agricultural equipment and materials used in traditional rites (Rule 32(3), CPESAR, 2022).

Any departmental program by the forest department for exploitation of forest and forest produce can be drawn only after consultation with the Gram Sabha and its implementation can be done by the forest department only in accordance with the management plan prepared by the Gram Sabha. Any destruction of saplings and trees by the forest department, which are useful for the local people, has been strictly prohibited (Rule 33, CPESAR, 2022).

The provisions delineating forest management by the forest dwellers is in consonance with other beneficent legislations in this regard. Though forest resources were absolutely essential during the British era of the building of ships and railway tracks, today, forest resources serve less to the national economy than the land over which these forests have been in existence. Hence, the inclusion of tribes into the mainstream economy and engaging them in the management of forests does not hurt the purpose of the Government and has been generously considered under the Rules, 2022.

Management of Land:

Land has been the most contentious issue of concern for the forest-dwelling tribes. The State Government could have solved significant issues fretting the forest dwellers by formulating strong provisions and lucidly delineating its application. Though the incorporation of an explicit provision towards the management of land is a welcome move in clearing the air on many concerns and truly implementing the spirit of the Panchayats (Extension to the Scheduled Areas) Act, 1996, yet the Rules, 2022 disappoints in resolving the anxiety of the forest dwellers due its vague wordings and thus being open to negative interpretation.

Section 36 of the Chhattisgarh Panchayat (Extension to Scheduled Areas) Rules, 2022 is titled "Consent of Gram Sabha before land acquisition/Government purchase/transfer." However, the provision does not mandate a need for consent but only for consultation with the Gram Sabha before any acquisition. The provision is a subject for interpretation since it states that the Gram Sabha will have to be consulted before acquiring "any land under all the laws/policies prevailing within the Government" (Rule 36(1), CPESAR, 2022). It is unclear whether this "any land" is from all the land situated within the jurisdiction of the Gram Sabha or only those over which individual and community rights have been accrued and also including those upon which the Community Forest Rights have been recognised. The usage of the terms 'all the laws/policies' and 'Government' also needs clarity to ascertain whether it would be applicable to both Central and State Laws, with or without any exception.

If the provision is interpreted strictly in accordance with the spirit of Section 4(i) of the Panchayats (Extension to the Scheduled Areas) Act, 1996, then it could be understood to mean that the Gram Sabha has to be consulted for acquisition of all the lands within its jurisdiction under any law, either of the Central Government or the State Government, without an exception. If such an interpretation is accorded to this provision, it can be a game changer in overriding all the land acquisition legislations which do not have any provision for deliberation and dialogue with the affected community and thus can prove to be the most significant achievement of the Rules, 2022.

Furthermore, the Rules, 2022 incorporates the doctrine of the prior and informed decision since the Government is required to inform the Gram Sabha about the conditions and

objectives of land acquisition and also to provide a detailed description of the project, including the impact of the project and proposed plan for rehabilitation and livelihood (Rule 36(3), Rule 36(4), CPESAR, 2022). Thus Rules, 2022 incorporates international standards in local legislation, which would significantly help make the consultation process fair and equitable.

However, upon being aggrieved by the decision of such consultation, the appeal lies before the Collector of the District, who also acts as the Land Acquisition Officer (Rule 36(5), CPESAR, 2022). This is in contravention of the principles of natural justice. By not recognising the established legal maxim of *nemo judex in causa sua*, i.e. no person shall be a judge in his own cause, the legislation negates its own achievement of granting the right of self-determination to the forest dwellers. Since the Collector itself would be the Land Acquisition Officer, it would be unfair to rest the fate of the consultation process upon him and expect an unbiased consideration of contravening arguments. Moreover, no procedure or yardstick for such adjudication has been delineated under the Rules, which grants the Collector grave unfettered discretion, prophesying an unfair assessment.

This chapter also addresses another very important issue of rehabilitation upon non-voluntary acquisition of forest land. The Rules, 2022 thus delineates that "Rehabilitation of project affected persons/families will be done as per the provisions of the prevailing rehabilitation policy issued by the Government" (Rule 38, CPESAR, 2022) This provision is yet again open to interpretation since the word herein used is "Government" and not State Government, hence creating a conflict of applicability between the State policy of 2007 and the framework prescribed under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. This provision read with Section 108 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 would be interpreted to mean that whichever of the two would be more beneficent would be applicable for such resettlement. However, the application of this provision would have to be interpreted differently for those laws which are exempted under Fourth Schedule read with Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

The Rules, 2022 requires the Government to inform Gram Sabha about the rehabilitation plan (Rule 38(2), CPESAR, 2022) but does not require any consent or even consultation with them

before finalising the rehabilitation scheme, despite prescribing a quorum for it (Rule 11(1), CPESAR, 2022). This absence of dialogue is not in consonance with Section 4(i) of the Panchayats (Extension to the Scheduled Areas) Act, 1996, whereby the consultation with Gram Sabha is prescribed before re-settling or rehabilitation of persons affected by development projects. The rehabilitation of the displaced forest dwellers has been proposed to be done in dense social groups and in the area close to the displacement area and chosen as such by the displaced forest dwellers so that their linguistic and cultural existence is maintained (Rule 38(4)(2), CPESAR, 2022). The District Collector has been burdened with the duty to ensure that the rehabilitation is done strictly in accordance with the rehabilitation policy (Rule 38(3), CPESAR, 2022).

It can be presumed that since the law is limited in its purpose, it has not answered the issues of restoration of community rights and community forest resources upon rehabilitation, which needs attention and consideration. Also, the additional compensation proposed to be accorded to the project effect family under the rehabilitation rules, according to the amount/day of annual forest produce collection, has been capped to a maximum of Rupees Fifty Thousand, which is even less than the minimum wages prescribed by the State Government on the date of enactment of the rules (Rule 38(4)(3), CPESAR, 2022).

As contended under the core issue of this research, the acquisition of forest from the forest dwellers is not analogous to any general acquisition but is also an acquisition of their culture and tradition associated with such lands. The Rule, 2022 could have very well stopped the buck and thus could have introduced the mandate of free and prior informed consent before any acquisition of forest land, which was very well within their power. The Rules, 2022 has interposed the requirement of a prior informed decision before land acquisition, without any mechanism to ensure its free nature. Yet, this chapter has broken the glass ceiling for further development of the law to attain international standards.

Management of Mines and Minerals:

At the very outset, it is pertinent to mention that none of the major minerals or their enactments or any action by the Government towards their exploitation have been discussed under the Rules, 2022.

Only exploitation of minor minerals from within the territory of a village has been made subject to the jurisdiction of the Gram Sabha. As such, it has been made mandatory to obtain the consent of the Gram Sabha before granting of the prospecting license, mining lease and the auction of minor minerals by the Government. A detailed description of the project must be presented before the Gram Sabha with necessary information before seeking the Gram Sabha's consent to grant any mineral concession towards the minor minerals within its territory (Rule 39(1), CPESAR, 2022). While granting consent, the Gram Sabha can suggest conditions for excavation and lease and has the authority to give instructions for restoring the environmental damage caused by such exploitation (Rule 39(5), CPESAR, 2022). However, the Gram Sabha is toothless in taking any action against exploitation being done in contravention of the consent or the mining contract, which will have to report any such violation to the Sub-Divisional Officer (Revenue), who is authorised to take action within thirty days and inform the Gram Sabha (Rule 39(7), CPESAR, 2022). Significantly, the dwellers of the forest village have been allowed to use the minor minerals for their own use and purpose according to their traditional needs, with consent and within the limits set by the Gram Sabha (Rule 39(3), CPESAR, 2022).

Management of Law and Order:

The Rules, 2022 aspires to establish a local juridical system for adjudication of disputes and prosecution of offences at the Gram Panchayat level in consonance with their traditional and customary practices. Such legitimacy to the time-honoured justice dispensation system followed by the tribal communities saves them from the long and lazy traps of conventional litigation. It would help the forest dwellers in ensuring justice by conforming to their recognised traditional and customary laws. This also brings the Fifth Schedule Areas in the State of Chhattisgarh at par with the judicial autonomy acceded towards the Sixth Schedule Areas under the Constitution of India.

As such, the Gram Sabha has been acknowledged to be competent to maintain peace and order in its area as per its community traditions and under the spirit of the Constitution, applicable laws and relevant rules (Rule 40(a), CPESAR, 2022). Pertinent to note that community traditions have been given precedence, and deep knowledge of Central and State laws is not requisite while discharging judicial duties. The task of dispute resolution has been bequeathed upon the Peace and Justice Committee of the Gram Sabha (Rule 40(b)(1),

CPESAR, 2022) and must be done with the aim of completely eliminating the cause of the dispute and creating an atmosphere of peace, harmony and mutual brotherhood in the village (Rule 40(c)(4), CPESAR, 2022). The decision of the Peace and Justice Committee can be appealed before the Gram Sabha (Rule 40(b)(2), CPESAR, 2022), which can also hear the matter if the Peace and Justice Committee is unable to reach any decision (Rule 40(c)(3), CPESAR, 2022). The hearings of such disputes ordinarily ought to be done in public (Rule 40(c)(1), CPESAR, 2022), and ample opportunity for hearing should be given to the concerned parties before arriving at any decision at any stage (Rule 40(c)(2), CPESAR, 2022).

The Gram Sabha through the Peace and Justice Committee can thus give punishments for offences committed under Appendix-2 of the Rules, 2022 (Rule 40(b)(2), CPESAR, 2022). However, any formal punishment to the guilty shall be given only as an exception and accepting the mistake before the Gram Sabha, expressing regret for it, asking for forgiveness from the community and promising not to repeat the mistake in future has been considered as appropriate punishment (Rule 41(1), CPESAR, 2022). The Gram Sabha is also empowered to grant compensation towards damages, including insult and mental trauma, thus directing the guilty to make good such loss to the sufferer in the form of punishment (Rule 41(3), CPESAR, 2022). The Police shall inform the Peace and Justice Committee about the arrest of any member of the Gram Sabha along with the reason for such arrest and the place of detention (R 42, CPESAR, 2022). However, what can be done by the Gram Sabha with such a piece of information has not been provided within the rules.

Other ancillary powers and responsibilities conferred upon the Gram Panchayat in a Scheduled Area under the Chhattisgarh Panchayat (Extension to Scheduled Areas) Rules, 2022 are similar to, and in consonance with the Chhattisgarh Panchayat Raj Act, 1993. It includes the control of intoxicants (Rule 43, CPESAR, 2022) planning of the Labour Force and ensuring minimum wages to the labourers engaged (Rule 46, CPESAR, 2022), management and control of village Bazaar in consonance with the provisions of Chhattisgarh Panchayat Gram (the regulation of markets and fairs within the panchayat area) Rules, 1994 (Rule 47, CPESAR, 2022), stopping illegal money lending (Rule 49, CPESAR, 2022) and practices of superstition and witchcraft (Rule 54, CPESAR, 2022).

Overview:

The Panchayats (Extension to Scheduled Areas) Act, 1996 was the first ever legislation to recognise the autonomy of the forest dwellers in managing their own affairs, though in a limited manner and scope. Before the introduction of Part IX to the Constitution of India and its extension to the Scheduled Areas, the regulation of tribal lands, if any, was the sole prerogative of the Governor of the State under the Fifth Schedule to the Constitution of India. The framers of the Constitution, who continued with the narrative that these forest dwellers were incapable of self-governance and that the provincial governments were too weak to care for the Scheduled areas, deemed it fit to keep the power to govern these areas centralised. However, as discussed earlier, the Governors seldom exercised their powers and hence the Fifth Schedule remained a dead letter under the Constitution. These areas were susceptible to exploitation, as historically witnessed, and thus were vulnerable under general regulations without a special administration. Therefore, the livelihood rights and customs of the dwellers of the Scheduled Area needed to be protected by distinctive legislation (Ministry of Panchayati Raj, 2010). Thus, the Panchayats (Extension to Scheduled Areas) Act, 1996 was enacted as a "logical extension" of the Fifth Schedule and Part IX of the Constitution of India (Kurup, 2007) and has brought some significant changes in the governance of the Scheduled Areas by recognising the autonomy of the forest dwellers.

The Panchayats (Extension to Scheduled Areas) Act, 1996 has introduced several key provisions which have accorded statutory acknowledgment towards imperative rights elucidated under International conventions. The authority of the Gram Sabha to approve plans and projects for the socio-economic development of the village resonates with the right to self-determination and acknowledges their need to "develop along the line of their own genius" (Nehru, 1953, p. 253). The Act conferred a compelling voice to the tribals through the democratic decentralisation of governance, which empowered them to control their interest (UoI vs. Rakesh, 2010). Ensuring reservation to the members of the tribes endows them with political power to assert their demands upon those higher up the echelon and ensures their voice is heard through adequate representation. Thus, the forest dwellers have been made a part of the Government and, through the legislation, hold the power to shift the social forces responsible for legislative actions.

However, since the State Governments were made responsible to effect these provisions, there is a lack of uniformity in its implementation across India. The enactment of the Panchayats (Extension to Scheduled Areas) Act, 1996 resulted in the amendment to the Chhattisgarh Panchayat Raj Adhiniyam, 1993, whereby The Madhya Pradesh Panchayat Raj (Dwitiya Sanshodhan) Adhiniyam, 1997 (Act no. 43 of 1997) and The Panchayati Raj (Sansodhan) Adhiniyam Act, 1999 (Act no. 05 of 1999) brought major changes to the Act of 1993 for its implementation in Scheduled Areas in spirit of the Panchayats (Extension to The Scheduled Areas) Act, 1996 and Part IX of the Constitution of India. However, the Act of 1993 failed to consolidate the law governing the field and made it even more complicated without stimulating the spirit of the Act of 1996.

The powers and functions prescribed for the Gram panchayat in general and those prescribed for the Gram Sabha for Scheduled Areas under Chapter XIV-A often overlap and conflict with each other (PRIA, 2004). This, moreover, is an issue since the Gram Panchayat is an agent of the Government and is required to carry out the directions issued by the Government and bureaucratic authorities (Sec 49 (29a), CPRA 1993); while the Gram Sabha is the voice of the people and thus is under no such mandate. There are ample provisions for the Government to control the functioning of the different levels of Panchayat (PRIA, 2004). Though the Gram Panchayat in Scheduled Areas is subservient to the Gram Panchayat, practically the Gram Panchayat, being an established cog in the Government with bureaucratic involvement, would be in a better position to impose its decision upon the people upon any such conflict, thus disparaging the decentralisation of power and the democratic process of decision making prescribed under the Act. Moreover, the functioning of the Panchayat is infested with bureaucratic interference, which defies the purpose of devolving autonomy between the Gram Sabha and the Gram Panchayat (Khanna et al., 2010).

The bureaucratic interference in the functioning of the Gram Sabha can be apprehended majorly due to the over-complication of regulations and the top-down approach of the law. Forest dwellers are a close-knit community and thus have been historically known for their autonomous nature in decision-making, as per their traditional methods and culture. However, the law supersedes the traditional administrative systems of the tribal population and replaces the same with statutory structures governed by multiple laws. The legislations have failed to incorporate the suggestion by the Bhuriya Committee, which observed that “while shaping the new Panchayati Raj structure in tribal areas, it is desirable to blend the

traditional with the modern by treating the traditional institutions as the foundation on which the modern super-structure should be built" (Report, 1995, p. 15)

As such, the Chhattisgarh Panchayat Raj Act, 1993 is an elaborate Act with more than 132 Sections, more than 87 Rules, and 10 Sub-Rules enacted under. There are thus more than 100 laws which govern the functioning of these 'autonomous' local bodies. An apt understanding of so many laws is unfathomable even to a legally trained mind, which is expected to standardise the functioning of these unsophisticated village institutions. A common conclusion of almost all the empirical studies suggests a severe lack of knowledge about Panchayat law among the dwellers, thus causing the failure of the Act to realise its full potential (Ministry of Tribal Affairs, 2010). Though the internal functioning of the Gram Sabah is practically unfettered by these laws and carries on with its traditional methods, a straightforward narrative for a better understanding of the forest dwellers is necessary, more importantly when their decisions can determine external consequences.

The reluctance of the State to devolve the powers to the Panchayats and Gram Sabha has rendered them as mere implementing agencies of the decisions made by political and bureaucratic authorities higher up and thus fails to decentralise the governance (Dogra, 2012). Instead, the demand should come from below and the policies for the grassroots level should be made per the people's real needs and demands. The legislation carries the undertone of considering the forest dwellers incapable of governing themselves, which was "born from the entrenched belief of politicians, bureaucrats and national and subnational institutions that the tribes' only chance of salvation was benevolent rule by the State" (Kurup, 2007, p.1). The decisions of the Gram Panchayat are subject to confirmation by high-up authorities, who do not have any knowledge about the particular needs and demands of the village, making the governance susceptible to bureaucratic interference. It has been rightly argued by Kurup in his critique of the Panchayats (Extension to Scheduled Areas) Act, 1996 that "If tribal local governments are truly to become institutions of self-government, they should exercise autonomous powers rather than devolved authority" (Kurup, 2007, p.110).

Section 4(i) of the Panchayats (Extension to Scheduled Areas) Act, 1996 is vital for the purpose of this paper, which provides for consultation with the Gram Sabha before the acquisition of land within the Scheduled Area. Furthermore, the requirement of consultation has also been mandated for rehabilitation and resettlement that may arise from such

acquisition towards development projects. Though this is not precisely in conformity with the international and widespread demand for mandating the requirement of 'consent' before the acquisition of indigenous lands, it does open up a possibility of dialogues between the parties. An amendment to the Act through the Panchayats (Extension to the Scheduled Areas) Bill, 2013 sought to replace consultation with 'prior informed consent'. Also, it sought the amendment of Section 4(k) to include major minerals, along with the existing minor mineral, under the requirement of mandatory recommendation from the Gram Sabha before granting a prospecting license or mining lease within the Scheduled Area (Xaxa Committee, 2014, p. 342). The status and record of the Panchayats (Extension to the Scheduled Areas) Bill, 2013 could not be found and, indeed, has not been implemented to date.

Though the Chhattisgarh Panchayat Raj Adhiniyam, 1993 in Chhattisgarh did undergo a significant change after the Act of 1996, it failed in implementing the spirit of Section 4 of the Panchayats (Extension to Scheduled Areas) Act, 1996, while enacting only the bare minimum. There is no provision for seeking consent under the Chhattisgarh Panchaya Raj Adhiniyam, 1993 as stipulated under Section 4(i) of the Panchayats (Extension to Scheduled Areas) Act, 1996. The recent implementation of the Chhattisgarh Panchayat (Extension to Scheduled Areas) Rules, 2022 does carry the flame of its parent Act, yet what remains to be seen is if it can prove to be a significant tool in firmly establishing the autonomy of the forest dwellers in management of their *Jal, Jungle and Jameen*. Moreover, even under the Rules, 2022 there is ambiguity about the requirement of consultation before rehabilitation and thus still falls short of the requirement under Section 4(i) of the Panchayats (Extension to Scheduled Areas) Act, 1996.

Despite the lukewarm requirement of 'consultation', which can be easily ignored and brushed aside by the authorities in the matter of land acquisition and rehabilitation, the Gram Sabha resolutions have been found to be often forged (Khanna et al., 2010). This implies that the bureaucrats are avoiding even the simple requirement of dialogue with forest dwellers before robbing them of their land and everything along with it. Instead, they prefer to forge the documents to comply with the provision. There is no provision under the Act or rules to ensure freedom of the consultation process and no mechanism has been prescribed to address the allegations of fraud or fabrication of Gram Sabha proceedings.

Even more unfortunately, the High Court of Chhattisgarh has recently held that Section 4 of the Panchayats (Extension to Scheduled Areas) Act, 1996 would not apply to lands being acquired for mining of major minerals (Mangal Sai vs. UoI, 2022). It is difficult to understand how the Court came to this conclusion since the provision does not differentiate between the nature of acquisition and only uses the word 'development project.' Even if the minimum requirement of consultation in seeking the choice of rehabilitations and dialogue before the land acquisition is done away with by such interpretations and the dwellers of the forest are stripped of their lands without any communication, then sadly, the independence of India did not make much of a difference for those living in the jungles.

The Rules, 2022 have been notified very recently and thus have been a subject of both accolades and criticism from the experts and affected alike. Introducing the Rules, 2022 is a significant step in truly enforcing the spirit of the Panchayat (Extension to Scheduled Areas) Act, 1996. It thus grants the Gram Sabha significant autonomy over its affairs. However, the State Legislature could have answered several concerns of the forest dwellers through this legislation, which seems to have been lost in bureaucracy.

Thus, though the institutionalisation of self-governance may not be the best idea to replace the ancient traditional administrative structures prevalent in the Jungles, the Acts and corollary Rules grant legitimacy to the autonomy of the village and its people in, at the very least, managing their day-to-day affairs on their own. The recent rules of 2022 open up possibilities of elucidation, which can be used in favour of forest dwellers by further legislation and juridical interpretations. This has been relied upon while proposing suggestions in this paper.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The demand for an all-inclusive Central law to recognise the rights of the forest dwellers was fuelled after an order dated 23rd November 2001 passed by the Supreme Court of India in *T.N. Godavarman Thirumulpad vs. The Union of India* (1997), popularly known as the 'Forest Case', restrained the regularisation of encroachment on forest land. As a result, the Inspector General of Forest vide letter dated 3rd May 2002 instructed the State Governments

"to evict the ineligible encroachers and all post-1980 encroachers from forest lands in a time-bound manner" (Relan, 2010, p. 484). This created a situation of havoc in the Country with several coerced evictions all across the nation. It started a stir in India demanding a law to recognise the rights of forest dwellers, and thus, several representations were made by the affected communities and Civil Society Organisations to the Government necessitating the legislation.

Thus, fifty-eight years after the independence of India, the Scheduled Tribes (Recognition Of Forest Rights) Bill, 2005 ('Forest Rights Bill, 2005') was introduced before the Lok Sabha on 13th December 2005 by the then UPA Government, under the leadership of Prime Minister Dr Manmohan Singh. The motion for reference of the Bill to a Joint Committee of both Houses of Parliament was moved in Lok Sabha on 21st December 2005 and was concurred by the Rajya Sabha on 23rd December 2005. Thus the 'Joint Committee on the Scheduled Tribes (Recognition Of Forest Rights) Bill, 2005' held its first sitting on 16th January 2006 under the Chairmanship of V. Kishore Chandra S. Deo ('Report, 2006').

The Committee was tasked with the responsibility of assessing the gap between the law and the ground reality in fulfilling the demands of the forest dwellers of the Country. The Committee was thus expected to suggest changes to the proposed legislation to make it practical and effective, which would be sufficient and competent to solve the issues concerning forest dwellers. Towards this, the Committee held 14 sittings, whereby it scrutinised 109 memoranda sent by individuals and examined 44 witnesses by oral evidence, thus representing experts, organisations, associations and NGOs working in the field (Appendix V of Report, 2006).

The issues raised by these witnesses, who were aware of the ground realities at the grassroots level, played a pivotal role in framing the law as we see it today. The draft presented before the Lok Sabha on 13th December 2005 was drafted by bureaucrats and thus reeked of their urge to control the maximum and give away the minimum. However, experts and savvy witnesses presented the Committee with the reality of the situation and thus framed the ideology of the Committee in coming close to accomplishing its task of addressing the 'historic injustice.'

Several significant changes proposed by the Joint Committee echoed the concerns raised by the expert participants and thus reflected upon the Joint Committee's deep understanding of the problems faced by the forest dwellers. To denote a few, the draft bill did not include 'other forest dwellers' nor did it lay down any criteria for their recognition, which was proposed to be included by the Joint Committee (Clause 2(o) of Report, 2006, para 25, p. vii). Furthermore, the Joint Committee proposed an extensive definition and recognition of collective community resources and thus defined the rights of the forest dwellers as a community (Clause 2(a) of Report, 2006, para 18, p. vi). The territorial area for recognition and exercise of rights was extended to include the periphery and fringes of the forest, recognising the rights of settlers therein, which was earlier limited only within the forest borders (Clause 2(c) of Report, 2006, para 21, p. vi). The Authorities under the Bill, 2005 were proposed to be constituted entirely of revenue and forest department officers. They had no representation from the forest dwellers, which the Joint Committee found to be unfair. Thus, the constitution of the authorities was altered to include the participation of the stakeholders, making its functioning fair and democratic (Clause 6 of Report, 2006, para 51, p. xii). The ceiling of land holding of 2.5 hectares was removed (Clause 4(6) of Report, 2006, para 43, p. xi), and the cut-off date was altered (Clause 4(3) of Report, 2006, para 39, p. x) by the Joint Committee, in the spirit of the objective of the Act.

A few of these major changes, which were suggested and incorporated or recommended but dropped from the final Act, ought to be studied to understand the shaping of the law as it exists today. The Joint Committee had done an extensive investigation towards the needs of the forest dwellers and thus had proposed a bill which conformed with its study. Thus, the comparison between the Bill of 2005, the alterations recommended by the Joint Committee and the existing Act of 2006 would further serve as a guiding light in examining the efficacy of the current provisions of the law.

Other Traditional Forest Dwellers:

As is apparent from the title of the Bill, 2005, the draft bill did not include 'other traditional forest dwellers' within its ambit and thus did not lay down any criteria for recognition of such dwellers of the forest, who have been practising their rights over the forest for centuries. The bill was only aimed at providing the benefit to forest residents who would fall within the definition of Scheduled Tribes under Article 342 of the Constitution of India. However, the

witnesses argued that the Act would fail to serve its purpose if such forest dwellers, who have been residing there for generations, are not accorded the protection and thus are evicted from the forest. Thus, the Joint Committee added a new Sub-Clause 2(o) to include other forest dwellers, who were not a part of the original proposed bill (Clause 2(o) of Report, 2006).

In the final Act, 2006 the other traditional forest dwellers have been defined as "any member or community who has for at least three generations before the 13th day of December 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs" (Sec 2(o), Forest Rights Act, 2006). Here, a generation has been understood to be a period of twenty-five years. This changed the entire narrative of the Act and extended protection even to those traditional settlers who could not qualify to be categorised under the strict definition of Scheduled Tribe but could demonstrate their generational dwelling and dependency on the forest.

Penalties:

Clause 7 of the Bill, 2005 prescribed punishment for contravention of the Act, breach of conditions of the forest rights, unsustainable use of forest or its produce, the killing of wild animals and destruction of forest or felling of trees. As such, any holder of the forest right, if found guilty of such an offence, was proposed to be punished with a fine extending up to one thousand rupees. Upon commission of such an offence more than once, the Bill, 2005 proposed to derecognise the forest rights thus granted to the offender (Sec 7, Forest Rights Bill, 2005).

The Joint Committee, while reviewing Clause 7 of the Bill, 2005 however, noted that "the object of the legislation is to recognise and vest traditional rights in forest dwellers to correct the historical injustice done to them. Hence, the penal provisions of fine and suspension of forest rights for violation of provisions of this Act were regarded as too harsh and inappropriate by the Committee. They opinioned that such penal provisions may enable the authorities to book the forest dwellers for alleged volitions, causing them avoidable harassment" (Clause 7 of Report, 2006).

Thus the penal provision proposed under Clause 7 of the Bill, 2005 was deleted by the Joint Committee, whereby it recommended that such matters were deemed fit to be decided by the

Gram Sabha, leaving the autonomy of punishing the offenders with those people who were responsible for the protection of their habitat. Due to this intervention by the Joint Committee, the Act, 2006 did not contain a penal provision against the forest dwellers, thus protecting the forest dwellers from a potential tool of harassment and right deprivation.

Cut-off date:

The Bill, 2005 prescribed the cut-off date for such vesting and recognition of forest rights to be 25th October 1980. The rationale, as understood by the Joint Committee, was that the Forest (Conservation) Act, 1980 was enacted on 25th October 1980 and thus any forest dweller who had acquired right thereafter was in derogation of the Forest (Conservation) Act, 1980 and ought not be accorded the protection under the law.

The issue of the cut-off date was vehemently raised by several expert witnesses, who objected to the arbitrary date set by the Bill, 2005. They expressed their concerns that such an old cut-off date, being more than twenty-five years ago, would make it very difficult for the forest dwellers to prove and establish their claim for rights. They also anticipated the cut-off date to be problematic since, in the past twenty-five years, several people would have migrated or been displaced from their original habitat, or their forest land would have been diverted during this period for other purposes (Evidence Tendered Before JC on ST (Recognition) Bill, 2005).

Thus the Joint Committee noted that the cut-off date prescribed under the Bill, 2005 for recognition and vesting of rights had "no legal sanctity" and is contrary to the spirit of the object of the Act and thus proposed to change the cut-off date to 13th December, 2005, when the Bill, 2005 was introduced in the Lok Sabha by the Government (Clause 4(3) of Report, 2006, para 40, p. 10). This was a major change since it had the desired result of espousing the forest dwellers to gather evidence towards claiming their rights under the Act.

Overriding effect of the Act' vs. 'Act not in derogation of any law:

This was perhaps the most important suggestion by the Joint Committee, which was unfortunately rejected by the Parliament, thus failing the Act in its efficacy. The Bill, 2005 proposed that the Act would not be in derogation of any of the laws in force but in addition to

the same. However, the Joint Committee saw serious flaws in this approach since all the laws thus legislated over this space in the past century were in derogation of everything that the Act stood for. The aim and objective of the existing legislations were of snatching rather than giving and thus the entire spirit of the new law contravened the earlier legislations. Hence, they found it impossible to make the Act in addition to any old legislation and were sure that the Act would indeed be in derogation and repugnant to the old Colonial laws, which are still being followed in India.

The Joint Committee thus suggested the following Clause 15, titled "Overriding effect of the Act":

"15. If the provisions of any other law for the time being in force or any decree, judgement, award or order of ant court are in contravention to the provisions of this Act, the provisions of this Act shall prevail" (Clause 15 of Report, 2006).

This would have brought the Act at par with the benchmark that it sought to achieve, thus propelling the spirit of the legislation over and above the surreptitious Colonial legalisations designed to rob the forest dwellers. It would have truly corrected the historic injustice by overriding the application of these existing laws which had caused such injustice in the first place. However, the legislators did not accept this clause and went ahead with the 'Act not in derogation of any law' clause, which has failed the purpose of the Act of 2006.

Ninth Schedule:

Though it would not have provided much protection after 24th April 1973,[8] the Joint Committee recommended the Act to be placed in the Ninth Schedule to the Constitution of India, to protect the law from the judgements and dictums passed by the Constitutional Courts in light of old Acts and guidelines issued by the Government. They apprehended that non-inclusion of the Act in the Ninth Schedule to the Constitution of India would delay the litigation by creating confusion from the precedents and thus may lead into mass eviction of

[8] Waman Rao and Ors. vs. Union of India and Ors., (1981) 2 SCC 362: The protections to legislations under the Ninth Schedule ended after the date of the Judgement in Kesavananda Bharati Sripadagalvaru vs. State of Kerala (1973) 4 SCC 225 being 24th April 1973.

the forest dwellers, whose rights could have been recognised (General Recommendations of Report, 2006, para 60, p. xiii). However, the Ac, 2006 was not added to the Ninth Schedule.

Duties of the Government:

The Bill proposed by the Joint Committee had provisions which, along with the duties cast upon the holders of forest rights, bestowed certain responsibilities upon the Government. These responsibilities were as under:

> "5. Duties of holders of forest rights and responsibilities of Government.
> (1) ……
> (2) The Government shall ensure that the forest dwelling Scheduled Tribes and other traditional forest dwellers shall not be denied any benefit arising out of any explorations, exploitations and use of natural resources and shall also adequately compensate the forest dwelling Scheduled Tribes and other traditional forest dwellers for any damages caused by such activities.
> (3) The Government shall protect the forest rights of the forest dwelling Scheduled tribes and other traditional forest dwellers under this Act and shall prohibit any one who does not belong to a forest dwelling Scheduled Tribe or who is not an other traditional forest dweller, such as an individual agency, corporation or institution from violating the provisions of this Act and take punitive action against them for such violation.
> (4) The Government shall protect the right to access biodiversity and the community right to intellectual and traditional knowledge related to forest biodiversity and cultural diversity.
> (5) No forest land shall be acquired or diverted that may adversely affect the rights recognized under this Act without prior intimation to and prior consent of the Gram Sabha and the affected persons without paying adequate and equal compensation on the principle of "cultivable land for land" and proper rehabilitation:
>
> Provided that in areas where the Sixth Schedule to the Constitution is applicable, its provisions regarding land acquisition shall prevail over the provisions of this Act" (Clause 5 of Report, 2006).

The duties of the Government defined under the proposed clause 5 encapsulated everything which the States in the history of forest legislation and governance have stood against. Sharing of resources and profits, keeping out the big corporations from the exploitation of forest land and most of all, the dreadful requirement of seeking free and prior informed consent of the forest dwellers before the Government could seize their land. It is not astonishing that this entire provision was dropped from the enacted legislation, while only defining the duties of the forest dwellers in a proclaimed welfare State.

Binda Karat, a Member of Parliament in 2006, claims that dropping the recommendation of the Joint Parliamentary Committee was influenced by the industrial lobby, which would have lost its power to acquire with minimum interference under colonial legislations (Karat, 2016).

The Act is undeniably the best tool for recognising the rights of forest dwellers and is a major leap in their favour, yet it could have been better.

Forest Rights Act, 2006

The report of the Joint Committee on The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2005 was published on 23rd May 2006. With changes to the proposed bill, the Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006 ('Forest Rights Act, 2006') was passed by the Lok Sabha on 15th December 2006 and by the Rajya Sabha on 18th December 2006. The Act, 2006 got the assent of the President of India on 29th December 2006 and was notified in the Gazette of India on 2nd January 2007. The Act came into force with effect from 31st December 2007.

The enforcement of the Act, 2006 was shortly followed by the Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Rules, 2007, ('Forest Rights Rules, 2007') which the Ministry notified of Tribal Affairs on 1st January 2007 to supplant the procedural aspects of the Act. The enactment of the Act, 2006 and Rules, 2007 has been the most significant watershed moment in the history of the recognition of forest rights in India.

The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006 is a short act with 14 Sections, with Section 14 authorising the Central Government to frame rules under the Act. Thus, the Forest Rights Act, 2006 is hereby being studied in conjunction with the Forest Rights Rules, 2007, which governs the procedure for applying the law and more. These laws are being examined extensively and minutely since these legislations are the most important and effective tools for forest dwellers to establish their rights. Any suggestions for remedial measures could arise only after the rights over the resources are instilled. Thus, it is the foundation for any claim and resolution that the forest dwellers could seek.

A Preamble to an Act denotes the aim and objectives pursued by the legislation. It reveals the shortcomings sought to be addressed by the statute, thus reflecting upon the scope and intention of the legislature in formulating the law. The preamble to the Act of 2006 is a crucial tool in unlocking the mind of the legislators, whereby they acknowledge the historic injustice endured by the forest dwellers. As per its object, the Act aspires to answer the "long standing insecurity of tenurial and access rights" of the forest dwellers, including those who were forced to relocate due to the acquisition of their habitat. It admits that the ancestral rights of the forest dwellers over the forest and its resources could not be adequately acknowledged, both during the colonial as well as post-independence era, thus resulting in "historic injustice" to the forest dwellers. The Act thus strives to vest the rights and occupation over the forest land to the forest-dwelling Scheduled Tribes and other traditional forest dwellers. Nonetheless, the object of the Act also delineates the facts that the rights thus recognised would also constitute a responsibility as well as an authority with the forest dwellers to strive towards sustainable use of forest resources Thus, the Act aspires to ensure the livelihood and food security of the forest dwellers while expecting them to conserve the biodiversity and maintain the ecological balance of their dwelling.

Eligibility under the Act:

The Forest Rights Act, 2006 provides a broad array of prospects for becoming eligible towards claiming forest rights under the Act, whereby any individual or community which: 1) primarily resided in the forest or 2) primarily depended on the forest or 3) primarily dependent on the forest land for bona fide livelihood needs; would be eligible for claiming the rights recognised under the Act.

Upon fulfilling any of the above criteria, either individually or as a community, two categories of forest dwellers are eligible to claim the rights thus recognised under the Act. The first is the Scheduled Tribes, being those individuals or communities who belong to the tribes which have been scheduled under Article 366(25) read with Article 342 of the Constitution of India. There is no separate definition of Scheduled Tribes under the Act and thus the law recognises the definition and categorisation provided under the Constitution of India. This category further includes a special sub-category of Particularly Vulnerable Tribal Groups (PVTGS), which have been distinguished for their vulnerability due to their backwardness and declining population (Scheme of Development of Particularly Vulnerable Tribal Groups, 2015).

The second category is that of Other Traditional Forest Dwellers (OTFD) who have been defined as being "any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs." (Clause 2(o) of Forest Rights Act, 2006). As discussed earlier, the original Bill of 2005 did not include those dwellers of the forest who did not belong to the administrable definition of Scheduled Tribes. Thus, the benchmark for recognition of rights of such OTFDs have been set higher than that prescribed for the forest dwelling Scheduled Tribes. This could have been done to avoid any encroachment over the forest by those who did not *bona fidely* belong to the forest but sought the title for other sly interests.

The recognition of rights for other traditional forest dwellers has been an uphill task due to these stringent provisions and lack of clarity, with lots of confusion regarding the law around it, thus failing to fulfil the purpose of their induction within the Act (Farha, 2019). The Act has been wrongly recognised as a scheme exclusively for the tribals by the State machinery, thus ignoring and refusing the recognition of the forest rights of the OTFDs, leading to them being branded as encroachers and thus being illegally evicted (Xaxa Committee, 2014).

The claims of both classes are fraught with challenges of interpretation. The authorities interpreted the expression "primarily resided in the forest or forest land" to seek proof of continuous occupation and uninterrupted exercise of the forest right by the OTFD, which is a wrong interpretation and has so been clarified by the Ministry of Tribal Affairs (Circular

No.17014/02/2007-PC&V (Vol.VII)). Moreover, the Other Traditional Forest Dwellers are not even required to prove their ceaseless tenure over the claimed forest land and the uninterrupted exercise of forest rights for 75 years to claim their eligibility since this is not the intention of the Act and would be putting an erroneous burden on the claimant ("Frequently Asked Questions on the Forest Rights Act"). As has been clarified by the Ministry of Tribal Affairs, the phrase "primary resided" means: (Taken from Circular No.17014/02/2007-PC&V (Vol.VII) 2008, Ministry of Tribal Affairs, Government of India).

"such Scheduled Tribes and Other Traditional Forest Dwellers who are not necessarily residing inside the forest but are depending on the forest for their bona fide livelihood needs would be covered under the definition of 'forest dwelling Scheduled Tribes' and 'other traditional forest dweller' as given in Sections 2(c) and 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006."

The claimants are not required to prove that they have been residing over the same land over which they are claiming title, as the same is not a condition under the Act. The residence or dependence has to be proved within the forest and not any particular part of it. The OTFD have to prove such residence either for the past 75 years or dependence prior to 13th December 2005. As per the clarification issued by the Ministry of Tribal Affairs, if the village or community has been able to prove its eligibility to be recognised within the parameters of the Act, then there is no need for every individual member of such a community to prove so ("Frequently Asked Questions on the Forest Rights Act"). However, it has been found that the authorities, rather than accepting either of the three conditions towards qualification for recognition of rights, have been demanding proof of all three criteria for being considered eligible under the Act, (CFR-LA & AJAM, 2013, p. 9). which is not only illegal but is in gross derogation of the spirit of the Act. The insistence of proof upon the OTFDs to establish their continuous residence over particular forest land for 75 years is also absolutely illegal (Satpathi, S. (n.d.).

Recognized Rights:

At the very inception of the Act, the legislation bells the cat and denotes those 'Forest Rights' which would be recognised under the Act for an individual or a community of persons

belonging to the forest dwelling Scheduled Tribes or other traditional forest dwellers, on all forest lands. The rights thus recognised are: (Section 3, Forest Rights Act, 2006).

a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;
b) community rights such as *nistar*, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;
c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
e) rights including community tenures of habitat and habitation for primitive tribal groups and pre- agricultural communities;
f) rights in or over disputes lands under any nomenclature in any State where claims are disputed;
g) rights for conversion of *Pattas* or leases or grants issued by any local authority or any State Government on forest lands to titles;
h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;
i) rights to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribal under any traditional or customary law of the concerned tribes of any State;
k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be,

which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

m) right to *in situ* rehabilitation, including alternative land in cases where the Scheduled Tribes or other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.

These forest rights can be claimed to be recognized and vested by any claimant, being an individual, group of individuals, family or community. The aforementioned rights listed under (b), (c), (d), (e), (h), (i), (j), (k) and (l) can also be claimed and recognised as Community rights (Rule 2(1) (ca), Forest Rights Rules, 2007).

Thus, apart from granting individual rights to the members belonging to the Scheduled Tribe or those qualifying as Other Traditional Forest Dwellers, the Act also appreciably recognises the rights of these members as a community. As elucidated, the tribes have been a closed-knit society and recognising their rights as a community has been a significant step in respecting their social structure. The rights over the forest's resources have been bestowed upon the community rather than any individual, along with the duties to protect and sustainably use such resources.

Apart from the community rights delineated under Section 3 of the Act, Section 2(1) of the Act defines Community Forest Resources, which brings within it a wide ambit of the territorial area over which the proximate dwelling communities have been exercising their traditional rights and can claim its continuance. This is different from the Community Forest Rights, which has been defined under Section 3(1) of the Act, 2006 and can be recognised by the authorities by following the formal methods. The Community Forest Resource is much wider than the community forest rights. It thus encompasses a large geographic area over which the community has had traditional and customary access, without any reservation of such recognition even in reserved forests, protected forests and protected areas such as Sanctuaries and National Parks. Such rights have been considered to be open-ended rights under which the forest-dwelling communities can claim even those rights which are not defined under the Act but have been of traditional practice and culture (Down to Earth, 2022). Such traditional rights have been protected under the Act and are significantly critical

for the forest-dwelling communities in truly exercise their autonomy towards self-sustenance (Section 3(i), Forest Rights Act, 2006).

Section 3(e) of the Act, 2006 is a provision which specifically recognises the community tenures of habitat and habitation rights of the PVTGs. A habitat has been defined as "the area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes." (Section 2(h), Forest Rights Act, 2006). The definition of habitat is unclear under the Act and does not reflect upon the floating nature of their Gram Sabha. The right to community tenure of habitat and habitation by the PVGTs over their customary territories has been sought to be recognised not only for their habitation and livelihood but also for such territories which are significant for their social, economic, spiritual, sacred and religious purposes (Circular No. 23011/16/2015-FRA, 2015). However, the implementation of habitat right in India has been poor due to a lack of clear definition within the Act and, thus, a lack of understanding clouded by confusion amongst the claimants and the authorities (Xaxa Committee, 2014). The Ministry of Tribal Affairs has time and again required the State Governments to initiate and complete the recognition of habitat rights of the PVTGs and thus reminded the DLC of its duty to ensure such compliance (Circular No. 23011/16/2015-FRA, 2015).

The Act thus declares that 'notwithstanding any other law', these forest rights have been recognised and vested upon the traditional forest dwellers and forest dwelling Scheduled Tribes, as declared within the State (Section 4, Forest Rights Act, 2006). The phrase 'notwithstanding any other law', which as per objective legal interpretation has to be constructed strictly so as to avoid any frustration of the intent of the legislation, (Pukhraj Jain vs. Mrs. Padma Kashyap,1990) denotes that this accreditation and recognition of rights by default would override any law which prohibits such rights and thus would nullify such provisions in other law against the forest dwellers (Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram, 1986). However, as discussed earlier, Section 13 of the Act makes the Act 'not in derogation of any law', thus creating confusion regarding the assertion of the Act over the Colonial legislations.

The definitions of both forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers under the Act find one thing in common: those individuals or communities that

have primarily resided depend on the forest or forests land for their "bona fide livelihood needs." (Section 2(c) and 2(o), Forest Rights Act, 2006). Bona fide livelihood has further been defined within the Rule as "fulfilment of livelihood needs of self and family through exercise of any of the rights specified in sub-section (1) of Section 3 of the Act and includes sale of surplus produce arising out of exercise of such rights." (Rule 2(1)(b) Forest Rights Rules, 2007). Thus, apart from their right over land, the Act seeks to protect these forest dwellers' livelihood, including the sale of surplus produce. Unlike the Colonial dogma, which reluctantly allowed the forest dwellers bare minimum access to forest produce for their mere sustenance, the Act recognises the right of the forest dwellers to trade such forest produce and respects such commerce as a part of their bona fide livelihood needs. The Minor Forest Produce over which these rights can be claimed is defined under Section 2(i) of the Act and thus includes "all non-timber produce of plant origin, including bamboo, brushwood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers, and the like."

It may also be important here to note that these forest rights are recognised over 'all forest lands', which by definition includes "land of any description falling within any forest area and includes unclassified forests, undermarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks", thus giving a wide scope of territorial area for staking such claim over land and resources (Section 2(d) Forest Rights Act, 2006). The definition under the Act is in consonance with the wide definition adopted by the Supreme Court in *T.N. Godavarman Thirumulpad vs. Union of India* (1997)[9]. The Gram Sabha has the right to seek the conversion of such forest villages into revenue villages, including those situated within the National Parks and Sanctuaries, to avail the development facilities and thus seek benefit from development programmes. Moreover, the District administration is expected to take proactive steps in converting such forest villages into revenue villages.

The Act specifically grants rights over disputed lands, which are those lands whereby the settlement process under the Indian Forest At, 1927 has not been completed or has been done in a faulty manner before the declaration of such areas as reserved or protected forest. Thus,

[9] The case held that "The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership."

where the forest has been declared as a reserved or protected forest without due notice or enquiry by the forest settlement officer regarding the rights within such area, the Act recognises the rights which may be disputed by the forest department and hence protects such individuals or communities from eviction on the ground that their claims have already been rejected (Relan, 2010, p. 484-521).

Under the suggestions of the Joint Committee, (Clause 4(10), Report of the Joint Committee on The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005) these rights have been vested retrospectively as where the State had acquired the forest land but could not be utilised for the purpose for which it was acquired within five years from the acquisition, the ousted dwellers of such land can claim their forest rights over the land, which will have to be returned back and thus the title and rights restored (Section 4(8), Forest Rights Act, 2006). This provision indeed seeks to correct the historical injustice and welcomes the forest dwellers back to their *in situ* habitat by restoring their lost rights over their forest due lack of any legislation protecting them in the bygone days.

Most pertinently, the Act provides protection for the forest-dwelling Scheduled Tribe and other traditional forest dwellers from eviction from their forest land pending the recognition and verification procedure for recognition of their rights (Section 4(5), Forest Rights Act, 2006). This is an important provision, which shifts the burden on the government to carry out the verification process before eviction and thus protects the forest dwellers from arbitrary ejections. The significance and consequence of Section 4(5) of the Act, 2006 has been strikingly elucidated by Hon'ble Justice J.B. Pardiwala (now a Judge of the Supreme Court, then as a Judge of the High Court of Gujarat) as:

"This clause is of an absolute nature and excludes all possibilities of eviction of forest dwelling Scheduled Tribes or other traditional forest dwellers without settlement of their forest rights as this Section opens with the words Save as otherwise provided . The rationale behind this protective clause against eviction is to ensure that in no case a forest dweller should be evicted without recognition of his rights as the same entitles him to a due compensation in case of eventuality of displacement in cases, where even after recognition of rights, a forest area is to be declared as inviolate for wildlife conservation or diverted for any other purpose." (Action Research In Community Health &Development (ARCH) vs. State Of Gujarat, 2020)

Duties:

While the Act recognizes various traditional rights of the forest-dwelling Scheduled Tribe and other traditional forest dwellers, the Act also prescribes the duties of the holder of forest rights towards the wild life, forest and biodiversity. The Act conceives a notion that the forest dwellers are integral for protection of the forest and thus 'empowers' such holders of rights and their Gram Sabha to: (Section 5, Forest Rights Act, 2006)

a) protect the wildlife, forest and biodiversity;
b) ensure that adjoining catchments area, water sources and other ecologically sensitive areas are adequately protected;
c) ensure that the habitat of forest-dwelling Scheduled Tribes and Other Traditional Forest Dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;
d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and biodiversity are complied with.

Conditions and Exceptions:

The recognition of rights and their eligibility under the Act has been subject to certain conditions and qualifications, which seem justified towards the purpose that it seeks to attain. The Act only recognises the rights of those forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers who could prove their occupation of the forest land before 13th December 2005 (Section 4(3), Forest Rights Act, 2006). As discussed earlier, this date was proposed to be 25th October 1980 but was brought down to 13th December 2005 by the Joint Committee. The cut-off date has been set to prevent any fresh encroachment upon forest land and thus strives to recognise only traditional and generational rights, which the Act aspires to protect.

Also, the rights recognised under Section 4(1) of the Act 2006 are only heritable and cannot be alienated or transferred. Without an heir to those whose rights have been recorded, the rights shall pass to the next of kin in inheritance (Section 4(4), Forest Rights Act, 2006). This is also justified since it would prevent anyone with malicious intent from misusing the forest

lands and thus keeps to the object of the Act, that is, to recognise the dwelling rights of the forest dwellers over their traditional land.

Though the earlier proposed ceiling limit of 2.5 hectares was scrapped by the Joint Committee, the right to hold and live in the forest under occupation or self-cultivation for livelihood has been restricted only to the area under actual occupation, which cannot exceed an area of four hectares (Section 4(6), Forest Rights Act, 2006). Here the area under occupation is not limited to the area under cultivation but also includes the space used for ancillary and allied activities such as land used for sheltering cattle, winnowing and post-harvest activities, rotational fallows, tree crops and storage of harvest. This is a sufficient area for personal use since the limit of 4 hectares is only for the recognition of rights over land for individual issuance of title. The limitation of the area does not apply to the recognition of community forest rights, which can be claimed as having been exercised.

An exception for dwellers of critical wildlife habitats of Natural Parks and Sanctuaries has been earmarked under the Act, whereby the dwellers of these sensitive areas can be resettled and their rights can be thus be modified. However, such forfeiture of the rights is subject to the condition that the concerned agencies or State have concluded that the cohabitation of forest dwellers with the wildlife would cause irreversible loss to the wildlife and as such the option of co-existence is not possible. The resettlement can be affected in such cases after all the rights of the dwellers of such an area have been settled and the resettlement plan has been approved by the Gram Sabah of the area concerned through free, informed consent, thus taking care of the livelihood and requirements of such affected individual and communities while resettling them (Section 4(2), Forest Rights Act, 2006). However, as per the Xaxa Committee report, there are more than 690 protected areas in India, whereby despite the clear mandate of the Act, most of the States exclude such areas from the application of the Act, 2006 thus leading to illegal eviction of the forest dwellers without even a settlement of their rights (Xaxa Committee, 2014).

Authorities and Procedure for Vesting of Forest Rights

Chapter IV of the Act of 2006 constitutes the authorities responsible for the recognition and vesting of forest rights, whereby the process of recognition of forest rights has been divided into a three-tier system. A State Level Monitoring Committee constituted by the State

Government monitors the entire process and is responsible for submitting the returns and reports on its monitoring of compliances to the Nodal agency, the Union Ministry of Tribal Affairs or an authority authorised by Central Government as being the Nodal Agency (Section 11, Forest Rights Act, 2006). Thus, the hierarchy of authorities towards recognition, monitoring and supervising is:

Gram Sabha

The Act of 2006 defines Gram Sabha as a village assembly which consists of all adult members of a village and elected village committees, with full and unrestricted participation of women (Section 2(g), Forest Rights Act, 2006). As prescribed under the Act, this is truly a democratic body consisting of the people, for the people and by the people.

To constitute a quorum of Gram Sabah, at least fifty per cent of the members of the Gram Sabah must be present and voting to pass any resolution, out of which not less than one-third of members shall be women. All the resolutions of the Gram Sabah prescribed under the Act and Rule can be passed by a simple majority of those present and voting, that is, by more than half of the members approving the resolution. In cases where the resolution being considered by the Gram Sabah concerns claims of forest rights, there is a special requirement of at least fifty per cent of the claimant of the forest rights or their representatives to be present before the Gram Sabah can pass a resolution in favour or against their claim (Rule 4(2), Forest Rights Rule, 2007).

Gram Sabah can be cogitated as the legislature of a Village, which takes decisions on matters of importance and common concern to its inhabitants. The Gram Sabha constitutes, monitors and controls Committees constituted for the protection of wildlife, forest and biodiversity to ensure conservation and management plans for community forest resources to sustainably and equitably manage them for the benefit of the village and thus integrate such conservation and management plan with the micro plans or working plans or management plans of the forest department (Rule 4(1)(e), 4(1)(f), Forest Rights Rule, 2007). Where the rehabilitation of the forest dwellers becomes inevitable under Section 4(2) of the Act, 2006, the Gram Sabha can, by a majority, consider and approve resettlement packages upon involuntary acquisition of their habitat (Rule 4(1)(d), Forest Rights Rule, 2007).

The Gram Sabha has been entrusted with the duty to receive and hear the claims relating to forest rights and thus determine the nature and extent of such forest rights being claimed. However, since Gram Sabha is an egalitarian body consisting of many members, the Act has designated an executive body to act as its administrative arm for processing and verifying claims. This executive body has been termed as the 'Forest Rights Committee', which shall be elected for this specific purpose by the Gram Sabha.

The Committee thus elected must have at least ten individuals from the Gram Sabha, but at most fifteen persons, as its members (Rule 3(1), Forest Rights Rule, 2007). The Committee must comprise at least two-thirds of the members belonging to the Scheduled Tribes. Also, out of the total strength of the FRC, at least one-third of such members must be women. Where there are no Scheduled Tribes in the area under the Gram Panchayat, at least one-third of such members must be women (Rule 3(1), Forest Rights Rule, 2007).

From amongst the members thus elected by the Gram Sabah towards the Forest Right Committee, they shall elect a Chairperson and Secretary of the Committee and intimate the same to the Sub-Division Level Committee (Rule 3(2), Forest Rights Rule, 2007). To maintain fairness in the process, any person claiming a forest right to be examined and verified by the Committee shall not participate in the process if he is a committee member and thus is precluded from being a judge in his cause (Rule 3(3), Forest Rights Rule, 2007). Thus, the FRC has been entrusted with the task bestowed upon the Gram Sabha, that is, to collect, process, verify and propose the extent of rights claimed by an individual or a community.

Notably, the Act of 2006 has significantly reduced the interaction between the claimant of the rights and the bureaucrats at the first instance of making such a claim. The preliminary determination of the rights has been left with the Gram Sabha, which consists of all the adult members of the village. The FRC also comprises only the members of the village. Thus, the village's residents have been recognised as being the best judge to assess the claim of rights, equipped with the knowledge and expertise of traditional rights being exercised in the area. If adopted aptly, this can be considered as an unprecedented step in developing the trust between the people and the bureaucracy by promoting self-governance.

Though the intent of the legislation in bestowing the authority of receiving claims to the Gram Sabha has been phenomenal, research suggests that this is not what is followed on the ground. As per Government Data, 17% of applications for forest rights claim were rejected at Gram Sabha Level and were not forwarded to the SDLC for consideration. The SDLC forwarded almost all the applications thus recommended by the Gram Sabha to the DLC, with only about 1% of the applications being rejected at this stage. The average rate of rejection rises at DLC level, whereby more than 36% of the applications recommended by the Gram Sabha are rejected (RTI reply, 2023). However, per one detailed research conducted in 2013 for the State of Chhattisgarh, 73.78% of the claims under the Act of 2006 were found to be rejected at the Gram Sabha level, which is far more than what has been calculated from the Government data (SCSTRTI, 2013). This is a staggering figure, which does not include those applications which were even refused to be acknowledged by the Gram Sabha. The major reason attributable towards such elimination of application is bureaucratic interference in Gram Sabha proceedings (SCSTRTI, 2013). The deep penetration of the forest department and the complexity of the law tend to give them an upper hand in dictating the proceedings. As such, the uneducated forest dwellers also rely on these forest officers or the Panchayat Secretary for their wisdom of the law, which is often misused by these authorities. Though the role of the forest department within the Act of 2006 is minuscule, it has been discovered to veto the resolution of the Gram Sabha, thus dictating the FRC (CSD, 2010). In Chhattisgarh, the villagers are coerced by the forest department into accepting claims only for those forest lands and only for such rights that the officers want them to, thus besmirching the authority of the FRC (MoEF/MoTA Committee on Forest Rights Act, 2010).

Also, as discussed earlier, the holding of Gram Sabha meetings at the Panchayat level defeats the purpose of such meetings at the local level, thus failing to truly gain the consensus of the dwellers of the forest. As such, the Act is defined in its purpose of devolving the authority to Gram Sabha so as to facilitate a closed community-based decision-making, with the Sarpanch heading the FRC and its meetings being called at the Panchayat level by the Panchayat Secretary, thus resulting in the Panchayat asserting the authority to collect and verify the claims rather than the Gram Sabha (Bandi, 2014). Those residing in deep hamlets within the forest and far from the village never know about the meetings or fail to go far to the panchayat office for the same. Such bureaucratic interference flouts the purpose of devolving the powers to the Gram Sabha and defies the Act's spirit.

Sub-Divisional Level Committee

The Sub-Divisional Level Committee is the bridge between the proposing authority Gram Sabah and the approving authority of the State, the DLC. The SDLC comprises six members with an equal public and bureaucratic representation ratio (Section 6(8), Forest Rights Act, 2006). The Sub-Divisional Officer or an equivalent officer is designated as the Chairperson of the committee, (Rule 5(a), Forest Rights Rule, 2007) with the other two ex-officio official members being the Forest Officer in charge of the Sub-division or any equivalent officer and the other member being an officer of the Tribal Welfare Department in-charge of the Sub-Division and where such an officer is not available, the officer-in-charge of the tribal affairs (Rule 5(b), Rule 5(d), Forest Rights Rule, 2007). The other three representative members are nominated by the District Panchayat from Block or Tehsil level panchayat, out of which at least two members belong to the Scheduled Tribes and preferably be forest dwellers or belong to PVGT. Where such a number of Scheduled Tribes are unavailable, two members shall preferably be traditional forest dwellers and one shall be a women member (Rule 5(c), Forest Rights Rule, 2007).

The SDLC plays a role in sensitising the Gram Sabha and its members about their rights and their responsibility towards their ecology. The SDLC has been made responsible for raising awareness amongst the forest dwellers about the object of the Act and the procedure that they can avail for recognition of their rights and thus ensure easy and free availability of the necessary documents to do so (Rule 6(k) & Rule 6(l), Forest Rights Rule, 2007). The SDLC ensures that the Gram Sabha Meeting are conducted freely and fairly with the requisite

quorum and provides necessary assistance to the Gram Sabha and FRC by providing forest and revenue maps and electoral rolls in furtherance of their duties (Rule 6(b), Rule 6(m), Forest Rights Rule, 2007). The SDLC collates the resolutions, consolidates the maps and thus examines the maps and resolutions passed and forwarded to the SDLC to assess the veracity of the claims (Rule 6(c), Rule 6(d), Rule 6(e), Forest Rights Rule, 2007). The SDLC acts as a quasi-judicial authority in hearing the disputes between different Gram Sabhas on the nature and extent of the forest rights and also hears petitions from persons, including State agencies, against any resolution passed by the Gram Sabah (Rule 6(f). Rule 6(g), Rule 6(h), Forest Rights Rule, 2007). After adjudication of all the disputes and grievances and thus assessment of the veracity of the claims, the SDLC is required to prepare the draft record of proposed forest rights after reconciling government records (Rule 6(i), Forest Rights Rule, 2007). Such draft records are then forwarded to the DLC along with the claims of forest rights by the Sub-Divisional Officer for facilitating the final decision (Rule 6(j), Forest Rights Rule, 2007).

District Level Committee

The District Level Committee is the final authority to consider and approve the record of rights prepared by the SDLC. The constitution and composition of the DLC are similar to the SDLC, whereby the DLC shall also comprise six members with an equal composition of public representatives and State authorities (Section 6(8), Forest Rights Act, 2006). The District Collector or Deputy Commissioner is designated as the Chairman of the District Level Committee (Rule 7(a), Forest Rights Rule, 2007). The concerned Divisional Forest Officer or the Deputy Conservator of Forest is one of the members of the DLC, and the Officer of the Tribal Welfare Department of the district, or the officer in charge of the tribal affairs in its absence, is the other of the two bureaucratic members of the committee (Rule 7(b), Rule 7(d), Forest Rights Rule, 2007). The three members form amongst the public representative would be members of the District Panchayat. Similar to that of the SDLC, out of the three members thus being nominated by the District Panchayat, at least two members must belong to the Scheduled Tribes and preferably be forest dwellers or belong to PVGT.

The District Level Committee is empowered to consider and finally approve the claims and record of rights formulated and forwarded by the SDLC (Rule 8, Forest Rights Rule, 2007). The DLC shall examine whether all the claims have been addressed, keeping in mind the objective of the Act and pay special attention to the claims of the Primitive Tribal Groups,

pastoralists and nomadic tribes as such (Rule 8(b), Forest Rights Rule, 2007). The DLC is expected to proactively ensure habitat rights to Primitive Tribal Groups, pastoralists and nomadic tribes, who may not constitute a part of any Gram Sabha due to their floating population or differential vulnerability. This proactive role of the DLC towards PVTGs has been affirmed and expected by the Supreme Court in *Orissa Mining Corporation Ltd vs. Ministry of Environment & Forest* (2013). The DLC acts as a quasi-judicial authority in hearing the petitions against the decisions of the SDLC (Rule 8(d), Forest Rights Rule, 2007). After hearing the objections and assessment of the claims, the DLC approves the fit claims and thus issues directions to incorporate such approved forest rights in germane government records and in the record of rights (Rule 8(f), Forest Rights Rule, 2007). Such finalised record of rights is be published by the DLC and a certified copy of the record of rights and title under the Act must thus be provided to the concerned claimant or the Gram Sabha or the Community claiming such rights, as the case may be (Rule 8(g), Rule 8(h) & Rule 8(i), Forest Rights Rule, 2007).

State Level Monitoring Committee

Though State Level Monitoring Committee has no role in recognizing and vesting of forest rights, with the order of the DLC being the final in such recognition and vesting, the SLMC devises the criteria and indicators for monitoring the entire process and thus supervises the recognition, verification and vesting of forest rights (Section 6(7), Forest Rights Act, 2006). It lays down the guidelines of the DLCs of the State and thus monitors the issues raised by the members of the Tribes Advisory Council.

The SLMC predominantly comprises the State authorities with ten members in its constitution (Rule 9, Rule, 2007). These are:

a) Chief Secretary - Chairperson;
b) Secretary, Revenue Department - Member;
c) Secretary, Tribal or Social Welfare Department - Member;
d) Secretary, Forest Department - Member;
e) Secretary, Panchayati Raj - Member;
f) Principal Chief Conservator of Forests - Member;

g) Three Scheduled Tribes member of the Tribes Advisory Council, to be nominated by the Chairperson of the Tribes Advisory Council and where there is no Tribes Advisory Council, three Scheduled Tribes members to be nominated by the State Government;
h) Commissioner, Tribal Welfare or equivalent- Member Secretary.

The setup of the SLMC is composed of top-level bureaucrats of the State Government, with the Chief Secretary of the State being the Chairperson of the Committee and Commissioner of the Tribal Welfare Department being its Member Secretary. The only glimpse of any involvement of public representatives can be found in the inclusion of three Scheduled Tribes members from the Tribes Advisory Council who have to be nominated by the Chairperson of the Tribes Advisory Council. As per the composition of the Tribes Advisory Council under para 4 of the Fifth Schedule to the Constitution of India, the Tribes Advisory Council is mostly comprised of the Members of the State Legislative Assembly. Recently, the SLMC in Chhattisgarh has seen increased participation of such members, who have raised some very important issues and concerns of the forest dwellers (RTI Reply, 2023). This has steered the SLMC of Chhattisgarh in taking some major policy decisions and ensuring the application of the law.

The SLMC has been duty-bound to monitor any resettlement and specifically monitor retrospective claims of the forest rights in cases of illegal eviction (Section 3(1)(m), Forest Rights Act, 2006) or claim over unused land for the past five years (Section 4(8), Forest Rights Act, 2006). The SLMC is required to meet at least once every three months and is required to:

a) Monitor the process of recognition, verification and vesting of forest rights
b) Contemplate and address the problems in the field level
c) Publish a quarterly report to the Central Government detailing
    i. Assessment apropos the status of claim
    ii. Compliances towards the steps obligated under the Act
    iii. Particulars of the claims approved
    iv. Status of impending claims
    v. Reasons for rejection of the claims

The SLMC has been empowered to punish any delinquent authority under Chapter V of the Act. As such, where any such authority or committee or any member thereof, digresses from the mandate of the Act or the ancillary rules thus prescribing the process for recognition of forest rights, they shall be deemed to be guilty of offence under Section 7 of the Act 2006 and shall be liable to be punished with a fine which may extend to one thousand rupees (Section 7, Forest Rights Act, 2006). The SLMC has been empowered to take cognizance and thus proceed against any authority for offence prescribed under Section 7 of the Act 2006, upon receiving a complaint from a forest-dwelling Scheduled Tribe or a resolution of Gram Sabha or any such authority (Section 8, Forest Rights Act, 2006).

Besides Gram Sabha, all the authorities under Chapter IV of the Act are constituted by the State Government. All the agencies thus involved in the process under Chapter IV for recognition and vesting of rights are deemed to be public servant within the meaning of Section 21 of the Indian Penal Code (Section 9, Forest Rights Act, 2006). Thus, the application of the Indian Penal Code would be drawn for any offence relating to offences against the authorities under Chapter IV of the Act, 2006. Accordingly, if while discharging the duties under the Act by any authority under Chapter IV of the Act 2006, any person commits an offence under the Indian Penal Code, including Chapter X of the Indian Penal Code, he/she will be liable to be prosecuted and tried under the Code of Criminal Procedure. Following are some of the relevant offences punishable under the Indian Penal Code for offences against Public Servants:

- Absconding to avoid service of summons or other proceeding (Section 172, Indian Penal Code, 1860)
- Preventing service of summons or other proceeding, or preventing publication thereof (Section 173, Indian Penal Code, 1860)
- Non-attendance in obedience to an order from public servant (Section 174, Indian Penal Code, 1860)
- Omission to produce document to public servant by person legally bound to produce it (Section 175, Indian Penal Code, 1860)
- Omission to give notice or information to public servant by person legally bound to give it (Section 176, Indian Penal Code, 1860)
- Furnishing false information (Section 177, Indian Penal Code, 1860)

- Refusing oath or affirmation when duly required by public servant to make it (Section 178, Indian Penal Code, 1860)
- Refusing to answer public servant authorized to question (Section 179, Indian Penal Code, 1860)
- Refusing to sign statement (Section 180, Indian Penal Code, 1860)
- False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation (Section 181, Indian Penal Code, 1860)
- False information, with intent to cause public servant to use his lawful power to the injury of another person (Section 182, Indian Penal Code, 1860)
- Resistance to the taking of property by the lawful authority of a public servant (Section 183, Indian Penal Code, 1860)
- Obstructing sale of property offered for sale by authority of public servant (Section 184, Indian Penal Code, 1860)
- Illegal purchase or bid for property offered for sale by authority of public servant (Section 185, Indian Penal Code, 1860)
- Obstructing public servant in discharge of public functions (Section 186, Indian Penal Code, 1860)
- Omission to assist public servant when bound by law to give assistance (Section 187, Indian Penal Code, 1860)
- Disobedience to order duly promulgated by public servant (Section 188, Indian Penal Code, 1860)
- Threat of injury to public servant (Section 189, Indian Penal Code, 1860)
- Threat of injury to induce person to refrain from applying for protection to public servant (Section 190, Indian Penal Code, 1860)
- Voluntarily causing hurt to deter public servant from his duty (Section 332, Indian Penal Code, 1860)
- Assault or criminal force to deter public servant from discharge of his duty (Section 353, Indian Penal Code, 1860)
- Mischief by destroying or moving, etc., a land-mark fixed by public authority (Section 434, Indian Penal Code, 1860)

Thus, though the Act of 2006 does not propose any penal action against the forest dwelling Scheduled Tribes or other traditional forest dwellers, by defining the authorities under the Act

to be public servants as under Section 21 of the IPC, the checks against furnishing false information and deterrence in proceedings have been incorporated through the application of criminal procedure. Though such checks are unavoidable for preventing the misuse of the Act by mischievous elements, however, this may pose a serious deterrence since there is no explicit protection for bonafide mistakes that could be committed by the indigenous and secluded population of forest dwellers, who would have to face criminal charges and trial for claiming their own rights and proving their innocent mistake.

Procedure For Filing, Determining and Verification of Claims: Grant of Title

Gram Sabha/ Forest Rights Committee:

The first step in recognising forest rights is to recognise such hamlets and habitations in forests which are unrecorded and unsurveyed settlements and thus are not a part of any forest or revenue record. The Panchayat is entrusted with the job of identifying such settlements within its boundaries and is required to prepare a list of such hamlets and habitations. The concerned Gram Sabha approves this list of each settlement by passing a resolution in its favor. The list is then to be forwarded to the Sub-Division Level Committee after the Panchayat has approved the same through a resolution. The Sub-Division Level Committee thereafter consolidates and verifies the list and thus proposes the inclusion of such hamlets and habitations within the proposing panchayat by forwarding the same to the DLC. Thus, after considering public comments, if any, the DLC shall finalize the list and hence recognize such settlements (Rule 2A, Forest Rights Rule, 2007).

Where the territory of the Gram Sabha is already recognized, the Forest Rights Committee plays the pivotal role in assimilation of claims over forest rights on behalf of Gram Sabha. The Gram Sabah calls for claims and authorizes the FRC to accept claims, to be submitted within three months from such date and under such proforma as prescribed under Annexure I of the Rules 2007 (Annexure 1, Rule, 2007). The form prescribed under Rule, 2007 seeks personal and family details of the claimant along with the category under which they claim such a right, being Scheduled Tribe or Other Traditional Forest Dweller. The form furthermore requires the claimant to submit the nature and extent of their claim over the forest land along with evidence in support of such claim. The evidences thus required in

support of a claim must be at least any two evidences from the list of acceptable evidences being: (Rule13(1), Forest Rights Rule, 2007)

a) public documents, Government records such as Gazetteers, Census, survey and settlement reports, maps, satellite imagery, working plans, management plans, micro-plans, forest enquiry reports, other forest records, record of rights by whatever name called, pattas or leases, reports of committees and commissions constituted by the Government, Government orders, notifications, circulars, resolutions;
b) Government authorised documents such as voter identity card, ration card, passport, house tax receipts, domicile certificates;
c) physical attributes such as house, huts and permanent improvements made to land including levelling, bunds, check dams and the like;
d) quasi-judicial and judicial records including court orders and judgments;
e) research studies, documentation of customs and traditions that illustrate the enjoyment of any forest rights and having the force of customary law, by reputed institutions, such as Anthropological Survey of India;
f) any record including maps, record of rights, privileges, concessions, favours, from erstwhile princely States or provinces or other such intermediaries;
g) traditional structures establishing antiquity such as wells, burial grounds, sacred places;
h) genealogy tracing ancestry to individuals mentioned in earlier land records or recognized as having been legitimate resident of the village at an earlier period of time;
i) Statement of elders other than claimants, reduced in writing.

The evidences that are acceptable and acknowledged under the Rules for claim towards 'Community Forest Resource' are: (Rule 13(2), Forest Rights Rule, 2007)

a) community rights such as nistar by whatever name called;
b) traditional grazing grounds; areas for collection of roots and tubers, fodder, wild edible fruits and other minor forest produce; fishing grounds; irrigation systems; sources of water for human or livestock use, medicinal plant collection territories of herbal practitioners;

c) remnants of structures built by the local community, sacred trees, groves and ponds or riverine areas, burial or cremation grounds;
d) Government records or earlier classification of current reserve forest as protected forest or as gochar or other village common lands, nistari forests
e) Earlier or current practice of traditional agriculture.

Thus, a form for claim of rights over forest and its resources by any individual or community must be accompanied by at least two evidences from the list of acceptable evidences prescribed under the Rules 2007 to be considered by the FRC (Rule 11(1)(a), Forest Rights Rule, 2007). The SDLC or the DLC are bound to consider such evidences. They cannot insist upon any particular form of documentary evidence for consideration of the claim (Rule 12A (11), Forest Rights Rule, 2007). Any fine receipts, encroacher lists, primary offence reports or forest settlement reports cannot be the sole basis for rejecting any claim. Satellite imagery and other technological data cannot supersede the proposed evidences but can only supplement any other evidence thus prescribed (Rule 12A (11), Forest Rights Rule, 2007).

The nature of the evidence sought under this beneficent Act is a very lenient one so as to ensure effective implementation of the Act. However, despite a clear mandate under the Act, the administration's whims to accept one type of evidence and reject the other has been found to exist profusely. The authorities have been found to insist on a particular type of evidence and often refuse oral evidence by village elders (Xaxa Committee, 2014). This is not only in violation of the Act, 2006, but also disregardful of the history of the forest-dwelling tribes, who have a culture of oral edification and least reliance upon written corroborations.

With the advent of technology, the Government has now been placing significant reliance on satellite imagery for asserting the veracity of claims made by forest dwellers, which has been specifically cautioned against under the Act. Though satellite imagery may be useful for demarcating the boundaries of the Community Forest, the same cannot be replaced as a tool for ascertaining the rights, as it has been found to be faulty in its application due to its inability to discover the existence and extent of community rights over traditional forest resources. Also, the satellite imagery relies on changing cultivation over land to assess individual rights, which fails the test for those forest-dependent dwellers who do not cultivate, like many of the PVTGs (Menon, 2013).

Such demands for a particular type of evidence and rejecting the prescribed evidences in favour of satellite imagery have been recently rebuked and held to be illegal by the High Court of Gujarat in a very progressive judgment while observing that: (ARCH vs. State of Gujarat, 2020, p. 23)

"We are of the opinion, having regard to the object of the Act and the purpose for which the same has been enacted, that to demand from such a class of citizens strict proof as regards their rights would frustrate the very object with which the Act has been enacted. Needless to say that the Act 2006 is a social piece of legislation and the legislative intent is to protect the rights of the Scheduled Tribes dwelling in the forests. The objective of such social welfare measures, no doubt is to provide better, efficient and meaningful life to such forest dwellers. The primary duty of the Court, while interpreting the provisions of such Act, is to adopt a constructive approach to achieve the purpose of the Act. Any other interpretation that would defeat the very purpose of the Act is not permissible in law. One should not overlook or ignore the hard fact that the claim petitions are filed by the persons who are absolutely illiterate and would hardly possess any such cogent and convincing evidence to the satisfaction of the authorities. We do not propose to say that the authorities should consider the claims in a slipshod manner but at the same time to decide the entire claim based only on satellite imageries would also not subserve the object of the Act, ignoring other pieces of evidences."

The FRC thus assists the Gram Sabha in receiving and duly acknowledging the receipt of claims (Rule 11(3), Forest Rights Rule, 2007). The FRC retains the claims along with supporting evidence and thus prepares a list of claimants along with the record of claims and evidences including maps (Rule 11(2), Forest Rights Rule, 2007). The FRC also acts as an agent for the Gram Sabha. It prepares the claim on behalf of the Gram Sabha in claiming community forest rights and for claiming the right over community forest resources (Form B, Form C, Forest Rights Rule, 2007). All such claims are duly recorded in a register maintained by the Gram Sabha, enlisting all the claimants and their claims (Rule 4(1)(b), Forest Rights Rule, 2007).

After receiving and recording the claims along with requisite evidences, the FRC is required to verify the claims as per rules and thus present their finding of the nature and extent of such

verified claims before the Gram Sabha for its consideration and further resolution (Rule 11(2)(v), Forest Rights Rule, 2007).

The method of verification of the rights entails bureaucratic engrossment. The FRC is obliged to inform the officials of the Forest and Revenue department about the verification process, who shall remain present on site during the verification of the claims and evidences and thus sign the 'Panchnama' of the proceedings denoting their designation, date and comments (Rule 12A(1), Forest Rights Rule, 2007). The engagement of the officers in the verification process by the FRC has been made quintessential by the Rule, 2007, as any recommendation in the absence of the representatives of the forest or revenue department can be remanded back to the Gram Sabha for re-verification for the entire process to be undertaken once again in the presence of the officers (Rule 12A (2), Forest Rights Rule, 2007).

However, research reports found that sometimes the Panchnamas or the field report is created at the office of the authorities without ever vising the place and signatures on blank pages are taken from the witnesses and members of the Gram Sabha (SCSTRTI, 2013, p. 112). In Chhattisgarhi, this practice is popularly referred to as '*khatiya girdawli'*, which denotes the bureaucratic predilection of conducting surveys from the comfort of the cot, ultimately resulting in inaccuracy and confusion. Such practice results in a poor report for further consideration and thus is more often than not rejected. Moreover, the lack of actual physical assessment results in loss to the forest dwellers, who are issued wrong titles and often get lesser land than occupied, upon the whims of the officers.

The FRC prepares the reference map of forest rights within their jurisdiction. The map indicates recognisable landmarks and thus denotes the area under claim, customary boundaries of the community forest and the extent of community forest resources. Such a map has to be formulated by the FRC after due intimation to the concerned claimant and in consultation with the village elders who are well versed with the traditional boundaries of the forest and know about their customary access to the forest resources.

The claims and evidences along with records of the verification are then placed before the Gram Sabha by the FRC and the Gram Sabah convenes a meeting with prior notice and intimation and thus considers the findings recorded by the FRC before passing appropriate

resolution. The resolution thus passed is forwarded to the SDLC (Rule 11(5), Forest Rights Rule, 2007).

Thus, under the entire process of recognition and vesting of forest rights the Gram Sabah or the FRC have been vested with the exclusive power to receive, reject, modify or decide upon any claim on forest rights at Block or Panchayat or forest beat or range level and such a power cannot be accorded to any other committee or officer (Rule 12A (10), Forest Rights Rule, 2007).

Any claim made over forest rights under the Act through Gram Sabha cannot be rejected on merely technical or procedural grounds. This protects the backward population living in the jungles, who may make technical or procedural mistakes in representing their claims. Furthermore, any recommendation or decision by the SDLC or DLC, thus rejecting or modifying the resolution of the Gram Sabha or the recommendation of the SDLC, as the case may be, shall be in writing, giving a detailed reason for doing so. A copy of the order rejecting or modifying the claim and the reason for doing so shall be made available to the claimant (Rule 12A (10), Forest Rights Rule, 2007).

If upon any petition or after due consideration of the reports and records thereof, either the SDLC or the DLC finds the recommendation of the Gram Sabha to be incomplete or prima facie in need of additional examination, the same shall be remanded back to the Gram Sabha. The SDLC or the DLC cannot modify or reject the recommendation of the Gram Sabha but can only require the Gram Sabha to reconsider their resolution after additional examination or re-examination (Rule 12A (6) & Rule 12A (7), Forest Rights Rule, 2007).

The Sub-Divisional Level Committee:

After receiving the resolution passed by the Gram Sabha, the Sub-Divisional Level Committee scrutinizes the claims and thus prepares its record. The SDLC collates the resolutions, consolidates the maps and thus examines the maps and resolutions to assess the veracity of the claims (Rule 6, Forest Rights Rule, 2007).

Any rejection or modification of a claim under the resolution of the Gram Sabha ought to be personally communicated to the person making such a claim. Any person aggrieved by the

resolution passed by the Gram Sabha may file a petition before the SDLC within sixty days from the resolution date (Rule 12A (3), Forest Rights Rule, 2007). The SDLC will then fix a date for the hearing and intimate the petitioner and the Gram Sabha at least fifteen days before the hearing. After granting a reasonable opportunity to be heard to the interested parties, the SDLC may allow or reject the petition or refer the petition for reconsideration by the Gram Sabha, which must be resolved by the Gram Sabha within thirty days after hearing the petitioner. The resolution on the reference shall thereafter be forwarded to the SDLC, which shall consider the resolution and pass appropriate orders of either accepting or rejecting the petition. The pendency of any such petition does not preclude the SDLC from collating the records of forest rights of other claimants and submitting the same before the DLC. The SDLC also acts as a mediator between two or more Gram Sabha in case of any dispute. It can also act as an adjudicator if medication attempts to resolve the issue fails between the Gram Sabhas within thirty days (Rule 14, Forest Rights Rule, 2007).

District Level Committee:

The DLC is the final authority to consider and approve the record of rights prepared by the SDLC. Any rejection or modification of a claim over the forest rights by any person, either under the resolution of the Gram Sabha or under the recommendation of the SDLC, shall be personally communicated to the person making such a claim (Rule 12A (3), Forest Rights Rule, 2007). Any person aggrieved by the decision of the SDLC may prefer a petition to the DLC within sixty days from the date of such impugned decision. The DLC will then fix a date for the hearing and intimate the petitioner and SDLC at least fifteen days before the hearing. After granting a reasonable opportunity of being heard to the interested parties, the DLC may allow or reject the petition or may refer the petition for reconsideration by the SDLC, which the SDLC must resolve after hearing the petitioner and the Gram Sabha. The decision on the reference shall thereafter be forwarded to the DLC, which shall consider the decision and pass appropriate orders of either accepting or rejecting the petition. The DLC also acts as a mediator between two or more SDLCs in case of any dispute. It can also act as an adjudicator if the attempts of medication to resolve the issue fails between the SDLC and thus can pass appropriate order after hearing different concerned SDLCs (Rule 15, Forest Rights Rule, 2007).

If upon any petition or after due consideration of the reports and records thereof, either the SDLC or the DLC finds the recommendation of the Gram Sabha to be incomplete or prima facie in need of additional examination, the same shall be remanded back to the Gram Sabha. The SDLC or the DLC cannot modify or reject the recommendation of the Gram Sabha but can only require the Gram Sabha to reconsider their resolution after additional examination or re-examination (Rule 12A (6) & Rule 12A (7), Forest Rights Rule, 2007).

However, such a petition to the higher authority against the resolution of the Gram Sabha or the SDLC can also be preferred by any other state agency which objects to the resolution by the Gram Sabah or to the recommendation by the SDLC, whereby the SDLC or the DLC, as the case may be, decide upon such an objection after hearing the claimant and in absence of the representative of the objecting agency (Rule 12A (4), Forest Rights Rule, 2007). Thus, the Government can be aggrieved and thus plea such grievance before the authorities to override the prudence of the Gram Sabha.

The Act strictly prohibits any petition directly before the DLC against a resolution of Gram Sabah, without first exhausting the remedy of a petition before the SDLC (Section 6(4), Forest Rights Act, 2006). Thus, the decision of the DLC on the records of forest rights has been declared to be final and binding on the claimant, with no further statutory remedy being provided against the decision of the DLC (Section 6(6), Forest Rights Act, 2006). Nonetheless, the same can always be challenged under Article 226 or under Article 32 of the Constitution of India before the High Court or the Supreme Court, respectively.

After hearing objections and considering recommendations, the DLC shall pass the final order, thus completing the rights settlement process. Accordingly, the titles are issued to the claimants (Annexure II or Annexure III or Annexure IV, Forest Rights Rule, 2007) and DLC directs the Forest and Revenue department to prepare a final map of the forest land in which the issuance of title has vested (Rule 8(f), Forest Rights Rule, 2007). The forest rights vested upon the claimants by the issuance of title are also to be recorded in the relevant Forest and Revenue records by the concerned authorities within the time specified in the State laws or three months, whichever is earlier (Rule 12A(9), Forest Rights Rule, 2007). The DLC is duty-bound to send the records of forest rights of a claimant to the District Collector or District Commissioner for required adaptations so as to reflect the accorded rights in the Government records (Rule 15(6), Forest Rights Rule, 2007). The recognition of rights is only deemed to

have been completed and concluded when the title has been inducted in the Record of Rights (Circular No. 23011/12/2015-FRA, 2015).

The title thus issued is the legal title which declares ownership. Unlike the previous instruments like lease and patta, it is a documentary recognition of all the forest rights thus recognized and vested in an individual or a community. This title has a clear description of the forest rights recognized, the area towards which these rights are recognized and the degree of exercise of rights under such area or over the adjoining forest. The title is signed by the competent authority under the Act to certify such recognitions. For individual titles, the survey number of the land is also mentioned for demarcating the land and rights. There cannot be any special conditions under the title, as any conditional title would be illegal and the demand for such condition is without any legislative sanction (Green, 2015). The title has the force of law and is non-transferable and inalienable and can only be inherited as provided under Section 4(4) of the Act, 2006.

Overview:

The enactment of the Forest Rights Act, 2006 has often been regarded as a watershed moment in India's history of recognition of forest rights. As discussed, the law that came to be differs from the one suggested by the Joint Parliamentary Committee. The law insinuated by the Joint Parliamentary Committee was an outcome of public participation and discussion and thus aligned with the spirit of the legislation. The contribution of the Joint Parliamentary Committee in framing an apt law needs a distinctive ovation. The law faced severe opposition from industrial lobbyists and wildlife conservationists, and thus the finally adopted Act is a result of an “intensively-contended drafting process.” (Bandi, 2012, p. 68)

The rights conferred under the Act, 2006 can thus be categorised into three major heads: 1) right over land, 2) right to use forest resources and collect such resources for livelihood and 3) right to protect and conserve (Bandi, 2012). The theme of the Act of 2006 is not individual-centric but rather community-centric. The rights of an individual are nestled within the rights of the Gram Sabha, whereby the community has the right to regulate such individual rights. Apart from the title right over land under occupation, all other rights over community forest resources and the land thereto are not proprietary in nature and thus cannot

be equated with private property rights. As elucidated, the tribes have been a closed-knit society; thus, recognising their rights as a community has been a significant step in respecting their social structure.

The restrictions under the Act, such as that of cut-off date and embargo on transfer of title, seem justified to prevent any misuse of the Act, as has been apprehended by the wildlife and forest conservationists. Subsequent notifications and explanations have watered down the strict requirement for eligibility of the OTFDs but are strict enough to minimise the chances of abuse of the law.

The Act pays heed and thus creates distinction for the sub-category of Particularly Vulnerable Tribal Groups, which was necessitated due to their exceptionally grave vulnerable status. The requirement of the proactive role of the district administration in protecting their rights is quintessential since these tribes live in deep isolation from the village and are least bothered about laws and regulations. In 2019, the Government of Chhattisgarh started paying earnest heed to the habitat rights of the PVTGs, which is absolutely noteworthy. The Government of Chhattisgarh has commenced recognition of the habitat rights of Abujhmarias, one of the notified PVTGs and amongst the most downtrodden communities in Chhattisgarh, in a significant step (Kukreti, 2019). These tribes have been historically averse to sovereign interference and are highly sceptical towards any proposals by the Government. However, the State of Chhattisgarh's endeavours to win the population's trust by taking a preemptive step in granting them their legal rights is commendable.

Rather than giving privileges for mere sustenance, the Act acknowledges a broad spectrum of rights of the recognised forest dwellers. This is a significant leap from the imperial jurisprudence, whereby the ownership and utility of the forest by the forest dwellers was severely fettered. Thus, the Act, 2006 recognises most of the rights historically claimed by the forest dwellers for dignified living, both in their individual capacity and as a community, while leaving space for accommodating any other traditional entitlements under Community Forest Resources. Moreover, even if such rights have not been recognised, the burden is upon the State to identify, verify and settle such rights, without which the forest dwellers cannot be evicted. Thus, though the title of rights is a concrete document of ownership under the Act, the forest dwellers can continue to own their land since the nature of restriction from eviction under the Act is absolute (ARCH vs. State of Gujarat, 2020).

The empowerment of the Gram Sabha to take its own decisions is not unique to the Act, but finds its foundation in the PESA Act, 1996. Both the Acts are in consonance with recognising the right of self-determination, thus devolving the political and social control back to the people. The Gram Sabha has been granted forest stewardship under the Act, 2006 and thus presents a political stage for the people to assert their rights over it. Giving the power to collect and verify the claim of rights to the Gram Sabha is a major step in ensuring their involvement and putting deep faith in respecting their environment. These Acts read together are amenable with most of the international benchmarks set towards the recognition of the rights of the forest dwellers.

The Act suffers from very few legal flaws. However, these flaws have been fatal.

The confusion regarding the supersession of the law is its biggest legal shortcoming. The Forest Rights Act, 2006 is one-of-a-kind legislation and has been formulated on a different jurisprudence than the previous laws governing the field of forest and forest land in India. As discussed in the previous chapter, the entire aim of the colonial Government, under various laws governing the field of forest and land therein, had been to exclude the forest dwellers from the forest and refuse any recognition of their rights over the land. The Act of 2006 reverses this stand and thus endeavours to address this very 'historic injustice'. The Act recognises the rights of these dwellers over the forest and the land and thus is entirely in contravention of everything before it. However, by adopting the phrase 'Act not in derogation of any law' rather than 'Overriding effect of the Act', as suggested by the Joint Parliamentary Committee, the Act has now been left open to interpretation, thus continuing with the sense of insecurity upon the uncertainty of such interpretation, which can be different with different Acts.

Also, the recommendation of the Joint Parliamentary Committee to include the provision delineating 'Duties of the Government' would have been in furtherance of the spirit of the Act, especially Clause 5(5), which stated: "No forest land shall be acquired or diverted that may adversely affect the rights recognised under this Act without prior intimation to and prior consent of the Gram Sabha and the affected persons without paying adequate and equal compensation on the principle of "cultivable land for land" and proper rehabilitation." This would have brought the aspect of dialogue and communication between the parties concerned

in land acquisition and confirmed to the international benchmark of free and prior informed consent towards involuntary dispossession. Also, it would have affirmed the requirement of consent before the diversion of forest land under the Forest (Conservation) Act, 1980. The grant of land for land and the requirement of consent for rehabilitation would have been in confirmation and upgradation of the requirement of such consultation under the RFCTLARR Act, 2013 and the PESA Act, 1996. However, the fear of the word 'consent' by the Government has made it awry to include any such provision, which routs the objective of the Act.

Apart from a few legal loopholes, the Forest Rights Act, 2006, in theory, is an exceptional tool for redressing the historic injustice faced by forest dwellers if implemented in its true spirit. Thus, while defending the Constitutionality of the Forest Rights Act, 2006 and seeking a suspension on order for evicting lakhs of forest dwellers before the Supreme Court, (Wild Life First vs. Ministry of Forest and Environment, 2008), the Solicitor General of India Tushar Mehta aptly remarked upon the disappointment of the Act that "This is a human problem more than a legal problem" (Rajagopal, 2021)

As such, the Act is gravely plagued by its poor implementation. The particle problems in implementing the Act in Chhattisgarh have been empirically studied in detail by the SCSTRIT in its quite exhaustive study and thus provide an excellent hands-on idea about the reason for its ground failure. A complete analysis of all practical challenges would be beyond the scope of this legal research; however, some of the issues are being discussed to give a glimpse of the Act's practical failure.

Lack of knowledge about the law and the procedure, not only amongst the beneficiaries but also among the officers responsible for the implementation of the Act, is a recurring finding in almost all the papers which have empirically studied the implementation of the Act (SCSTRTI, 2013). Shockingly, claim applications have been found to be rejected for being late or incorrectly filled (SCSTRTI, 2013), and the dry response of the officer upon quarries by the forest dwellers adds to their disappointment (Kukreti, 2022). Issues such as profound and significant bureaucratic interference in the decision of the Gram Sabha, usurping the power of the Gram Sabha by the Panchayat and Joint Forest Management Committees, and faulty procedures adopted by the authorities in the verification and recognition of rights have now been widely recognised reasons for the failure of the Act to achieve the desired result.

However, these difficulties owing to bureaucratic apathy can be understood since more than 200 years of subjugation have made the forest dwellers used to the top-down approach, mainly when people are also conditioned to the governmentalised way of conducting Gram Sabha (SCSRTRIT,2013 p.110).

Though the Ministry of Tribal Affairs is the nodal agency in the implementation of the Forest Rights, it has often taken a back seat and has displayed hesitancy in abiding by its duties. This also majorly relates to the fact that the Ministry at both the Central and State levels are severely under-staffed and under-resourced, which makes it weak to handle such a colossal role under the Act (CFR-LA, 2016). The clash between the Ministry of Tribal Affairs and the Ministry of Environment, Forest and Climate has often found the Central Government inclined towards the latter, especially in matters of granting forest clearances and usurping the forest land for industrial usage. The intervention of high offices like the PMO in favour of the acquisition of forest land and against the mandate of consent from the forest dwellers has witnessed the Ministry of Tribal Affairs bucking under pressure and thus has turned a blind eye towards its duties as the nodal agency in protecting the rights of the forest dwellers (Bijoy, 2021). Where there have been inter-ministerial collaborations between the two ministries for implementation of the Forest Rights Act, the Ministry of Tribal Affairs has failed to raise important issues during the meets and has been unsuccessful in putting forth the interest of the forest dwellers, with the Ministry of Environment, Forest and Climate dominating the outcomes (Kukreti, 2021). Thus, when the resistance towards the law is within the Government, which has been constantly trying to dilute the law and its requirements, the Nodal Agency cannot be practically expected to function independently.

Nonetheless, none of the solutions for better implementation of the Act, 2006 can be suggested without an active role of the Civil Society Organizations and a dynamic involvement of the Nodal agency, being the Ministry of Tribal Affairs. Any reliance upon forest or revenue departments would not achieve the desired result due to the lack of trust by the forest dwellers. This is also due to the other roles and responsibilities borne by the forest and Revenue department, which not only makes them overburdened but carry interests contrary and conflicting with those of the forest dwellers.

Despite its legal and practical inadequacies, the Forest Rights Act, 2006 stands as a robust tool in recognising forest rights. As observed by Arora (2010), “even in the best of times, an

honest bureaucracy, a good and evenly distributed forest cover, a peaceful and vibrant civil society, political leaders concerned about the welfare of others, the implementation of the Act, at least in spirit, is a formidable task." (p. 484-521). Nonetheless, the Act, 2006 has been regarded as the most viable legislation in the world in granting the rights to its indigenous population against the claims of the Sovereigns over the forest land (Bijoy, 2021). Moreover, these recognised rights have become the base for forest dwellers to claim compensation and rehabilitation upon involuntary displacement. Hence, the enactment of the Forest Rights Act, 2006 is not the end of the fight for rights by the forest dwellers but is the beginning of the journey to reach its true horizon and thus answers the historic injustice they suffered for centuries.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Land acquisition during colonial rule was governed under the Land Acquisition Act, 1894, passed by the Imperial Legislative Council. The Act proclaimed the Colonial Government to be the *de jure* owner of all the land in the Country and granted an unfettered power to the Government to acquire any land by payment of meagre compensation towards such coercive alienation. This introduced and imbibed the common law doctrine of eminent domain in India, which is still a part of the nation's jurisprudence. After independence, The Land Acquisition Act, 1894 seemed beneficial and convenient for the Government of free India, which had remained consistent with the extractive mindset of the British Raj. Thus, the Act was adopted for its purpose after independence as well. Hence, the Act remained the prime legislation governing land acquisitions in the Country for 119 years, with the last amendment to the Act being done in 1984.

The Act was a bulldozer of rights and proclaimed the supremacy of Government in acquiring any land in the name of 'public purpose', without any assessment or consequences. The land oustees were left to their fate after being driven away from their habitat. The only remuneration was monetary, without considering the loss of economy, ecology or culture. Even the compensation accorded towards the forceful dispossession was calculated to grant a bare minimum reparation. Overall, the Colonial Act of 1894 did not recognise any special

groups and thus unjustly treated the oustees without considering their rehabilitation or any fair compensation award.

After much criticism and remonstration, the UPA Government in Centre repealed The Land Acquisition Act, 1894 and thus replaced the same with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('The RFCTLARR Act, 2013). The RFCTLARR Act, 2013 (Act 30 of 2013) received Presidential assent on 27th September 2013 and came into force on 1st January 2014 (Gazette (extraordinary) Notification No. 3729 (E), 2013). The Act was ardently opposed by the industrial lobby as the payment of exorbitant compensation and the responsibility of an elaborate rehabilitation would delay the projects and fall on them (Sampat, 2013). Nonetheless, the Act came to the rescue of all the land losers and was a pragmatic shift from the earlier colonial legislation.

The preamble and object of the RFCTLARR Act, 2013 expresses its aim to affect the land acquisitions "in consultation with institutions of local self-government and Gram Sabhas established under the Constitution" and strive for "a humane, participative, informed and transparent process for land acquisition." The RFCTLARR Act, 2013 not only lays down the process for a fair assessment of the quantum of compensation but also deliberates upon the essential aspects of rehabilitation and resettlement of the displaced diaspora. The procedure thus prescribed for assessment of the quantum of compensation (Section 27, RFCTLARR Act, 2013), the award of solatium (Section 30, RFCTLARR Act, 2013) and the factoring of the multiplier to be applied after assessing whether the land thus being acquired is situated in urban or rural area (Schedule I, Entry 2, RFCTLARR Act, 2013), brings about the final compensation to be a fair sum thus awarded towards the loss of land. Though the forfeiture under an involuntary acquisition is often more than just loss of estate and money, the Act has brought significant changes in bringing about all due fairness in procedure and compensation for the loss of land.

The RFCTLARR Act, 2013 is an exhaustive legislation and thus deals with many of the possible situations which may arise during an acquisition. Since the scope of this paper is limited, the RFCTLARR Act, 2013 will not be dealt with exhaustively but only to the extent where it concerns the forest dwellers and their rights. For such purpose, there are three distinct elements under the new Act, which elates it from the old one, being: Social Impact

Assessment, special status for Scheduled Tribes and Scheduled Areas and the requirement of Rehabilitation and Resettlement. These three requirements under the Act bring the legislation at par with international requirements in ensuring the observance of minimum rights towards the dispossession of indigenous lands. However, the exceptions to the legislation reverse these magnificent provisions, thus rendering the RFCTLARR Act, 2013 redundant.

In a considerate manner, the RFCTLARR Act, 2013 identifies the unique group of Scheduled Tribes and sometimes acknowledges the separate category of traditional forest dwellers. This is a significant change in a primary piece of legislation since recognition of the distinct class comprising of Scheduled Tribes and Forest Dwellers provides legitimacy to their distinct socio-economic needs and thus, in spirit, seeks to protect their traditional culture, economy and means of livelihood. The Act asserts that no land must be transferred by acquisition in Scheduled Areas in contravention of any law, thus recognising the special status of the Scheduled Areas as well (Section 2(2), RFCTLARR Act, 2013).

The RFCTLARR Act, 2013 defines "affected family" to explicitly include "the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land." (Section 3 (c)(iii), RFCTLARR Act, 2013). However, this definition poses some serious legal concerns. Though the class of Tribes and Forest Dwellers have been profoundly noted and included under the definition, it can be interpreted to include only those dwellers of the forest whose rights have been duly recognised and recorded under the Forest Rights Act, 2006. Upon interpretation, this limits the application of the Act to only those who have lodged and thus have been approved of their rights under the Act of 2006. However, the definition furthermore includes those "family whose primary source of livelihood for three years before the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land", thus protecting a wide base of people who have been dependent on the forest for their livelihood (Section 3 (c)(iv), RFCTLARR Act, 2013). Nonetheless, such claimants to come within the definition must show their dependence on the forest for the past three years, the test of which has been undefined.

Also, the definition of a "land owner" under the RFCTLARR Act, 2013 only covers those individuals or families who have been granted forest rights under the Forest Rights Act, 2006 (Section 3 (r), RFCTLARR Act, 2013). This is a small number compared to those who actually reside in such Scheduled Areas, yet their rights over their lands have not been recognised. These individuals who do not have their rights recognised are not granted any compensation for the alienation of their land (Koshy, 2021). This is also against the spirit of the Forest Rights Act, 2006, whereby no such alienation shall take place before the procedure for recognition of rights has been completed.

Thus, the critical definitions of the "affected family" and "land owner" under the RFCTLARR Act, 2013 have trappings of humdrum bureaucratic toil, which these forest dwellers would have to face to claim the benefits under the Act. To prove their status as being displaced due to the involuntary acquisition and to legally avail the distinct rights conferred under the Act for the special class, the forest dwellers would have to fall within the definition of the "affected family." Similarly, to fall within the definition of "land owners" before a Court of law, the forest dwellers would have to face the long process of recognition of forest rights under the Act of 2006, if the same has not been done beforehand. Thus, the forest dwellers would have to go through the tedious and wearisome process of either claiming and establishing their rights or proving that they have depended on the forest for the past three years to claim their mere livelihood. This is moreover concerning since, in the face of imminent acquisition, it can be fathomed that the State will try to reject as many rights as possible if the recognition is initiated after earmarking land for eviction. This would prevent any restoration of rights and thus save the amount from being paid towards compensation. Also, forest dwellers are aweary of hurriedly claiming their rights and proving their inheritance, since such an indulgence in bureaucratic process does not find favour with the forest dwellers' wish for seclusion. The recognition process must be community-driven and done through building trust, which would be lacking in a time-bound process towards land acquisition. Thus, at the very keyhole for applying the RFCTLARR Act, 2013, the Act shifts on a rudder, which may lead to stripping the tribals from the application and protection under the benevolent legislation.

Apart from fulfilling its primary purpose of replacing the Land Acquisition Act, 1894, the RFCTLARR Act, 2013 has included significant provisions dealing with the Social Impact Assessment, Rehabilitation and Resettlement and special recognition and protection of

Scheduled Tribes, thus trying to be at par with the international expectations and standards set towards requiring prior consent from the indigenous population and restoration of their ergonomic needs.

Procedure for Acquisition of Land

Though the RFCTLARR Act, 2013 prescribes a comprehensive process for acquiring land and thus its detailed discussion would be too lengthy to be accommodated within the scope of this paper, a basic understanding of the procedure is necessary to study the relevant provisions.

The acquisition process of any required land is formally initiated by the publication of a preliminary notification under Section 11 of the RFCTLARR Act, 2013, which announces the intention of the Government to acquire such land for public purposes. The notice is published after conducting a Social Impact Assessment, which has been dealt with in detail later. The notification under Section 11 must contain a statement on the nature of the public purpose involved, reasons necessitating the displacement of affected persons, a summary of the Social Impact Assessment Report and particulars of the Administrator appointed for rehabilitation and resettlement. This notice has to be specifically brought to the knowledge of the local bodies including Gram Sabha, thus informing the public about the particulars described therein (Section 11(2), RFCTLARR Act, 2013).

Any person interested in any land which has been notified under such notification can submit a written objection to the Collector, thus challenging: (Section 15(1), RFCTLARR Act, 2013)

a. the area and suitability of land proposed to be acquired
b. justification offered for public purpose;
c. the findings of the Social Impact Assessment report.

The Collector is required to hear such objections and furnish a report to the appropriate Government, containing the record of the proceedings held by him and his recommendations on the objections, along with a separate report reflecting the approximate cost of land acquisition and particulars of affected families likely to be resettled, for the decision of that Government (Section 15(2), RFCTLARR Act, 2013). The Government's decision upon

assessing the report and objections thereto has been declared final under the RFCTLARR Act, 2013 (Section 15(3), RFCTLARR Act, 2013).

The right to object and to be heard upon the grounds mentioned under Section 15(2) "represents the statutory embodiment of one of the facets of the rules of natural justice i.e. audi alteram partem." (Palaniswamy vs. The State of A.P. Revenue (Land Acquisition) Department, 2016). Thus the hearing against a decision of acquisition cannot be a mere formality but has to be carried out diligently and fairly by the authority. Refusal to accept or reject the objection without consideration and in a non-speaking manner would be a constitutional anathema and violative of Article 14 of the Constitution of India (Palaniswamy vs. The State of A.P. Revenue (Land Acquisition) Department, 2016).

Thus, after adjudication of the objections under Section 15(2), if any, and after the finalisation of the Rehabilitation and Resettlement Scheme, the appropriate Government issues the final declaration for its intention to acquire specified land under Section 19 of the RFCTLARR Act, 2013. The final notification for acquisition is required to identify the resettlement area mandatorily and must be supplemented with the finalised and detailed Rehabilitation and Resettlement Scheme (Section 19(2), RFCTLARR Act, 2013). This notification has to be issued within twelve months from the preliminary notification, or else the latter would be deemed to have been rescinded (Section 19(7), RFCTLARR Act, 2013). The Government can extend the period only upon reasons to be recorded in writing (Section 19(7), RFCTLARR Act, 2013). Such a declaration under Section 19 has been construed as conclusive evidence that the land is required for a public purpose. After making such a declaration, the appropriate Government may acquire the land as specified under the Act (Section 19(6), RFCTLARR Act, 2013).

Before taking actual possession of the land, the Collector is required to furnish a public notice stating the intention of the Government to take possession of the land and thus call for claims towards compensation and rehabilitation from all interested persons. The Collector may also serve personal notice upon any person who is the occupier of such land or holds interest over the land which the government intends to occupy. Any person aggrieved by the final notification and the Rehabilitation and Resettlement Scheme or the compensation therein is entitled to prefer an objection before the Collector within six months from the date of publication of the notice, thereby stating the nature of interests in the land and the amount

and particulars of their claims to compensation for such interests, their claims to rehabilitation and resettlement along with their objections, if any, to the measurements made under section 20 (Section 21, RFCTLARR Act, 2013).

The Collector can thus take possession of the land so acquired after ensuring the full payment of compensation to the land loser (Section 38(1), RFCTLARR Act, 2013). The rehabilitation and resettlement entitlements are to be paid to the entitled persons within a period of three months and the monetary part of rehabilitation and resettlement entitlements is to be paid within six months from the date of the award. The components of the Rehabilitation and Resettlement Package in the Second and Third Schedules related to infrastructural entitlements can be provided within eighteen months from the date of the award. Most pertinently, the Collector has been responsible for ensuring that the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families and taking possession of the land (Section 38(1), Section 38(2), RFCTLARR Act, 2013).

Social Impact Assessment

The Act introduced the mandate of Social Impact Assessment study, which serves as a tool to comprehend the pros and cons of the project and assess its viability in public good vis-à-vis private rights. This is a precursor to the notification under Section 11 and thus has to be conducted before the proposal for the acquisition can be made by the Government or requested by a requiring body (Rule 3, RFCTLARR Act, 2013). Social Impact Assessment has to be carried out by a Social Impact Assessment Unit; an independent organisation assigned with the responsibility (Rule 4, RFCTLARR Act, 2013). It requires consultation with the local self-governing bodies such as Panchayat, Municipality or Municipal Corporation and thus demands fair participation from the public to bring forth their views and grievances through public hearings (Section 5, RFCTLARR Act, 2013). Such a Social Impact Assessment study is further subject to appraisal by an Expert Group, which assesses whether the project's social costs and adverse social impacts outweigh the potential benefits after considering the objection of local residents (Section 7, RFCTLARR Act, 2013).

Chapter III of the RFCTLARR (Social Impact Assessment and Consent) Rules, 2014 is titled “Consent”. It thus directs the Collector to obtain consent from the affected landowners while conducting the Social Impact Assessment Study (Rule 16, RFCTLARR Act, 2013). For

maximum public participation and informed consent towards the acquisition, the Rules require the Collector to conduct public awareness campaigns and hold a special Gram Sabha meeting in the affected area to explain the terms and conditions, rehabilitation, resettlement and compensation committed by the Requiring Body (Rule 15(2), Rule 17(1), RFCTLARR Act, 2013). After deliberations, the Gram Sabha may pass a resolution either giving or withholding consent for the proposed acquisition. The resolution may contain the negotiated terms and conditions for Rehabilitation and Resettlement, compensation, impact management and mitigation that the Requiring Body has committed and which have been signed by the District Collector or designated district officer and the representative of the Requiring Body (Rule 17(6)(i) of the RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015). The members of the Social Impact Assessment team are required to assist the Gram Sabha in coming out with such a resolution (Rule 17(9) of the RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015). The entire proceedings of the Gram Sabha have been mandated to be video recorded and thus be made available as a public record (Rule 17(8) of the RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015).

Similarly, where the land is being acquired under Public Private Partnership or for a private company, there is a requirement of seeking individual consent from each and every land owner. Such representatives of the requiring body, who are competent to take decisions and negotiate the terms of Rehabilitation and compensation with the land owners are required to be present during the meeting with such affected land owners to explain the terms and conditions, Rehabilitation and Resettlement and compensation committed by the Requiring Body (Rule 18(5) of the RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015). The Gram Sabha can negotiate the terms and thus can come to a conclusion towards the conditions under which they are willing to give consent towards the acquisition. Thus, at the conclusion of the meeting, each individual land owner shall be asked to indicate in the signed declaration whether he or she gives or withholds consent for the acquisition of land involved (Rule 18(6) of the RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015). Where any of the land owners could not be present during the meeting, he/she can submit the declaration within twenty-one days from the date of the meeting (Rule 18 of the RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015) The requirement of free, prior and informed consent under Rule 17 has been reiterated for acquisition by Public

Private Partnership or private company. The Rules admirably articulate the role of the Government towards ensuring free prior informed consent, which commendably includes a written statement signed by the District Collector, certifying that there will be no consequences if consent is denied for a project and stating that any attempt to coerce or intimidate to obtain consent shall be illegal (Rule 19 of the RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015)

Thus, the Social Impact Assessment Study is an important tool for the locals to understand the impacts of the Government project and for the Government to ensure that the project causes minimum damage. There are adequate forums for public representation in the entire scheme, ensuring their voices are heard while preparing and assessing the Social Impact Assessment Study. The introduction of the element of free, prior and informed consent under the RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015 is ground-breaking, as it takes care of every problem that may arise due to the lack of dialogue between the requiring body and the forest dwellers.

However, despite the objections from the local inhabitants and a negative recommendation by the Expert Committee against the project and the acquisition thereof, the Government can ignore the same and proceed with the acquisition while only giving a reason for doing so (Section 7 (4), RFCTLARR Act, 2013 & Rule 12, RFCTLARR (Social Impact Assessment and Consent) Rules, 2014). Thus, the kill switch granted to the government under the Act makes the entire exercise redundant, leaving it a mere façade. Even otherwise, if any acquisition is made by the Government while invoking the urgency provision under Section 40 of the Act 2013, then the Government may be exempted from undertaking the Social Impact Assessment Study. There is no provision to explain the modus operandi upon the refusal of consent by the Gram Sabha or individual land owners, which makes it even more frustrating for the land loser. The RFCTLARR (Amendment) Ordinance, 2015 has sought to remove the application of Social Impact Assessment for projects related to defence, rural infrastructure, affordable housing, industrial corridors and infrastructure projects, including Public–Private Partnerships (PPPs), thus severely diluting the provision and its application.

The audacious and laudable provisions towards Social Impact Assessment fail to address the anxiety of the forest dwellers towards forcible dispossession since it ultimately culminates into the whims of the Government to reject the recommendation and hence continues the

colonial legacy of autocracy. Thus, the entire exercise would only help the locals in knowing what is coming for them before the project, which under the 1894 Act, happened afterwards.

Rehabilitation and Resettlement

The authorities responsible towards rehabilitation and resettlement have been delineated under Chapter VI of the Act, 2013. The appropriate Government is required to appoint a project-specific Administrator for Rehabilitation and Resettlement, who is an officer not below the rank of Joint Collector or Additional Collector or Deputy Collector. The Administrator is responsible for the formulation, execution and monitoring of the Rehabilitation and Resettlement Scheme (Section 43, RFCTLARR Act, 2013 & Rule 16, RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015). The Act also provides for the appointment of The Commissioner for Rehabilitation and Resettlement, who shall not be below the rank of Commissioner or Secretary and shall supervise the formulation of rehabilitation and resettlement schemes and proper implementation of such schemes (Section 44, RFCTLARR Act, 2013).

Where the land proposed to be acquired is equal to or more than one hundred acres, the appropriate Government is required to constitute a committee at the project level, to be called the Rehabilitation and Resettlement Committee, under the chairmanship of the Collector (Section 45, RFCTLARR Act, 2013). The Committee shall be competent to discuss the draft Scheme formulated by the Administrator and thus suggest changes to the same (Rule 17, RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015). The Committee is responsible for monitoring and reviewing the progress of implementing the Rehabilitation and Resettlement scheme and carrying out post-implementation social audits in consultation with the Gram Sabha (Section 45 (1), RFCTLARR Act, 2013). The Committee provides a platform for public representation and includes the participation of women, Scheduled Tribes, elected representatives and a representative of Civil Society Organizations working in the area thus being acquired (Section 45(2), RFCTLARR Act, 2013).

The Act has constituted National and State Monitoring committees for ensuring the implementation of Rehabilitation and Resettlement thus floated under the Act (Section 49, Section 50, RFCTLARR Act, 2013). Also, any private party acquiring the land through

private negotiations is also required to have a Rehabilitation and Resettlement scheme approved by the Commissioner (Section 46, RFCTLARR Act, 2013). The Land Acquisition, Rehabilitation and Resettlement Authority has been proposed under the Act, to be constituted by the appropriate Government, where the persons aggrieved can challenge the award made by the Collector (Section 51, RFCTLARR Act, 2013). The Land Acquisition, Rehabilitation and Resettlement Authority is presided over by an authority equivalent to the rank of District Judge and has the judicial authority to supervise the entire process. The Appeal against the Land Acquisition, Rehabilitation and Resettlement Authority order lies directly before the High Court of the State (Section 74, RFCTLARR Act, 2013). Thus, the Act has detailed delineation of authorities who have been constituted only for the purpose of ensuring apt rehabilitation and resettlement and have their duties defined.

The Administrator for Rehabilitation and Resettlement has been bestowed with the duty to prepare a detailed draft of the Rehabilitation and Resettlement Scheme, which requires the Administrator to consider the loss of land and livelihood of those affected by the acquisition (Section 16 (1) (b), RFCTLARR Act, 2013). The draft scheme prepared by the Administrator must be widely published for a public hearing and should be open for discussions with the concerned local bodies (Section 16 (4), RFCTLARR Act, 2013). Where the land sought to be acquired is situated in a Scheduled Area, the Administrator must consult the concerned Gram Sabha upon the draft Rehabilitation and Resettlement Scheme, per the provisions of the PESA Act, 1996 (Section 16 (2) (5), RFCTLARR Act, 2013). Also, wherever the State is acquiring the land for private companies for public purposes, there is a rider in the act that the same can be done only after the consent of eighty per cent of the inhabitants and residents of the area have been taken by such company (Section 16 (2b), RFCTLARR Act, 2013). However, the authority to finalise the report rests with the State, which has the authority to declare and approve the Scheme (Section 18, RFCTLARR Act, 2013). This may be done by overriding the concerns of the affected individuals and is not truly reflective of the idea of negotiation.

The provision for determination of monetary compensation under the Act emphasises upon ownership of the land and does not reflect upon the dwelling and livelihood over the same (Section 26 & 27, RFCTLARR Act, 2013). The Act does not provide for compensation towards the loss of economic, social, cultural and traditional rights of the forest dwellers. The calculation of compensation revolves around the determination of ‘market value’, which can

be for material possessions such as land but cannot be determined for possessions of intrinsic value and cultural identity. Moreover, the market values for land situated in the Jungle are, more often than not, infinitesimal.

Since the calculation of compensation under the Act fails to address such losses, restoring livelihood, culture and environment under the Rehabilitation and Resettlement scheme assumes even more importance.

The Second Schedule to the Act of 2013 read with Section 41(1), 38(1) and 105(3) of the Act of 2013 provides for "Elements Of Rehabilitation And Resettlement Entitlements For All The Affected Families (Both Land Owners And The Families Whose Livelihood Is Primarily Dependent On Land Acquired)", whereby entry 2 deliberates grant of 'Land for Land' to those who have been divested of their land. Special consideration has been accorded to the Scheduled Tribes, whereby the land to be provided in lieu has been defined as equal to the land divested or 2.5 acres, whichever is lesser. This benefits the Scheduled Tribes since those not belonging to the Scheduled Case or Tribe are to be allotted at most 1 Acre of land for such loss.

The best provision under entry 5 for the forest dwellers states that "In case of displacement from the Scheduled Areas, as far as possible, the affected families shall be relocated in a similar ecological zone, to preserve the economic opportunities, language, culture and community life of the tribal communities." (Schedule II Entry 5, RFCTLARR Act, 2013). This provision considers the economic, social and cultural aspects of the loss faced by the forest dwellers rather than regarding it as a mere loss of land. If affected aptly, the problem of the forest dwellers being coerced away from their natural habitat could be solved in case of forcible acquisitions. As such, the preparation and implementation of the Rehabilitation and Resettlement plans must thus be drawn with the consent and consensus of the locals to determine the ecological zone which matches their needs in furtherance to preserve the economic opportunities, language, culture and community life of the tribal societies.

The Third Schedule to the Act of 2013 read with Sections 32, 38(1) and 105(3) of the Act of 2013 provides for the minimum infrastructural amenities which must be provided in the area where the rehabilitation and resettlement have been effected. As such, apart from the basic amenities and needs such as roads, drainage, safe drinking water etc., special entries at Serial

no. 22 and 23 of Schedule III have been made for forest dwellers, which reads as "Separate land must be earmarked for traditional tribal institutions" (Section 22, RFCTLARR Act, 2013) and "The forest dweller families must be provided, where possible with their forest rights on non-timber forest produce and common property resources, if available close to the new place of settlement and, in case any such family can continue their access or entry to such forest or common property in the area close to the place of eviction, they must continue to enjoy their earlier rights to the aforesaid sources of livelihood." (Section 23, RFCTLARR Act, 2013).

Though the Act strives to restore the traditional rights of forest dwellers under these provisions, specific restoration of rights has been limited. However, even the scope of the such allocation has been very limited and kept exhaustive by Act (Section 31, RFCTLARR Act, 2013). Apart from fishing rights, the provision mostly prescribes monetary compensation for loss of economy rather than its restoration. Under entry 5, those belonging to the Scheduled Tribe or Caste are entitled to a subsistence allowance of Rs. 50,000, higher than Rs. 3000 per month allotted to other communities. Though the provision requires the Rehabilitation and Resettlement Award to provide particulars of special provisions for the Scheduled Castes and the Scheduled Tribes, (Section 31(k), RFCTLARR Act, 2013). the same remains vague and does not consider the class of forest dwellers in particular.

Special Recognition to Scheduled Tribes

Section 41 of the Act, 2013 acknowledges special recognition for members of Scheduled Tribes and Scheduled Castes. The provision carves out a distinctive niche for Scheduled Ares and unequivocally declares that where avoidable, no land shall be acquired from the area falling under Scheduled Areas (Section 41(1), RFCTLARR Act, 2013). Moreover, it states that where such acquisition is required, it should be done only as a demonstrable last resort (Section 41(2), RFCTLARR Act, 2013). The prior consent of the concerned Gram Sabha or the Panchayat has been made mandatory in such acquisitions or alienation of land within the Scheduled Area as defined under the Fifth Schedule to the Constitution of India, so much so that the prior consent of the local body has been made mandatory even for acquisition in case of urgency, which otherwise bypasses all the requirements under the Act. The provision prescribes the mandate not only for the land acquisition notification under the Act, 2013 but also any other Central Act or any State Act as time being in force. Thus as per the law laid

down under the Act 2013, the notification for the acquisition of land under any of the legislation providing for acquisition can be issued only after the prior consent of the Gram Sabha or the Panchayat constituted within the Scheduled Area (Section 41(3), RFCTLARR Act, 2013).

For acquisitions being made by/for a requiring body, involving the involuntary displacement of the Scheduled Castes or the Scheduled Tribes, the Act provides for concurrently settling land rights and restoring the title over the land thus being alienated to the Scheduled Tribes and the Scheduled Castes (Section 41(4), RFCTLARR Act, 2013). This is to be done by way of a Development plan to be carried out simultaneously with the land acquisition. This provision is an excellent instrument to provide protection to those members of the Scheduled Tribes who have not been able to have their rights over their ancestral lands settled under the Act of 2006. However, to avail the protection and benefits extended to the members of the Scheduled Tribe, the process for such declaration will have to be followed by the tribals, which again trips them into the traps of long bureaucratic procedural traps. Also, it may be noted that the provision protects only those forest dwellers who have been recognised as Scheduled Tribes and does not recognise the class of other traditional forest dwellers. Moreover, as expressed earlier, the time-bound manner of recognition of rights under the Development plan may witness a larger number of claims being rejected to facilitate the acquisition, immediately followed by eviction from the land and its defacement, thus frustrating the purpose of the beneficent legislation.

A decent consideration towards the ethnic, cultural and linguistic identity of the Scheduled Tribes residing in the Scheduled Areas has been given under the Act, whereby the Scheduled Tribes thus affected from the involuntary acquisition and displacement have been sought to be resettled in the same Scheduled Area, though in a compact block (Section 41(7), RFCTLARR Act, 2013). The protection and restoration of only the fishing rights of the STOTFD have found a special mention and is sought to be restored in the reservoir area of irrigation or hydel projects (Section 41(10), RFCTLARR Act, 2013). No other rights have been delineated or sought to be specifically restored for the tribes and traditional forest dwellers. Such a void in the specific recognition of different yet important rights for sustenance would make it difficult for the forest dwellers to claim their rights upon resettlement and they would be coerced into living a life of unfulfillment and dearth.

Where the community rights of the dwellers of the forest have been settled and recognised under the Forest Rights Act, 2006, upon acquisition of such land, the rights will be quantified in monetary terms and thus be paid to individuals concerned with such right, in proportion with their share in such community rights (Section 42(3), RFCTLARR Act, 2013). This is most unfortunate since the Act of 2013 does not provide for the restoration of community rights of forest dwellers, which may be more important to their ethnic ergonomics than individual rights. The quantification of traditional rights in terms of money is not sufficient but rather requires the restoration of every right exercised before, which must be resituated in the place of rehabilitation for the restoration of their dignity.

Exceptions

The change of Central Government in the year 2014 witnessed the RFCTLARR (Amendment) Ordinance, 2015 being brought by the NDA Government, whereby five major categories of projects are exempted from the requirement of 'consent' and 'SIA' mandated under the RFCTLARR Act, 2013. These categories include defence, rural infrastructure, affordable housing, industrial corridors and infrastructure projects, including Public–Private Partnerships (PPPs) (Section 10A(1), RFCTLARR Act, 2013). This severely dilutes the Act as it covers almost all the industrial and mining projects, which cause major forest land acquisitions. It reversed everything in the RFCTLARR Act, 2013 which was different from that of the Land Acquisition Act, 1894. The ordinance is today lapsed and the RFCTLARR (Amendment) Bill, 2015 has been referred to a Joint Committee and is awaiting the report.

Also, under Section 105 of the Act of 2013 read with the Fourth Schedule to the Act, several major and most active legislations adopted for acquisition of land have been left out from the application of these beneficent provisions. These legations are:

1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958).
2. The Atomic Energy Act, 1962 (33 of 1962).
3. The Damodar Valley Corporation Act, 1948 (14 of 1948).
4. The Indian Tramways Act, 1886 (11 of 1886)
5. The Land Acquisition (Mines) Act, 1885 (18 of 1885).
6. The Metro Railways (Construction of Works) Act, 1978 (33 of 1978).

7. The National Highways Act, 1956 (48 of 1956).
8. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962).
9. The Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952).
10. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (60 of 1948).
11. The Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957).
12. The Electricity Act, 2003 (36 of 2003).
13. The Railways Act, 1989 (24 of 1989).

Some of these exempted legislations are frequently used for causing large-scale displacements within forests. Though the laws like the Ancient Monuments and Archaeological Sites and Remains Act, 1958, the National Highways Act, 1956, the Electricity Act, 2003 and the Railways Act, 1989 have a linear nature of the acquisition, statutes like the Coal Bearing Areas Acquisition and Development Act, 1957 and the 138 years old Land Acquisition (Mines) Act, 1885 can be used to acquire hundred and thousands of hectares of forest land. These Acts were based on archaic colonial legislations like the Land Acquisition Act, 1870 and the Land Acquisition Act, 1894 and thus resonate with the imperialist mindset of exploitation. None of these laws have provisions for Social Impact Assessment nor do they provide for rehabilitation and resettlement. Their colonial nature is apparent from the lack of provisions providing consultation or even sincere intimation before land acquisition, which keeps alive the autocratic nature of the British Government.

Apart from the 'public good' argument, there is no justification for the exemption of these legislations from the application of the RFCTLARR Act, 2013. The Act thus propounds that these laws should continue with their autocratic manner, as recently the High Court of Madaras in *G. Sundarrajan vs. Union of India* (2018) has held that the public purpose under the exempted legislations "is on a higher pedestal than the public purposes defined under Section 3(za) of the RFCT Act." However, it is still not clear as to how the greater need of the nation would be hampered if the people were simply consulted and their voices were heard before their land was acquired. This is moreover important for the forest-dwelling population, who are vulnerably attached to their land for their bare sustenance. Thus, in my opinion, the 'public good' argument is weak to exempt almost all major dispossessing legislations from acknowledging the special status of the forest-dwelling population. The increasing inclusion of PPPs within the exception to the Act has rendered the Act a sham and

a mere sweet mantelpiece for display, without any true protection under this phenomenal legislation. Thus, though Section 105 read with Forth Schedule to the RFCTLARR Act, 2013 have survived the test of Constitutionality, (Prithvi Singh vs. Union of India, 2013) they fail on the touchstone of answering the historic injustice towards the forest dwellers.

Moreover, all of these legislations were formulated before the enactment of the Scheduled Tribes (Recognition Of Forest Rights) Act, 2006 and, except for the Electricity Act, 2003, before the PESA Act, 1996. Hence there is an apparent inconsistency between these Acts and the discussed beneficent legislations.

In the exercise of the powers under Section 113(1) of the RFCTLARR Act, 2013, the Central Government brought the RFCTLARR (Removal of Difficulties) Order, 2015 with effect from 1st September 2015, (Extraordinary Notification No. 1834, 2015), whereby the provisions of the Act of 2013 relating to the determination of compensation under the First Schedule, rehabilitation and resettlement under the Second Schedule and infrastructural amenities under the Third Schedule were made applicable to these 13 enactments thus protected under the Fourth Schedule to the RFCTLARR Act, 2013 (Clause 2, RFCTLARR (Removal of Difficulties) Order, 2015). Nonetheless, The Order, 2015 is conspicuously silent on adopting the procedure of acquisition as under the Act of 2013 and thus preserves the scheme for such acquisition under these 13 Acts, which are true to their colonial antiquity. Thus, though these 13 Acts would provide for better compensation and rehabilitation than that prescribed under such legislations, the requirements of SIA, consent and special treatment of Scheduled tribes have been put to uncertainty and are still open to interpretation in favour of the State. Moreover, as it would be, the provisions of the RFCTLARR Act, 2013 are in addition, and not in derogation, of the existing repressive legislations, which dilutes the precedence of this benevolent legislation (Section 103, RFCTLARR Act, 2013).

Overview:

The Xaxa Committee (2014), observed that the Act of 2013 “has come many years too late.” (p. 254). Moreover, the definition of public purpose has been rendered vague under the Act and does not help minimise displacement. Such a broad definition leaves much discretion at the hands of the State to declare any project to be towards ‘public purpose’ and exercise the

authority of the eminent domain. The Courts have refused to entertain challenges to a project's ‘public’ nature, leaving the definition wide open while holding that "the expression `public purpose' is not capable of a precise definition and has not a rigid meaning. It can only be defined by process of judicial inclusion and exclusion. In other words, the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and State of society and its needs. The point to be determined in each case is whether the acquisition is in the general interest of the community as distinguished from the private interest of an individual." (State of Bihar vs. Kameshwar Singh, 1952). Thus, the Courts are not of much help in challenging the scope of a project, since the courts believe that “the Government is the best judge to decide as to whether the public purpose is served by issuing the Notification for acquisition of land.” (Daulat Singh Surana vs. First Land Acquisition Collector, 2007). This expansive definition of ‘public purpose’ often cited by the Courts sounds ominous in today’s scenario of development aggression, and such a capacious scope of the definition at the hands of the Government has made it imperialistic in nature. With the rise of private players in industrialisation and the ‘ease of business’ policy adopted by the Government, the State is increasingly losing its neutrality, and thus it has been observed that “wherever ‘large profit’ is at stake, projects are considered to be ‘public purpose’ or ‘urgent for development’” (Shrivastava et. al., 2020, p. 217) Thus, strictly defining the ‘public purpose’ under the Act is an urgent requirement to avoid misuse of the legislation.

With the introduction of Social Impact Assessment, the Act has incorporated the doctrine of free and prior informed consent, which brings the RFCTLARR Act, 2013 in consonance with the international standards of requirement towards involuntary dispossession. It addresses the centuries-old power asymmetry between landowners and land-acquiring authorities. By providing a platform for discussion between the land loser, the project proponent and the appropriate Government, the process of Social Impact Assessment opens doors for assertion and negotiations with the people and thus effectively respects their right to self-determination. The RFCTLARR (Social Impact Assessment and Consent) Rules, 2014 is praiseworthy. It presents a law which has taken into account everything and thus is significantly a potential tool to solve the historical anxiety of the forest dwellers.

The shift of the land acquisition jurisprudence in India from a strict doctrine of eminent domain, entailing only compensation, to including the facets of rehabilitation and

resettlement, is a momentous achievement of the RFCTLARR Act, 2013. It respects the autonomy of the Gram Sabha under the PESA Act, 1996 to be consulted before acquisition and rehabilitation, thus opening up a possibility of dialogue between the land owners and the acquiring or requiring authorities. As such, properly implementing the RFCTLARR Act, 2013, in its true spirit, can strive towards recuperating the loss of livelihood and ecology caused to the forest dwellers due to forced displacement and thus minimise the impact of land acquisition.

However, the Act has exempted several major legislations from its application, most of which are the primary laws used for land acquisition in forest areas, especially in the State of Chhattisgarh. Lack of clarity around the exempted legislations under the Act has put uncertainty upon requirements of SIA, consent and special treatment of Scheduled tribes while making acquisitions under these laws. The notification towards applying the Act for compensation and rehabilitation is also ambiguous, thus leaving a lot to the interpretation of the Courts and authorities. The categories of projects exempted from the mandate of consent and Social Impact Assessment, being defence, rural infrastructure, affordable housing, industrial corridors and infrastructure projects, have accounted for more than half of the contested land acquisition cases before the Supreme Court between 1950 to 2016 (Wahi, 2017, p. 20). Thus, the affected population is deprived of this exceptional legislation through escape doors planted within the law for the State to exercise colonial powers in the name of the public good.

Furthermore, there have been constant attempts to dilute the law by creating exceptions to the procedure to be followed under the Act (Wahi, 2018) The subversion of due process for seeking the consent of the forest dwellers and paying heed to their demands for rehabilitation has been a significant cause of land conflicts in India. The debasing of consent to consultation by the authorities violates the spirit of the Act and fails to devolve the autonomy upon the affected communities. The Act is short-sighted in reducing the community rights to mere monetary compensation rather than restoring the Community Forest Resources to their fullest extent. Moreover, the lack of separate guidelines for assessing the fair value of lands deprives the forest dwellers of even a fair compensation upon acquisition.

The Assessment of the Act of 2013 poses it as benevolent legislation through the provisions discussed above. To some extent, the Act has shown compassion towards the forest dwellers

and has sought to address their concerns and anxiety about forcefully acquiring their traditional land and rights. Though land acquisition is never a favoured or happy process for the displaced, the same may never be completely avoided. Thus, upon such an unavoidable acquisition, the Act, in its letter and spirit, tries its best to take care of the rights of the forest dwellers and is a welcome departure from the colonial outlook of eminent domain.

OTHER LAWS

Apart from the significant legislations discussed hereinabove, there are a few other legislations and regulations of their own accord that play an interface in deluging the rights of forest dwellers. These legislations interplay with the beneficent legislations enacted for the forest dwellers and the rights conferred upon them under the Constitution of India.

As will be reconnoitred in the subsequent chapter, one of the major criticisms of the historic statutes like the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006, the PESA Act, 1996 and the RFCTLARR Act, 2013 is the confusion surrounding the precedence and applicability of such beneficial legislations, which gives a leeway for loopholes to be exploited by the bureaucracy and the industries in belittling the rights of the forest dwellers. While such laws exist that put other considerations on a higher pedestal than the rights of the forest dwellers, some of the legislations have furthered such rights.

Since the scope of this paper is limited to the rights of the forest-dwelling tribes, only those provisions that affect these rights are herein being delved into, with an intention to understand the consequence of such co-action. The Statutes, Rules and Policies have been discussed in chronological order, but inclusive of any amendments, which helps in understanding the changing views and perspectives of the Government with the advent of time. The legislations discussed here do not constitute an exhaustive list of all the laws that have an interplay with forest rights and lead to the loss of their land but are the ones which have been observed to be frequently and vigorously implemented in the State of Chhattisgarh and, as per my opinion, have the potential of causing large scale displacement. The Policies discussed herein reflect the view of the Government towards their respective subject and hence can be used as a tool for understanding the strategy towards the implementation of their corollary Statutes.

The Coal Bearing Areas (Acquisition and Development) Act, 1957

This anarchic law based on the Land Acquisition Act, 1984 was drafted soon after India's independence and reflected the country's affinity towards the then colonial ideas. However, the law still exists and is still an efficient tool at the hands of the Government for unilateral acquisition and effecting dispossession of the tribal communities. The statute declares Coal to be a national asset and thus brushes aside every other right and procedure under the carpet as being a *lex specialis* governing the field.

The power to acquire land by the Government under the Coal Bearing Areas (Acquisition and Development) Act), 1957 ('CBA Act, 1957') is unfettered, whereby there is no need for any consultation with the affected community, no need to carry out any impact assessment, no mandate to prepare any mining plan and likewise does not prescribe for seeking of the free, prior and informed consent from the persons and communities affected (Section 7, CBA Act, 1957). The Government only needs to know that there is Coal under the land and thus can override all other considerations by simply declaring its intention to acquire the land for excavation, which can be done even without paying prior compensation (Section 9, CBA Act, 1957). If any person is interested or is affected by such an acquisition, he/she is required to give an objection within thirty days from such notification under Section 7, whereby the Government's decision concerning such an objection is final (Section 8, CBA Act, 1957). The onus is on the affected person to approach the Government beseeching relief towards its grievance and not the duty of the Government to seek out the affected. Moreover, even the procedure of entertaining objections can be overridden by the Government if the notification claims the acquisition to be urgent (Section 9A, CBA Act, 1957).

The Government can snatch the possession by use of force over such notified Coal bearing land, if the possessing forest dweller fails to deliver possession within the time prescribed under the notice (Section 12, CBA Act, 1957). The period for vacating possession has not been prescribed under the Act but has been left to be determined by the notice. Such open-ended clauses, with other partisan clauses to corroborate, give unfettered power to the Government to evict the forest dwellers at their whims.

Overview:

Coal was nationalised in 1973 and has been seen as a critical factor in the country's growth for securing its energy needs. This primordial Act by-passes the application of subsequent legislations like the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006, the PESA Act, 1996 and the RFCTLARR Act, 2013, which reflect the international consensus and obligations towards the basic human rights of the forest dwellers.

Coal mining causes large-scale displacement and dispossession not only by acquiring enormous tracts of land for excavation but also by causing inevitable pollution during such extraction. Chhattisgarh has the highest reserve of coal in India, whereby coal mining accounts for 44% of the mining activity in the State, with South Eastern Coal Fields Limited in Chhattisgarh being the most profitable Coal India subsidiary in India (Das, 2022). However, most of these mines or reserves are situated in forest lands and Scheduled Areas of Chhattisgarh. Thus, the colonial nature of the Coal Bearing Areas (Acquisition and Development) Act), 1957 poses a severe threat to the habitat of the forest dwelling communities. Forest dwellers are the most affected community due to coal mining in Chhattisgarh, as well as in India, whereby “One in six of the 87,000 Indians who have been displaced over the past 40 years by state-owned Coal India Ltd (CIL) is Adivasi” (Reuters, 2023).

Though by the effect of the RFCTLARR (Removal of Difficulties) Order, 2015 the provisions of the Act of 2013 relating to the determination of compensation per the First Schedule, rehabilitation and resettlement per the Second Schedule and the infrastructure amenities per the Third Schedule were made applicable to the CBA Act, 1957, the protection to the Scheduled Tribes under Section 41 of the RFCTLARR Act, 2013 does not apply to acquisitions of coal-bearing land (Mangal Sai Armo vs. Union of India, 2022). The loss of special status of the forest dwellers deprives them by disregarding their vulnerable status and thus they stand to lose the most by any such acquisition. As such, even lands in Scheduled Areas can be acquired without looking for alternatives and thus need not be tested for last resort. Unfortunately, by its exclusion under the Fourth Schedule, the provision towards seeking the consent of the Gram Sabha does not apply towards acquisitions under the Act. Also, there is no requirement for rehabilitating the displaced forest dwellers in their area of

choice within the Scheduled Area. Most fatally, there is no mandate upon the Government to formulate a Development Plan and thus settle the rights over the land proposed to be acquired before such acquisition, which presents a grave situation. In the absence of the recognition of rights and title over the land thus being acquired, not only will they not be entitled to compensation but they would also lose any right to claim rehabilitation as provided under Schedule II of the RFCTLARR Act, 2013 (Section 41, RFCTLARR Act, 2013). Thus, by application of only the Schedules to Act of 2013 and not its provisions, the Coal Bearing Areas (Acquisition and Development) Act), 1957 can still first acquire the land and forcibly take its physical possession while choosing to resolve the issue of compensation and rehabilitation later, without any time limit fixed for the same. This presents a grim picture for the land losers.

While relying on a Judgement of the High Court of Madhya Pradesh, (Naresh Singh vs. Union of India, 2009) the High Court of Chhattisgarh has recently affirmed that the Coal Bearing Areas (Acquisition and Development) Act), 1957 is not bound by the provisions of the PESA Act, 1996 or its subsidiary rules, since the role and say of the Gram Sabha under the Act of 1996 is limited to only minor minerals (Mangal Sai Armo vs. Union of India, 2022). Thus, the provision for consultation with the Gram Sabha under Section 4(i) of the PESA Act, 1996 does not apply to Coal bearing lands, and hence, the land can be acquired without even a mere consultation. Similar is the situation of the non-applicability of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006, which has no provisions towards acquisition. As a result, there is no way for forest-dwelling land losers to exercise autonomy if their land is acquired for coal extraction, which contradicts the entire gamut of decentralisation envisioned under the PESA Act, 1996 and the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Thus, there is no scope for any deliberation or consultation within the CB Act, 1957. As soon as a notification under the Act is issued, the dweller of the land loses his right over it by the application of the Act. Due to the lack of procedure under the Act for wide publicity of the notification for acquisition and the absence of any need for communication or consent, most forest dwellers are even unaware of their land being acquired until the authorities reach to take possession of their land. Thus, the Act fails to provide even the basic right of natural justice to forest dwellers by its despotic application and execution. A ‘Harmonization Committee’ set up by the Central Government in the year 2011 recommended that the Coal

Bearing Areas (Acquisition and Development Act), 1957 be amended to include the provision requiring the prior consent of the Gram Sabha before acquisition, so as to bring the Act in conformity with The PESA Act, 1996. However, the same was never implemented. Thus, the Act stands over and above every legislation giving any right of hearing to the affected persons.

Apart from the snatch-and-grab powers given to the Government over the land of the Forest Dwellers, there is no provision for restitution of the forest after the mining, whereby recently the Central Government has formulated a policy that the lands, after being rendered unusable, shall be used for industries which are ancillary to coal mining (Notification No. 43022/1/2020-LAIR, 2022). Thus, even after the land has been de-coaled, the same would not be restored as forest but would continue with the industry, even if it is in the midst of the forest and disturbing the area's already affected ecology and biodiversity.

Also, it has been found that even if the notification under the Act has not been issued but the area has been earmarked for Coal mining, the authorities refuse even to accept the application towards the claim of rights over such area (Environmental Justice Atlas, 2012) In Chhattisgarh, Community Rights granted under the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 have been cancelled after the notification for acquisition under the Act is issued to facilitate coal mining (Farha, 2019). Chhattisgarh became the first State to cancel recognised rights, which shows the grave nature of the CB Act, 1957 in affecting the rights of forest dwellers. The Act overrides every legislation that grants autonomy and rights to forest dwellers and has been a convenient tool at the hands of the State to autocratically acquire land, even without a fair hearing and proper rehabilitation.

The Coal Bearing Areas (Acquisition and Development) Act), 1957 still ruminates the colonial ideology of bulldozering the rights of individuals in favour of exploitation. It thus needs to be checked towards its Constitutionality after the enactment of several other beneficent legislations and progressive judgements by the Constitutional Court of the Country. The High Court of Chhattisgarh in *Mangal Sai Armo vs. Union of India* (2022) had an excellent opportunity to do so but did not sincerely delve into it. The Act puts coal above the rights of its citizens, who at least need to be heard, not only as an individual but also as a community, before their lands are snatched from them under this draconian law.

There is no doubt that despite several environmental concerns, coal remains the most utilised fossil fuel for securing the energy needs of the country, and India is heavily dependent on exported coal to meet its demand despite having significant reserves. Nevertheless, total annihilation of forests is not an answer to solve this, that too in a forcible manner. The provisions towards hearing grievances under the Act are extremely inadequate, and thus, by the exclusion of Section 41 and only by applying Schedule II of the RFCTLARR Act, 2013, the forest dwellers have no say in even their choice of rehabilitation. By excluding the Social Impact Assessment and other methods of communication, the Act has closed any door for deliberation upon the acquisition. Such coerced acquisition breaks down the trust between the affected population and the Government, which is unfortunate in a progressive democracy.

Despite the international condemnation of the Act as being draconian in its approach, (Amnesty International, 2021). the Government is unwilling to amend this Act and thus bring it up to mark and in line with the current legislations like the RFCTLARR Act, 2013, for that would mean losing the colonial authority and respecting the right of self-determination and seeking free, prior and informed consent, which is already a thorn for the bureaucracy.

The Mines and Minerals (Development and Regulation) Act, 1957

The Mines and Minerals (Development and Regulation) Act, 1957 (Act 67 of 1957) ('MMDR Act, 1957') was enacted in the same year soon after the Coal Bearing Areas (Acquisition and Development) Act), 1957 and thus echoed its hegemonic spirit while declaring the absolute control of Union Government in regulating the mines and development of minerals in the country (Section 2, MMDR Act, 1957). The Act resonates with a similar application of the doctrine of eminent domain and thus emancipates minimum regard for rights in acquiring mineral-bearing land. The Act is cryptic in its application since it does not entail the acquisition of land but propounds the acquisition of surface rights. Hence, though the Act, in effect, acquires the land, it has not been regarded as a land acquisition law (PIB, 2023). Thus, the acquisition of land under the Act can be made through private negotiations or application of State legislation or by adopting the RFCTLARR Act, 2013. In Chhattisgarh, the notification for such an acquisition is issued under Section 247 of the Chhattisgarh Land

Revenue Code, 1959.[10] Thus, the assessment of land acquisition herein must include the examination of acquiring provisions under the CGLRC, 1959.

The Mines and Minerals (Development and Regulation) Act, 1957 provides for the regulation of 'Major Minerals' by the Central Government (Section 13, MMDR Act, 1957) while giving the freedom of regulating 'Minor minerals' to the State Governments (Section 15, MMDR Act, 1957). The ownership rights over minerals underneath private land is a contentious issue which needs independent and elaborate deliberation. Yet, the Supreme Court in *Orissa Mining Corporation Ltd vs. Ministry of Environment & Forest* (2013) has held that the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 "neither expressly nor impliedly, has taken away or interfered with the right of the State over mines or minerals lying underneath the forest land, which stand vested in the State.". The

[10] **247. Government's title to minerals. - (1) Unless it is otherwise expressly provided by the terms of a grant** made by the Government, the right to all minerals, mines and quarters shall vest in the State Government which shall have all powers necessary for the proper enjoyment of such rights.
(2) The right to all mines and quarries includes the right of access to land for the purpose of mining and quarrying and the right to occupy such other land as may be necessary for purpose subsidiary thereto, including the erection of offices, workmen's dwellings and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways or tram-lines, and any other purposes which the State Government may declare to be subsidiary to mining and quarrying.
(3) If the Government has assigned to any person its right over any minerals, mines or quarries, and if for the proper enjoyment of such right, it is necessary that all or any of the powers specified in sub-sections (1) and (2) should be exercised, and the Collector may, by an order in writing, subject to such conditions and reservations as he may specify, delegate such powers to the person to whom the right has been assigned :
Provided that no such delegation shall be made until notice has been duly served on all persons having rights in the land affected, and their objections have been heard and considered.
(4) If, in the exercise of the right herein referred to over any land, the rights of any person are infringed by the occupation or disturbance of the surface of such land, the Government or its assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall be calculated by the Sub-Divisional Officer or, if his award is not accepted, by the Civil Court, as nearly as may be, in accordance with the provisions of the [Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (No. 30 of 2013)].
(5) No assignee of the Government shall enter on or occupy the surface of any land without the previous sanction of the Collector, and unless the compensation has been determined and tendered to the persons whose rights are infringed.
(6) If an assignee of the Government fails to pay compensation as provided in sub-section (4), the Collector may recover such compensation from him on behalf of the persons entitled to it, as if it were an arrear of land revenue.
(7) Any person who without lawful authority extracts or removes minerals from any mine or quarry, the right to which vests in, and has not been assigned by, the Government shall, without prejudice to any other action that may be taken against him be liable, on the order in writing of the Collector, to pay penalty not exceeding a sum calculated at double the market value of the minerals so extracted or removed :
Provided that if the sum so calculated is less than [twenty five thousand rupees], the penalty may be such larger sum not exceeding [twenty five thousand rupees] as the Collector may impose.
(8) Without prejudice to the provisions in sub-section (7) the Collector may seize and confiscate any mineral extracted or removed from any mine or quarry the right to which vests in, and has not been assigned by the Government.
Explanation. - In this section, "minerals" include any sand or clay which the State Government may declare to have a commercial value or to be required for any public purpose.

PESA Act, 1996 requires the consent of Gram Sabha for mining minor minerals. However, the major minerals are governed solely under the Mines and Minerals (Development and Regulation) Act, 1957.

While the MMDR Act, 1957 defines the minor minerals to include "building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral", (Section 2(e), Mines and Minerals (Development and Regulation) Act, 1957) there is no definition for the term 'major mineral', thus constituting everything else. The Specified Minerals under the First Schedule to the MMDR Act, 1957 have been treated tightfistedly and include Asbestos, Bauxite, Chrome ore, Copper ore, Gold, Iron ore, Lead, Manganese ore, precious stones and Zinc, along with coal and other atomic minerals (First Schedule, Mines and Minerals (Development and Regulation) Act, 1957). Excavation of these minerals involves large areas and thus leads to significant displacement.

The MMDR Act 1957, together with the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 and the Mineral Conservation and Development Rules, 2017, today holds the field of mining of Major minerals. It thus lays down the procedure for obtaining 'mineral concession' (Section 2(d), Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016), which includes a reconnaissance permit, a non-exclusive reconnaissance permit, a prospecting licence, a prospecting licence-cum-mining lease, or a mining lease. Without any distinct protection for the tribal population or the forest dwellers, all the concerned regulations describe such holder of the right over the land as 'occupier of the surface of the land.' Under the MMDR Act, 1957 the duty to compensate such a landholder has been bestowed upon the prospecting or mining lease holder (Section 24A, Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016). Thus, under the Act, the State is not even responsible for granting any compensation for the loss of 'surface rights' to its rightful owner or occupier. However, under the deed for grant of prospecting licence and mining lease prescribed under the Rules, 2016, the State government is responsible for securing the possession of such land over which the mining rights have been granted (Schedule V & VI, Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016)

Today, the MMDR Act 1957 is less stringent than the Coal Bearing Areas (Acquisition and Development) Act), 1957 since it has undergone some amendments to incorporate schemes for the reparation of the affected population. One such incorporation was by the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (Act 10 of 2015), whereby Sections 9B and 15A were inserted into the MMDR Act 1957, thus constituting the District Mineral Foundation. This was long due to being done in the spirit of the order issued by the Supreme Court in the case of *Samatha vs. State of Andhra Pradesh* (1997), whereby the Government was instructed to create a fund for the benefit of those affected by the mining operations in the Scheduled Areas. Thus, the object of the District Mineral Fund (DMF) was defined under Section 9B (2) of the MMDR Act 1957 as "to work for the interest and benefit of persons, and areas affected by mining related operations." Though the Central Government can give directions towards the composition and utilisation of the fund by the DMF, the State Government is the primary authority for its functioning (Section 9B (2), MMDR Act 1957).

As such, it is noteworthy here to observe that the State Government, while formulating such rules under Sub-section 2 & 3 of Section 9B of the MMDR Act 1957, is bound to observe the provisions under Schedule V of the Constitution of India emanating from Article 244 of the Constitution of India which relates to the administration of the Schedules and Tribal Areas. Furthermore, in an even more surprising zest, the State Government is also directed to recognise the provisions of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the PESA Act, 1996, while formulating the rules and in the apportionment of the funds.

Overview:

The MMDR Act, 1957 and its enabling provision under the CGLRC, 1959 seriously lack the element of dialogue between the owner of surface rights and the Government or the holder of the lease, before granting a prospective license for exploration of minerals in forest lands. Since it has been held that the PESA Act, 1996 only applies to minor minerals (Mangal Sai Armo vs. Union of India, 2022), any mineral concession granted towards the major mineral need not comply with the requirement of consultation with the Gram Sabha before operating over the forest land.

There is no provision under the concerned Acts or rules for settlement of individual or community forest rights under the Forest Rights Act, 2006, before the land is granted on lease for mining and the dwellers of the forest are evicted. However, the Supreme Court in *Orissa Mining Corporation Ltd vs. Ministry of Environment & Forest* (2013), while dealing with mineral concession granted to Vedanta Limited for mining of Bauxite in Lanjigarh Bauxite Mines in Kalahandi and Rayagada Districts of Orissa, observed that the right of the forest dwellers must be identified and settled in a free and fair manner before the mining can proceed. Though the matter concerned the refusal of grant of Stage II permit for forest diversion, the judgement can be construed to give importance to the settlement of forest rights before granting mining rights over forest land.

The judgement in *Orissa Mining Corporation* (1997) is also vital to address the aspect of rehabilitation, which is completely missing from the Act. Following the old principle of eminent domain, the MMDR Act, 1927 and Section 247 of the CGLRC, 1959 only prescribe compensation, not rehabilitation. Moreover, the State law used to support the acquisition is obsolete and thus leads to illegality.

In summation, there is no provision or scope for any deliberation or consultation within the Acts or rules. All the powers within the Act rests with the State Government and the affected community is not even required to be informed before the prospective license is granted. Both the affecting and executing Acts are obsolete in nature and align with the autocratic exploitative attitude of the Government concerning the exploitation of major minerals, whereby the democratic element in participation of the community for such decisions making is absent. The Act is based on the obsolete Land Acquisition Act, 1894. It thus carries with it the rumination of imperialism, which has been protected by creating several exceptions and loops in beneficent laws. The application and incorporation of the Forest Rights Act, 2006 and the PESA Act, 1996, are missing from the Act, which allows the entire process to be devoid of any accountability towards the land losers. Though Section 247 of the CGLRC, 1959 provides for the grant of compensation as provided under the RFCTLARR Act, 2013, the applicability of other provisions of the RFCTLARR Act, 2013 is unclear.

While the entire mining scheme under the aforementioned rules and legislation is autocratic and lacks any efforts to win public confidence, creating DMF and introducing tribal beneficent provisions in its utilisation is a whiff of fresh air. As per the Government data, the

State of Chhattisgarh has collected a total of Rs.10,513 Crore in DMF Funds, equivalent to Seychelles' GDP. However, research suggested that due to the minuscule accommodation of public representatives in the DMF Trust, these funds were not utilised towards the benefit of the most-mining-affected communities (Aggarwal, 2021).

With the change of regime in 2018, the State of Chhattisgarh has become the first State in India to amend its DMF Rules to accommodate the members from Gram Sabha of the affected area to take decisions upon utilisation of the funds (Chhattisgarh Gazette (Extraordinary) no. 505, 2019). As such, the Collector is now bound to nominate two members from each affected Gram Sabha, to a maximum of 10 members, to be appointed as trustees of the DMF Trust (Rule 10(4a), Chhattisgarh Mineral Foundation Trust Rules, 2015). Furthermore, in Scheduled Areas, at least 50 per cent of the total nominated members from Gram Sabha for each trust shall be nominated from Scheduled Tribes. With the support of the elected representatives, this is a significant number and holds sway in the DMF Trust, which votes on managing the funds thus accumulated under the fund. This has been nationally lauded as an actual repatriation of mineral wealth to those who have lost the most (Das, 2019), as was envisioned by the Supreme Court.

The Forest (Conservation) Act, 1980

This two-page Act with only 5 Sections affirmed the power of the Central Government over that of the State Government in permitting the diversion of the Forest land for any other purpose. Under the Act, the Central Government has the final say in removing the label of a reserved forest, in permitting the usage of forest areas for non-forest purposes and in assigning any portion of forest land to non-governmental organisations, including industries and corporations (Section 2, Forest (Conservation) Act 1980). Diversion of forest land is the first step towards altering the nature of the land from forest to mine or industry. Thus, the legislation is essentially a land law, whereby the forest land can be divested of its nature and converted for its utility.

The short Act is supplanted by elaborate rules detailing the procedures to be followed therein. The Forest (Conservation) Rules 1981 was replaced by the Forest (Conservation) Rules 2003. The Forest (Conservation) Rules 2003 was then amended in 2004, 2014 and 2017. Recently, an amendment was proposed to the Forest (Conservation) Act 1980 by the Ministry of

Environment, Forest & Climate Change under the incumbent NDA Government, which had faced severe backlash from the Tribal Communities and forest rights' advocates for being in contravention of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 (The Hindu, 2021). However, despite the criticism, The Forest (Conservation) Rules 2022 was notified on 28th June 2022 (Gazette of India, 2022).

The Forest (Conservation) Rules, 2022 is being heavily criticised, as it negates all the work that the Union government had done in giving the right of free, prior informed consent to the affected community and thus gravely dilutes the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 and The PESA Act, 1996 (Trivedi, 2022). It allows the interested parties to 'selective felling' trees for prospecting without consent from the Gram Sabha. The authorities prescribed under the rules seriously lack any representation from the affected population living in the forest. The Advisory Committee constituted to advise the Central Government upon any proposal for a change of nature of land, The Regional Empowered Committee constituted to examine such proposals and the Project Screening Committee constituted to examine the completeness of such proposal are constituted exclusively of bureaucrats and do not find even a single public representative in their composition. Thus, the Rules, 2022 excludes representation of the effected population in the entire process of forest diversion (Rule 3, Rule 6, Rule 8, Forest Conservation Rules, 2022).

Moreover, the Forest (Conservation) Rules, 2022 is worse than the Forest (Conservation) Rules 2003. To understand this, it is essential to roughly explain the steps involved in the grant of approval towards the diversion of forest land.

The user agency[11] makes an application to the State Government for the diversion of forest land. The State Government, with requisite formalities, then forwards the recommendation to the Central Government, seeking approval under section 2 for the dereservation of forest land for the use of forest land for non-forest purposes or assignment of lease over forest land. This approval is granted by the Central Government in two stages: The first stage is the grant of 'In-Principle approval', that is, approval subject to fulfilment of stipulated conditions. All the

[11] Section 2(1)(x) of the Forest (Conservation) Rules, 2022 defines "user agency" as "any person, organisation or legal entity or company or Department of the Central Government or State Government or Union territory Administration making a request for dereservation, diversion or assignment of lease of forest land under the provisions of the Act or the rules made thereunder"

investigations towards the need and necessity of such a diversion of forest land are done before the grant of In-Principle approval. The 'Final approval' granted under Stage II thus only entails the completion of formalities by the user agency, such as payment of Compensatory Levies and handing over the land identified for Compensatory Afforestation along with submission of such compliance reports to the Divisional Forest Officer (Rule 9, Forest Conservation Rules, 2022).

The Forest (Conservation) Rules 2003 prescribed the duty upon the District Collector to complete the process of recognition and vesting of forest rights in accordance with the provisions of the Forest Rights Act, 2006 for the entire forest land indicated in the proposal. Furthermore, the District Collector had been tasked to obtain the consent of each Gram Sabha, having jurisdiction over the forest land thus proposed to be diverted, upon the compensatory and ameliorative measures, after having understood the purpose and details of diversion. Thus, the Rules of 2003 provided for the settelng of forest rights and sought prior informed consent of the Gram Sabha before the Government could grant the In-Principle approval (Rule 6(3)(e), Forest Conservation Rules, 2022).

However, the Forest (Conservation) Rules 2022 has done away with the provision of settlement of rights and prior informed consent before the grant of In-Principle approval, as it vested too much say with the forest dwellers and was not good for the rampant destruction of forests sought under the proliferating industrialisation schemes. Under the Forest (Conservation) Rules 2022, the Central Government is not to be troubled with the issues of forest rights and is free to grant approval without any such consideration. After the grant of final approval by the Central Government, the State Government may seek the compliance of settlement of rights under the Forest Right Act, 2006, before issuing the orders for diversion, assignment of lease or dereservation (Rule 9(6)(b)(ii), Forest Conservation Rules, 2022). Yet, the critical provision towards prior informed consent of the Gram Sabha before the diversion of the forest land has been slyly removed, thus nullifying the spirit of the beneficent legislations trying to correct the historic injustice. The misuse of the law has started reflecting on the ground, whereby the forests are being cut under government protection, while the State has a very little say in matters of mining of major minerals.

Overview:

The Forest (Conservation) Act, 1980 was implemented in an era when the depleting resources of the forest were sought to be protected against the casual diversion of forest land by the State Governments. Thus, the Constitution was amended and the subject of 'Forest' was brought under the concurrent list (Schedule VII, Constitution of India). Under the Act, though the proposal for diversion was to be made by the State Government, the final say for the diversion of the forest was to rest with the Central Government. The Act is a land use law whereby the forest land can be diverted for non-forest purposes upon such a request made by an interested party. With the passage of time and the changes in social forces due to the nation's industrial ambitions, the Act's name today is ironic since it has very little to do with conservation and more to do with its destruction, by granting permission to change the nature of the forest. The Act is not a substantive law but a delegated legislation whereby the Central Government has the authority to decide upon the fate of the forest and the utility of the land thereby (Hazra, 2002, p. 30).

The original Act and rules were least concerned with recognising forest dwellers and their rights over the land sought to be diverted. However, the subsequent changes in rules and amendments brought it in consonance with other beneficent legislations. Moreover, it has now been established that the idea of necessary human exclusion for the conservation of forests is a flawed model based on inaccurate assumptions.

As discussed, The Forest (Conservation) Rules 2003 prescribed the duty upon the District Collector to complete the process of recognition and vesting of forest rights and thus mandated consent from the concerned Gram Sabha. This provision was introduced by the Forest (Conservation) Amendment Rules, 2016 (Gazette of India (Extraordinary) No 160, 2017). The amendment was brought in light of an executive direction issued by the Ministry of Environment and Forests (FC Division) vide a letter dated 30th July 2009 to the Chief Secretaries of all the States, whereby they were directed "to formulate unconditional proposals under the Forest (Conservation) Act, 1980, the State/UT Governments are, wherever the process of settlement of Rights under the FRA has been completed or currently under process, required to enclose evidences for having initiated and completed the above

process, especially among other sections, Sections 3(1)(i), 3(1)(e) and 4(5). These enclosures of evidence shall be in the form of following:

1. A letter from the State Government certifying that the complete process for identification and settlement of rights under the FRA has been carried out for the entire forest area proposed for diversion, with a record of all consultations and meetings held;
2. A letter from the State Government certifying that proposals for such diversion (with full details of the project and its implications, in vernacular / local languages) have been placed before each concerned Gram Sabha of forest-dwellers, who are eligible under the FRA;
3. A letter from each of the concerned Gram Sabhas, indicating that all formalities/processes under the FRA have been carried out, and that they have given their consent to the proposed diversion and the compensatory and ameliorative measures if any, having understood the purposes and details of proposed diversion.
4. A letter from the State Government certifying that the diversion of forest land for facilities managed by the Government as required under section 3(2) of the FRA have been completed and that the Gram Sabhas have consented to it.
5. A letter from the State Government certifying that discussions and decisions on such proposals had taken place only when there was a quorum of minimum 50% of members of the Gram Sabha present;
6. Obtaining the written consent or rejection of the Gram Sabha to the proposal.
7. A letter from from the State Government certifying that the rights of Primitive Tribal Groups and Pre-Agricultural Communities, where applicable, have been specifically safeguarded as per section 3(1)(e) of the FRA.
8. Any other aspect having bearing on operationalisation of the FRA.

The State/UT Governments, where the process of settlement of Rights under the FRA is yet to begin, are required to enclose evidences supporting that settlement of rights under FRA 2006 will be initiated and completed before the final approval for proposals."

Thus, as per the communication dated 30th July 2009, before the final requisition for the diversion of forest land is forwarded by the State Government to the Central Government for its approval under Section 2 of the Act of 1980, the State Government had to complete the

process of identification and settlement of rights within the area thus proposed to be diverted. This was ground-breaking since it introduced the element of consent within the process of forest diversion. It also sought to bring the process of approval under the Forest (Conservation) Act 1980 in consonance with the Forest Rights Act, 2006, since the forest land could not be diverted without first confirming the rights of the forest dwellers upon it.

Moreover, the order had given significant weightage to the consent of Gram Sabha towards the proposal for the diversion of forest land, whereby they had to be given prior information about the full details of the project and its implications. The consent sought from the Gram Sabha had to be by a majority, with an obligation of obtaining written consent or rejection of the Gram Sabha to the proposal. The State Government was furthermore required to seek a letter from the Gram Sabha seeking an affirmation that all the procedures under the Forest Rights Act, 2006 had been carried out and that the consent thus being given by them towards the proposed diversion and the compensatory and ameliorative measures, is informed. The State had been saddled with the additional responsibility of categorically obtaining due consent and ensuring the settlement of the rights of the PVTGs.

However, the recent rules have seriously caused prejudice to such earlier recognitions and have washed away decades' worth of efforts to equate the forest dwellers with sustenance. There is no clarity concerning the applicability of the circular dated 30th July 2009 in light of the new rules. In fact, the Rules, 2022 contravenes the circular dated 30th July 2009, which requires consent to be obtained before initiating the proceedings under Stage I of the forest diversion and even before the State Government sends the proposal. As per a circular issued by the Ministry of Tribal Affairs, Government of India, the State is required to prove the initiation of the proceedings towards identification and settlement of rights under the Forest Rights Act, 2006, before Stage I requisition (Letter No. F. No 23011/23/2012-FRA, 2019). This also fails to find any reflection within the Rules, 2022.

The Act is now a mere tool at the hands of the Government to ensure the diversion of forests for industrial and mining purposes. After the in-principle approval is granted by the Government, even if the circular dated 30th July 2009 applies to the extent of seeking consent, the requirement becomes a mere façade since the final approval becomes inevitable. The user agency can start operating in the forest sought to be diverted without any discussion with the area's dwellers, which may reduce the confidence between the dwellers and the Government.

Moreover, after much work has been done and investment has been induced upon In-principle approval, the final approval would only be subject to formal paperwork. As rightly apprehended by the Ministry of Tribal Affairs in OM No. 23011/04/2013-FRA (2018), "This would prove to be fait accompli as by that time the project proponents would have made sufficient progress and the tribals living in the forest areas earmarked for use by the project would be put to great disadvantage". Thus, the forest dwellers would be put in a grave disadvantageous position and it can be fathomed that the consent of the Gram Sabha would not of much value at such a belated stage, if the Government has made up its mind to divert the forest land after significant progress of the project.

Moreover, the mandate of consent emphasised under the circular dated 30th July 2009 has been attenuated by the circular dated 5th February 2013, also issued by the Ministry of Environment and Forests (FC Division), whereby 'liner projects' have been exempted from any obligation of seeking consent from the Gram Sabha, at any stage of grant of permission for diversion of forest land (Letter No. F. No. 11-9/98-FC, 2013). The Forest (Conservation) Rules, 2022 carries this forward with a very vague definition of 'liner project' as being laid under Rule 2(n) (2022) to be "project involving linear diversion of forest land for the purposes such as roads, pipelines, railways, transmission lines, etc." Though this circular was opposed by the Ministry of Tribal Affairs, claiming that such subversion of consent would be a violation of the Forest Rights Act, 2006 and thus punishable under the Act (Letter No. 23011/02/2014-FRA, 2014), the circular and its subsequent recognition under Forest (Conservation) Rules 2022 has been used to override any requirement of consent or recognition of rights for several projects. The anxiety expressed by the Ministry of Tribal Affairs has been ratified by the National Green Tribunal (Principal) Bench, New Delhi, whereby it has held that there is no requirement for settling of forest rights to be undertaken under the Forest Conservation Act, 1980 before granting any approval of diversion of forest land and thus exempted the project under Dalli-Rajhara-Rawghat Railway Line at Bastar from seeking the consent of the dwellers (Hira Singh Markam vs. Union of India, 2014).

After the introduction of the Forest (Conservation) Rules 2022, the National Commission for Scheduled Tribes recommended the Ministry of Environment, Forest & Climate Change to put the Forest Conservation Rules, 2022 on hold, beseeching the Rules, 2022 to be in violation of the rights granted under the Forest Rights Act, 2006. The National Commission for Scheduled Tribes, in its letter to the Government, has expressed its vital concern that the

Forest Conservation Rules, 2022 cannot run parallelly with the Forest Rights Act, 2006 and that the rules will affect and dilute the land rights of forest dwellers (PTI, 2022). However, the recommendation of the National Commission for Scheduled Tribes has been brushed aside by the Union Government, which has refused to stay the implementation of the rules (Jha 2023).

Since the enactment of the Forest Act in 1980, 3.54 lakh hectares of forests have been cleared, with is average of 8,448 hectares per year (Vidhi, 2022). The strict conservationist Act was successively brought in consonance with the rights of the forest dwellers by bringing it in conformity with the spirit of the Forest Rights Act, 2006 and the PESA Act, 1996. However, after 2014, the name of the Act became ironic, and serious efforts have been made to dilapidate every such regulation and instruction that requires any deliberation, consent, or even communication with the affected community before diversion of forest land. The dwellers of the forest are today more interested in conserving the forest than the Ministry of Environment, Forests and Climate Change, which has argued that intervention by the forest dwellers causes delays in projects by lingering the diversion of forest lands (D.O. NO. 23011/18/2014-FRA, 2014). It has been in constant clash with the Ministry of Tribal Affairs to minimise the rights of the forest dwellers. Recently, the attitude of the Ministry of Environment, Forests and Climate Change has been found to be contrary to its purpose towards the environment or forest or climate change, while championing for faster diversion of forest lands. The use and interpretation of the Forest (Conservation) Rules 2022 remains to be seen, but it does not have a very hopeful future for forest dwellers under the ‘ease of business’ policy. Nonetheless, since the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 overrides the Forest (Conservation) Act 1980, it would be pertinent to see whether the subserving Forest (Conservation) Rules 2022 can abrogate the mandates under Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006.

The Wild Life (Protection) Act, 1972

As the title denotes, the Act is primarily crafted for protecting the nation's Wildlife, and thus, forest rights find a back seat under the legislation. Though the initial Act was advocated the total exclusion of human presence from the Jungle for the protection of Wildlife, two

significant amendments to the Act of 1972, being the Wild Life (Protection) Amendment Act, 1991 (Act 44 of 1991) & Wild Life (Protection) Amendment Act, 2002 (Act No. 16 of 2003) subsequently brought it in consonance with the current sensitivity towards the traditional rights of the forest dwellers. However, even such concessions and participations are subject to and in furtherance towards conserving Wildlife in a scientific method. Nonetheless, the Wild Life (Protection) Act, 1972 ('WLPA, 1972') demonstrates significant indulgence of the Government in recognising and protecting the traditional rights and livelihood of the forest dwellers. As such, the duties prescribed for the State Board of Wildlife include measures to be taken to harmonise the needs of the forest dwellers with that of the protection and conservation of Wildlife (Section 8, WLPA, 1972).

While there is an absolute ban on hunting of wild animals under the Act, the members of the Scheduled Tribe have been allowed to pick, collect and possess specified plant or part or derivative thereof for bona fide personal use, which otherwise is prohibited under the Act for others (Section 17A, WLPA, 1972). The Protected Areas prescribed under Chapter IV of the Act seek to preclude the rights of forest dwellers from such areas, which are considered significant for conserving and developing wildlife and its environment. For a Sanctuary, the Authority under the Act can proceed to determine the rights of the forest dwellers over such an area notified as a Protected Area and thus acquire the land and the rights under the law (Section 19, WLPA, 1972), or allow such rights to be carried on in consultation with the Chief Wild Life Warden (Section 24, WLPA, 1972) However, such rights have been limited to the very minimum for the forest declared as a National Park, where the extinguishment of rights has been given precedence (Section 35, WLPA, 1972). These amendments were before the enforcement of the Forest Rights Act, 2006, which has further laid down the guidelines for recognising rights in critical wildlife habitats (Section 4(2), Forest Rights Act, 2006).

Some of the significant Authorities constituted under the Act, such as the National Tiger Conservation Authority (Section 38L, WLPA, 1972), Steering Committee (Section 38U, WLPA, 1972) The Advisory Committee for Sanctuary (Section 33B, WLPA, 1972) and the State Board for Wild Life(Section 6, WLPA, 1972) have been mandated to have either authorities concerned with the tribal welfare or the representatives of the Scheduled Tribe community as its member, to take into account the concerns of the Scheduled Tribe and other Forest Dwelling Communities into consideration before formulating policies under the Act. The State Government is bound to consult with the local community before declaring any

forest area as a Conservation Reserve (Section 36A, WLPA, 1972). The powers and functions of a significant Authority of national importance, being the Tiger Conservation Authority, have been made subject to the rights of the local people, specifically, the Scheduled Tribes residing in the concerned area (Section 38O(2), WLPA, 1972).

The Act also constitutes a Community Reserve Management Committee, which has been made responsible for conserving, maintaining and managing the community reserve by preparing and implementing a management plan and has been authorised to take steps to ensure the protection of Wildlife and its habitat within the reserve (Section 36D, WLPA, 1972). Such a community reserve can be any forest land not comprised within a National Park, sanctuary or conservation reserve (Section 36C, WLPA, 1972) The committee is majorly constituted of the members of the local community nominated through the Village Panchayat or Gram Sabha and thus have been significantly engaged in the decision-making process for conserving their own habitat. Thus, the Act has sought to implement self-management principles by granting autonomy to the local forest-dwelling communities to take decisions for managing their affairs and dwelling, though in a minimal geographical area.

It is interesting to note the modus proposed under the Act for implementation of the Tiger Conservation Plan, whereby the Wild Life (Protection) Act, 1972 has incorporated the right of self-determination and the application of the doctrine of free, prior and informed consent from the persons and communities thus affected by the implementation of the Tiger Conservation Plan as under: (Section 38V, WLPA, 1972)

> "(5) Save as for voluntary relocation on mutually agreed terms and conditions, provided that such terms and conditions satisfy the requirements laid down in this sub-section, no Scheduled Tribes or other forest dwellers shall be resettled or have their rights adversely affected for the purpose of creating inviolate areas for tiger conservation unless—
>
> (i) the process of recognition and determination of rights and acquisition of land or forest rights of the Scheduled Tribes and such other forest dwelling persons is complete;

(ii) the concerned agencies of the State Government, in exercise of their powers under this Act, establishes with the consent of the Scheduled Tribes and such other forest dwellers in the area, and in consultation with an ecological and social scientist familiar with the area, that the activities of the Scheduled Tribes and other forest dwellers or the impact of their presence upon wild animals is sufficient to cause irreversible damage and shall threaten the existence of tigers and their habitat;

(iii) the State Government, after obtaining the consent of the Scheduled Tribes and other forest dwellers inhabiting the area, and in consultation with an independent ecological and social scientist familiar with the area, has come to a conclusion that other reasonable options of co-existence, are not available;

(iv) resettlement or alternative package has been prepared providing for livelihood for the affected individuals and communities and fulfils the requirements given in the National Relief and Rehabilitation Policy;

(v) the informed consent of the Gram Sabha concerned, and of the persons affected, to the resettlement programme has been obtained; and

(vi) the facilities and land allocation at the resettlement location are provided under the said programme, otherwise their existing rights shall not be interfered with."

The process prescribed for the dispossession of the forest dwellers under the Tiger Conservation Plan resonates with the Forest Rights Act, 2006, though it is not applicable for other protected areas under the Act. The Wild Life (Protection) Act, 1972 has incorporated and thus respected the issues relating to the rights of the Scheduled Tribes, unlike the exploitative industrial legislations. Thus though the legislation is less harmful than land acquiring legislations, nonetheless, the curbing of rights in name of conservation results in dispossession for the forest dwellers.

Overview:

The bureaucratic interpretation of the law and the minimum allowance of rights in Protected Areas has caused practical problems and conflicts between the forest department and the forest dwellers. Reports of forced relocation of forest dwellers from such areas have constantly surfaced, whereby, as per the Report of the Tiger Task Force (2005), "in the name of conservation, what has been carried out is a completely illegal and unconstitutional land acquisition programme" (pg. 182). Thus, the eviction of the forest dwellers in the name of wildlife conservation causes the dispossession of their traditional land and habitat, without any formal acquisition of their property or rights.

The recent amendment by the Wild Life (Protection) Amendment Act, 2022, mandates the Chief Wild Life Warden to consult with the Gram Sabha while formulating any policy for Sanctuaries, if such falls within Schedule V to the Constitution of India or where the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 is applicable (Section 33(a) WLPA, 1972). However, the Forest Rights Act, 2006, has been made subservient to the Wild Life (Protection) Act by the amendment, which authorises the forest department to impose heavy fines upon any breach of the law. It has been alleged that this rescinds the purpose of the Forest Rights Act, 2006, which was to supersede the previous deterring legislations and gives a tool at the hands of the forest department to harass the forest dwellers (Samant & Ravindranath,, 2022).

Nonetheless, the non-implementation of the law and the exercise of bureaucratic supremacy by the forest department has been a continuous cause of prosecutions under the Act and thus has riffed unrest within the tribal community. Moreover, the constant clash between environment conservationists and tribal rights activists on multiple turfs has failed to recognise the mutual inclusivity of both causes. This is evident from the pending challenge to the Constitutional validity of the Forest Rights Act, 2006 by wildlife conservationists before the Supreme Court. The Petitioners have argued that recognising forest dwellers' claims will lead to the disappearance of forests and wildlife, without any empirical data to support their conjuncture and based on the outdated idea of exclusion (Sahu, 2019). The narrative that the forest dwellers cause significant loss to forests and wildlife was hard-pressed before the Supreme Court, without any representation from the forest dwellers' side. Thus, while relying

on the narrative put forth before it, the Supreme Court, in a very controversial order, directed 21 States, including the State of Chhattisgarh, to remove the encroachment of those forest dwellers whose claims had been rejected (Wild Life First vs. Ministry of Forest and Environment, 2009). This caused a lot of hue and cry, with acceptance from several states that the due process had not been followed in rejecting such applications. The order of eviction has since been reviewed and stayed by the Supreme Court, while the challenge is still pending.

As per an affidavit submitted by the State of Chhattisgarh on 7th November 2022 before the Supreme Court of India, the State Government has affirmed that it has conducted a review of all the 4,52,275 individual forest rights claims thus rejected up to 31st December 2017 and has reversed the finding in 34,999 claims (RTI reply, 2023).

The Compensatory Afforestation Fund Act, 2016

The establishment of Compensatory Afforestation Fund was long due under the directions issued by the Supreme Court in the *Forest Case*, whereby the Supreme Court had observed that all funds collected from user agencies for compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of the diverted forest land, or catchment area treatment plan should be deposited in such Compensatory Afforestation Fund. These funds are to be used to restore forest land lost due to diversion by prompting afforestation of degraded forest lands being equivalent to or double the area which had been deforested for any non-forest purpose (T.N. Godavarman Thirumulpad vs. Union of India and Others, 1997). However, though the idea behind enactment of the Compensatory Afforestation Fund Act, 2016 ("CAF, 2016') is noble, this exercise of afforestation has become a cause of land loss to the forest dwellers.

To manage the funds thus consolidated, the Act creates two categories of funds at the Central and State levels, being the National Compensatory Afforestation Fund (Section 3, CAF Act, 2016) and the State Compensatory Afforestation Fund (Section 4, CAF Act, 2016). These funds are managed and utilised by the National Compensatory Afforestation Fund Management and Planning Authority (Section 8, CAF Act, 2016) and the State Compensatory Afforestation Fund Management and Planning Authority (Section 10, CAF

Act, 2016), respectively. The governing body of the National Compensatory Afforestation Fund Management and Planning Authority is assisted by Executive Committee, Monitoring Group and Administrative Support Mechanism, none of which have any representation from the tribal community (Section 9, CAF Act, 2016). The governing body of the State Compensatory Afforestation Fund Management and Planning Authority is assisted by a Steering Committee and an Executive Committee, whereby only one expert on tribal matters or, as an option, a representative of the tribal community has been given a berth to be appointed at the pleasure of the State Government (Section 11, CAF Act, 2016). The Compensatory Afforestation Fund Rules, 2018 ('CAF Rules, 2018') supplements the Act and thus lays down the detailed objective and procedure for the management and utilisation of the funds thus created under the CAF Act, 2016.

The legislation fails to accommodate the forest-dwelling communities in the management of the forest thus created through afforestation by the Government or private entities. The territory thus marked as afforested land is made out-of-bounds for forest dwellers, which has no place for recognition of rights or exercise of autonomy by the forest dwellers. The Act and Rules are in contravention of both the Forest Rights Act, 2006 and the PESA Act, 1996 and hence constitute and continue to be an oblique land acquisition law.

Overview:

Compensatory afforestation is planting a forest on non-forest land / degraded forest land in lieu of the destruction of actual forest for development purposes. As such, any forest with a crown density of less than 40% is considered an open forest and can be regarded as a degraded forest by the State CAF Management and Planning Authority for being granted towards compensatory afforestation. Such a category of forest constitutes the second largest category of forest area in India, about 3,01,797 sq. kms in area and about 42% of the total 7,08,273 sq. kms of forest cover of the country (Kukreti, 2019).

Though the Act creates a significant corpus, yet the utility of the same has been left in the hands of the Government and bureaucrats, with negligible involvement of the forest dwelling communities and tribes affected by the diversion of Forest lands. Rule 5 of the CAF Rules, 2018 defines the manner of utilization of the net present value and thus lists all the objectives

towards which the fund can be utilized. Neither the Act nor the Rules prescribe any benefit towards the disturbed forest dwellers and the funds cannot be expected to be used for restoring their lost habitat and livelihood. The minimum role of consultation for the working plan of the forest has been dichotomised between the Gram Sabha or the Forest Management Committee the latter being spearheaded by the Forest Department itself (Rule 3(k), CAFR, 2018). Interestingly, the PESA Act, 1996 fails to even find its mention within the law, thus blatantly ignoring the autonomy and participation of forest dwellers in managing their habitat.

Accommodation of only one member from the tribal community in the Steering Committee of the State (Section 11, CAF Act, 2016) that too under the whims of the Government, is a severe under-representation of the forest dwellers and a grave departure from the principles of autonomy in the matter of management of forests. The distrust expressed towards the forest dwellers under this Act, while leaving the autonomy of utilisation of the funds in the hands of the Government and the Forest Department alone, reverses the endeavours of the PESA Act, 1996 in involving the forest dwellers in decision making towards their own land. The Act instead enforces the supremacy of the forest department over the Jungle by creating a parallel budget for them. As observed by K. B. Saxena (2019), “there is no greater example of the complete bureaucratization of the decision-making structure and the complete absence of participation of stakeholders than this legislation.” (p. 23-40)

The permission for diversion of forest under the Forest (Conservation) Act, 1980, is subject to deposition of funds for compensatory afforestation and the final permission granted thereby mandates that such afforested land be handed over to the forest department. The Government thus declares such newly created forests to be reserved or protected forests, as defined under the IFA, 1927 (Rule 9(6), Forest Conservation Rules, 2022). The entire exercise and decision of earmarking the land for such afforestation is done solely by the officers of the forest department without any deliberation with the dwellers of the area. One may even fail to find the words ‘consent’ or ‘consultation’ or any other word denoting such a spirit under the Act. Since the area is governed by the forest department upon compensation being paid towards it by the business concern, there is no scope for recognising traditional forest rights over such newly created forests. This is a grave departure from everything sought to be corrected by the Forest Rights Act, 2006 and thus stands in contravention of its essence.

Thus, though the forest dwellers may lose their habitat owing to the diversion of their forest land, they will have no stake upon the forest that comes up in lieu of the same (Patnaik, 2013, p. 18). The Act assumes that since these would be new forests, there could not be any traditional rights over such land. Moreover, by declaring them as reserved or protected forests under the Indian Forest Act, 1927, the Act eliminates any possibility of acquisition of new rights over such areas. These assumptions and eliminations are severely flawed since there is no provision under the Act for settling forest rights before the afforestation is done on the forest land and the rights are ousted. The absence of provision regarding recognition of both individual and community rights, including the community forest rights, over the afforested territory, without any recourse to rehabilitation or identification, clearly besmirches the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006

In summation, when a territory is acquired for afforestation under the Act, there is no need for any communication with the concerned Gram Sabha and there is no requirement to seek out the claimants or communities with a claim over the land thus sought to be acquired. Moreover, once the land has been afforested, there cannot be any claim over such newly created forest. The forest department now owns these forest lands without any exercisable rights or claims by the forest dwellers, who have been ousted from the forest without even being informed, let alone being heard. This is a concerning conclusion for the scheme under the Act, which turns into an oppressive and despotic land acquisition law without any provision for rehabilitation and requisition in its management.

The enormous sum collected under CAF is a tell-tale sign of the destruction of forest, while the dwellers of the forest have no say in its spending. Due to lack of representation, this has become an excellent tool for land grabbing under the garb of compensatory forestation, whereby while the existing forests with existing rights are destroyed, the new forests with no rights and absolute exclusion are created, thus causing lopsided loss to the forest dwellers. This has raised severe apprehensions about the gradual privatization of forests, which will deplete natural forests and render traditional forest dwellers homeless (Kukreti, 2020). Once all the forests have been planted by the private companies, there will be no space for the forest dwellers to claim their rights, thus driving out the tribes from their natural habitat.

National Mineral Policy, 2019

While dealing with the issue of rapacious mining across the country, the Supreme Court in *Common Cause vs. Union of India* noted that "The National Mineral Policy, 2008 (effective from March 2008) seems to be only on paper and is not being enforced perhaps due to the involvement of very powerful vested interests or a failure of nerve." (Common Cause vs. Union of India, 2017, p. 573). Thus while observing that the National Mineral Policy, 2008 was old and did not conform to the existing laws and policies, the Court perceived that "it is high time that the Union of India revisits the National Mineral Policy, 2008 and announces a fresh and more effective, meaningful and implementable policy" (p. 573).

Thus the National Mineral Policy, 2019 was approved on 28th February 2019 to replace the old and criticised National Mineral Policy, 2008. The new policy seeks to increase the mining production in the Country and thus reduce dependency on exports while keeping it environmentally sustainable and with the participation of all the stakeholders.

Since the policy is in furtherance of effective increase of mining activities, the contribution of the forest dwellers is limited to their displacement for fulfilling of such objectives. The policy very eloquently discusses the relief & rehabilitation for the displaced and affected persons, whereby the careful assessment of "economic, cultural, environmental, and social impact on the affected persons" ultimately culminates and liquidates in terms of monetary compensation (Clause 6.12(a), National Mineral Policy, 2019). It promises the evolution of a mechanism in future for appropriate implementation of the RFCTLARR Act, 2013. The creation of DMF under the Mines and Minerals (Development and Regulation) Act, 1957 has been duly pointed out under the Policy, 2019 to denote that those who live in the affected areas have been taken care of by such a fund (Clause 6.12(b), National Mineral Policy, 2019). However, as discussed earlier, the fund in itself has remained unfruitful in reality.

Though the Policy makes out a special case for Forest Dwellers and those dwelling in Scheduled Areas, thus declaring that the 'grant of mineral concession' in India shall be guided by all the legislations protecting the interests of tribals, (Clause 6.12(c), National Mineral Policy, 2019). the policy still misses out on the explicit question of free, informed and prior consent to be taken from the forest dwelling communities before any mining

activity and land acquisition. Even the proposed rehabilitation and resettlement of such displaced members of the Scheduled Tribe miss the mention of the Forest Rights Act, 2006 and the PESA Act, 1996. Thus, the mandatory and enforced displacement of the forest dwellers has been left at the hands of the bureaucrats, without any say by the affected community. They are not free to choose their habitat for resettlement and thus are bound to lose their ancestral lands and traditional means of livelihood for the economic interest of the incentivised private companies.

STATE OF CHHATTISGARH: LAWS & POLICIES:

As discussed earlier, there is a constricted latitude of issues related to the forest dwellers upon which the State Government can legislate. Where it can legislate, it has to conform with the laws enacted by the Parliament to avoid attracting the doctrine of repugnancy. However, the State Government is not toothless and thus has the authority under the Constitution to frame laws on the subjects of local government and land, both under List II of the Seventh Schedule to the Constitution of India. Also, the State can exercise its powers to regulate those issues whereby the State has been delegated the power to frame rules and policies under the Union enactments.

Since this research expects to identify the problems the forest dwellers face under current laws and hence aspires to suggest changes in State legislations, understanding the local laws related to the topic is quintessentially important in finding such loopholes which need to be plastered.

Chhattisgarh State Forest Policy, 2001

The State of Chhattisgarh was carved out of the erstwhile State of Madhya Pradesh on 1st November 2000. The new State, which boasted more than 44% of its territorial area as forest, ought it fit to devise its own forest policy. Since 'Forest' is a subject under the Concurrent list of the Constitution of India, the forest policy thus proposed ought to have conformed with the National Forest Policy of 1988.

Thus, the Department of Forest and Culture notified the Chhattisgarh State Forest Policy, 2001 ('CSFP, 2001') on 22nd October 2001 (No.F7-42/2001/F.C., 2001). While acknowledging the preeminence of the National Policy, 1988, the CSFP, 2001 emancipated its need as "a new strategy of forest conservation, which encompasses the special characteristics of the state as well as provides it a new direction." (Clause 1.2, CSFP, 2001). The Policy admitted that most of the reserves in the mineral-rich State of Chhattisgarh fall mainly within the forests of the State and that the population residing in the State is predominantly tribal, with a substantial economic and cultural dependency on the forests (Clause 1.7 &1.8, CSFP, 2001). However, the Policy fails to address any issue related to mining and discourses on the 'sustainable model' of forestry in Chhattisgarh.

As under the National Forest Policy, 1988, the central thrust of the CSFP, 2001 is on Joint Forest Management. The Policy thus proposes incentivisation and adequate participation of forest dwellers at all levels of decision-making, including the engagement of landless, marginal farmers and women in JFM bodies like VFC (Village Forest Committee), FPC (Forest Protection Committee) and EDC (Economic Development Committee) (Clause 4.2.4, CSFP, 2001).

A detailed analysis of the CSFP, 2001 would be futile since it would be repetitive of the discussions already done under Forest Policy, 1988. However, the Policy is still in force in the State of Chhattisgarh and reflects upon the current strategy of the State towards the forest and its dwellers.

The Policy envisages the establishment of a network of PPAs or Public Protected Areas of the forest, whereby the local community would be bestowed with the responsibility of sustainable forest development, livelihood security and bio-cultural diversity conservation. As per the Policy, the forest dwellers will thus be made responsible for maintaining their environment in lieu of their access to the forest resources (Clause 3.3, CSFP, 2001). In a good move, the Policy encourages setting up Minor Forest Produce industries by the forest dwellers, thus promoting its processing and value addition (Clause 3.5, CSFP, 2001).

The Policy continues with the archaic jurisprudence of 'rights and concessions' and thus audaciously goes to declare that "in due course of time such rights and concessions with the exception of cultural rights, may no longer be required with an improvement in the standard

of living of the majority of people in the state." (Clause 1.2, CSFP, 2001). The Policy still manifests upon the widely discarded and now regarded obsolete attitude of assimilation towards the forest dwellers. However, until that happens, the Policy acknowledges the State's obligation to provide the 'Nistar', meaning concessions under tradition, subject to its control by the State in accordance with the forest's carrying capacity (Clause 4.3.1, CSFP, 2001).

Under a Clause titled "Tribal People and Forests", the Policy recognises the symbiotic relationship between the tribals and the forest and thus proposes that the agencies engaged in forest management, including the forest department, the Forest Development Corporation and the Minor Forest Produce Federation, should acutely involve the tribals in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forests on following lines: (Clause 4.13, CSFP, 2001).

- Protection, regeneration and non-destructive harvesting
- Conversion of forest villages of minor forest produce in collaboration with the local people specially tribals, and provision of institutional arrangements for the marketing of such produce.
- Conversion of forest villages into revenue village
- Community based schemes for improving the economic status of the tribal
- Undertaking integrated area development programmes to meet the needs of forest conservation

In to-to the Policy is more concerned with the duties and engagement of the forest dwellers in preservation of forests and less towards the duties of the Government towards these forest dwellers. The forest dwellers are thus used as labors by the forest department, for their own revenue benefits. The Policy aims at the up keep of the forests and thus while recognizing the 'rights and concession' of the forest dwellers, reminds them that it is not for free and that they have to work to earn it. They Policy follows an assimilationist approach, which is obsolete and archaic in its philosophy.

Interestingly, the Policy envisages the State to educate the tribal population living in the forests about the value of trees, bio-diversity and nature in general (Clause 4.13, CSFP, 2001). This is ironic in many ways, as the forest dwellers would be more concerned about

protecting their habitat than the State, which has historically been interested in exploiting its resources.

Chhattisgarh Rehabilitation Policy, 2007

An Ideal Rehabilitation Policy, 2007 (hereinafter referred to as CRP, 2007) of the State of Chhattisgarh was formulated based on the National Rehabilitation and Resettlement Policy, 2007 and sought to bring uniformity in the rehabilitation policy adopted by various departments for acquisition of lands towards different purposes. The general Policy is still in existence and is being followed for acquisitions across the State of Chhattisgarh.

The spirit of the Policy of 2007 is obsolete and not in consonance with the notion of rehabilitation as promogulated under the RFCTLARR Act, 2013. There is no scope for deliberation or dialogue between the land losers and the authorities formulating the rehabilitation plan, and thus, they are absolutely ignorant of their right to self-determination. The "main purpose of the rehabilitation policy is to extend appropriate compensation" which is a continuation of the commodification of the land and is, in fact, ironic to the name of the policy (Clause 1.1, CRP, 2007). The Policy has very few elements of proper rehabilitation and mostly liquidates every loss in terms of monetary compensation.

The Policy of 2007 does not differentiate between Revenue Village and Forest Village and thus irresponsibly ignores the difference in their ecology (Clause 1.2.2, CRP, 2007). The Policy also does not acknowledge the verge between revenue land and forest land, thus using them interchangeably for the purpose of rehabilitation (Clause 3.4, CRP, 2007). The Policy gives an option between allocation of land and grant of compensation rather than ensuring that both are equally offered towards the rehabilitation (Clause 1.1.1, CRP, 2007). Where the acquisition is made at the instance of a private institution, the Policy provides for only a grant of compensation in lieu of the loss of the land (Clause 4.1.1(b), CRP, 2007). Where the State acquires the land, the maximum land which can be allotted under the Policy towards resettlement is 600 sq. mtr. or 6,458 sq.ft., which is pitiable (Clause 6, CRP, 2007). Thus, the Policy is insensitive towards the cultural, social and economic vulnerability and dependency of the forest dwellers upon their land and has no mandate of restoring their habitat.

The Policy is absolutely paternalistic in its approach while proposing 'well-planned accommodation' for land losers without any consideration towards the loss of habitation by the forest dwellers. The aim of the Policy of forcing civilisation upon the forest dwellers is contrary to the right of self-determination and thus is inconsistent with the principles expected to be followed upon acquisition of indigenous land. The entire Policy lacks the element of choice being given to the forest dwellers to develop according to their own genius.

The Policy describes and prescribes providing employment or vocational training or business opportunities to an affected family member. However, it is impervious to restore the livelihood of the forest dwellers through their traditional means. Thus, the Policy continues with the commodification of land and is oblivious to an acknowledgement of rights over resources. The Policy is silent upon the restoration of traditional and cultural rights of the forest dwellers, while they are sought to be forced into the labour market for the industries.

For rehabilitation of people living in scheduled areas, they will have to either prove their right over the land on which they reside or will have to establish their residence or possession over such land being acquired for the past three years before the notification of acquisition (Clause 1.2.5, CRP, 2007). As per the Policy, no compensation will be given if the residence is considered to be an encroachment over Government land unless the same is proved to have been encroached before 1990 (Clause 4.1.2, CRP, 2007), which is clearly in violation of the deadline fixed under the Forest Rights Act, 2006.

The Authorities constituted under the Policy have scanty representation from the affected community, The consultation under the PESA Act, 1996, has been reduced to suggestions with the Collector being made all-powerful to override any submissions (Clause 10.4, Clause 10.5, CRP, 2007). Thus, the Land Acquisition Officer has been made responsible for finalising the rehabilitation scheme, without discussing or deliberating with the affected community, upon his whims and commands (Clause 10.7, CRP, 2007). The Collector may thus decide the scheme and enter into a bilateral MoU with the requiring body to carry out the rehabilitation as per the Policy, which is absolutely faulty and in violation of the principles of natural justice (Appendix III, CRP, 2007).

The quantum of compensation and area for rehabilitation under the Policy of 2007 was per the Land Acquisition Act 1984 and thus boasted to be adequate with the lesser compensation

under Act, 1894. However, with the advent of the RFCTLARR Act, 2013 and other laws governing the field, the quantum has become obsolete and thus needs to be revisited. Similarly, the Policy does not reflect the recognition and thus restoration of rights as provided under the Forest Rights Act, 2006, which has not even been mentioned in the legislation. The Policy even fails to adhere to the PESA Act, 1996, as it misses out on the element of consultation before rehabilitation. Thus, it is an outdated piece of legislation due to its unconformity with several beneficent legislations. The consideration of displaced forest dwellers as individual families and not a community is archaic in its nature and thus requires correction to bring it to par with subsequent legislations.

Chapter IV

ARGUMENT: SOLUTION WITHIN THE LAW

INTRODUCTION

A study of the history of forest dwellers in India, ranging from the ancient ages till the Independence of India, truly demonstrates a constant theme of 'historic injustice'. The tussle between the forest dwellers and the civilised can be traced to have existed forever. While the civilised have always perceived forest and forest land as assets for tactical and economic advantage, forest dwellers have been unwelcoming towards foreign intrusion into their way of life. For several centuries, they have preferred a life of seclusion and autonomy by choice, refusing to fall in line with the sophisticated society.

This led to the forest dwellers being characterised as demonic individuals in epics and folklore, which continues in its current description. Such romanticised accounts reflect upon the frequent clash between those seeking to exploit the forests coercively and those seeking to protect their habitat. Thus, forest dwellers have always fought to protect their autonomy and have rejected centralised sovereignty.

In Chhattisgarh, the supremacy of a central sovereign authority could not find its roots within the tribal society. Though the tribal chiefs were subdued by Kings of large empires like the Mauryas and the Guptas, the forest dwellers enjoyed significant autonomy after their fall. Moreover, the area of Bastar was effectively free from any powerful sovereign ruler for more than one thousand years. When the Kakatiya dynasty established its rule at Bastar, they also exercised minimum interference in the way of life exercised by the forest dwellers. The forest dwellers were the absolute owners of their land and had unrestricted access to the bounties of the forest, with little claim over it by anyone from outside their community.

However, with the advent of the East India Company and the gradual establishment of the British Empire in India, this autonomy increasingly came under threat. At first, the British

were not interested in acquiring these uncharted and dangerous territories. Agricultural lands were more critical to the Crown for revenue generation and forest was not a subject of interest for them. However, with the increasing need of wood for shipbuilding and laying of railway network, both serving the military and economic needs of the empire, forests became an essential asset for exploitation by the Crown. The British Government of India thus started legislating upon the forest, which had never been legislated upon until then, and hence directly attacked the autonomy of the forest dwellers by asserting sovereignty over the forest land. Thus started the depletion of self-rule enjoyed by the forest dwellers for centuries and introduced the doctrine of eminent domain in India.

As demonstrated, the jurisprudence of legislation governing forests was developed to exploit forest resources for the economic gain of the British metropole. Legislations introduced by the Crown for governing the forest increasingly became stringent and every such consecutive regulation diminished the rights of forest dwellers over their own land. The classification of forest was based on the solitary criteria of their economic worth, whereby the higher the worth, the more it excluded the forest dwellers from resources sharing. The Crown asserted its ownership and dominance over the forest in India by legislating upon it. The ‘rights’ of the forest dweller became ‘privileges’ and soon were attenuated to mere ‘concessions’, which too were sought to be extinguished as expeditiously as possible. The need to enforce these laws witnessed the rise of a strong forest department in India with significant penal powers and deep bureaucratic penetration into the forest, which is still discernable.

However, the British Government faced the burn of these repressing legislations from the forest dwellers, who could not tolerate such autocratic intrusion into their motherland. It was humiliating for the forest dwellers to have to seek permission to use their own resources, and they were seriously perturbed by the assertion of propriety rights by the Government over the forest and its bounty. The economic exploits also resulted in the depletion of the forest, which was their habitat and carried a cultural and traditional significance to the forest-dwelling communities. The forest-dwelling tribes could not stomach an autocratic claim of sovereignty over the forest asserted by the Crown, which aimed only to minimise their freedom and maximise the economic profit for the government at the cost of their independence. What was prohibited for the forest dwellers was allowed for the Government, while the former had been declared encroachers upon their own land. The forest dwellers were not accustomed to governance and thus could not endure such suppression. Thus, there were several revolts and

resistance by the forest-dwelling tribes against these repressive laws, which had become a hazard for the British Government. The Bhumkāl revolt in Bastar is still a matter of pride and glory for the tribes of Bastar and is a part of their revered folklore, which reminds them of their strength and inspires them to fight for their freedom.

Such intense yet frequent resistance from the forest dwellers alerted the British of their nature, which was different from the rest of the Nation, of preferring to lead a life in accordance with their ancient cultures and traditions. The British thus stopped imposing repressive laws upon these forest dwellers and started handling the forest dwellers tactfully by creating excluded and partially excluded areas. Almost the entire area of the modern-day Chhattisgarh was excluded from the automatic operation of central laws, which was left to be applied by the provincial Governments while keeping in view the volatility of the situation and the possibility of reaction at the grassroots level. Thus, even the most tyrannical British Government had started to learn to respect the boundaries of transgression into the way of life of the forest dwellers. However, it did not stop the exploitation.

The reminiscence of Imperialistic jurisprudence of justifying autocratic repressive laws in the name of economic gain continues to date. It has been a widely used tool to carve out a niche for certain sovereign activities, despite a universal change in outlook towards the human rights of forest dwellers. While the British used this repressive legislation for the economic gain of the Crown and not the country, it would become an inevitable tool for the Government of Independent India, tasked with nation-building, to continue with the same mindset of robbing the minority to benefit the majority.

Independence from British rule in 1947 is the most significant landmark event in the history of India. It witnessed a sea of change in the country's political setup and eventually saw the birth of a unified Nation. This Nation was reclaimed and shaped by the people of India after a long struggle against suppression by the monarchy, and the leaders of the time were aware of the oppression faced by minorities due to discrimination prevalent in the society. Thus, the leaders of the new Government were sympathetic towards the minority and endeavoured to grant them the status of equal shareholding citizens of the Nation. It is interesting here to note that the erstwhile areas under the direct control of the British Government, the Presidency areas, were handed over by the British to the new Government of India during Independence. The princely states, being the Residency areas, acceded to the Union of India through deeds

of accession signed by their respective rulers. However, the parts of the country dominantly resided and ruled by the tribals were never formally taken over by the government and were assumed to have assimilated into the Union of India (Khanna et. al., 2010, p.18).

India is constituted under the Constitution of India. The framers of the Constitution were learned leaders who strived to formulate a fundamental document to bring justice, equality, liberty and fraternity for all its citizens irrespective of race, caste, creed, sex or religion. Though the forest-dwelling communities were not considered a class on their own, since most of the country was composed of villages, the tribes were sought to be specifically redressed by the framers of the Constitution of India.

While the Scheduled Tribes are entitled to the fundamental rights guaranteed under Part III of the Constitution of India, they have been recognized as a distinctive class to be granted further affirmation. The Constitution of India provides the administrative definition of the Scheduled Tribes and thus carves out the Scheduled Areas as a particular region to protect its dwellers from exploitative actions and legislations. Though the assimilist approach of the Constitution has been criticized by several scholars, it can be found justified in the spirit of the time. Before the introduction of The PESA Act, 1996, the Fifth Schedule to the Constitution of India was the sole legislative instrument to facilitate the unique governance of these areas. The advent of Judicial Activism in India started the evolution of the Constitution of India as an ‘organic law’ and thus derived several crucial human rights while aspiring to attain international benchmarks based on this supreme law (Dattatraya Govind Mahajan vs. State of Maharashtra, 1977).

Though the Constitution of India aspired to bring about equality by uplifting the most backward and downtrodden, to achieve this, the Government was tasked with the responsibility of building an economically strong Nation from frugally fragile provincial states.

Thus, several laws legislated by the Government of India after independence reflected upon the colonial mindset of asserting absolute sovereignty in governance. Most of the imperial laws that suited the needs of the Government were adopted and continued to operate. Regarding land acquisition, the Government of India found the colonial doctrine of eminent domain fitting to its desires and thus persevered with it by applying the Land Acquisition Act,

1894 towards acquiring private lands in the name of public good. The Land Acquisition Act, 1894 failed to recognise the vulnerability and special status of the forest dwellers and thus continued to commodify the land to be an asset which could be quantified into mere compensation. The Land Acquisition Act, 1894 was severely flawed as it brushed aside the concerns of the affected and rumpled over their rights by a unilateral declaration of forced acquisition. Though these errors were later rectified by introducing the RFCTLARR Act, 2013, the erroneous Land Acquisition Act, 1894 continued to govern the field for about 119 years. During this period, several subject-specific land acquisition laws were legislated upon by the Government, which were based on the Land Acquisition Act, 1894 and thus carried its colonial legacy, still continuing to sweetly suit the Government for exercising autocracy. Laws such as the Coal Bearing Areas (Acquisition and Development) Act), 1957 and the Mines and Minerals (Development and Regulation) Act, 1957, which were enacted for extensive mining and thus caused large-scale displacement, are based on the blueprint of the Land Acquisition Act, 1894. They carry the cold colonial demeanour of unilateral acquisition, without much engagement with the landholders.

While specific laws delineate the purpose and procedure for land acquisition, certain legislations result in the dispossession of forest dwellers by extinguishing their rights without explicitly acquiring their individual or community landholding. These laws eliminate the rights of forest dwellers over land and resources in the name of conservation and excludes their participation in the decision-making process. Laws such as the Forest (Conservation) Act 1980, the Wild Life (Protection) Act, 1972 and The Compensatory Afforestation Fund Act, 2016 have often been criticised for their obsolete outlook of exclusion rather than engagement and are, in principle, against the spirit of the benevolent legislations.

For a very long time after independence, the Governments in India continued with the Centralized structure of administration propagated by their colonial predecessors. Introducing Part IX and Part IX-A to the Constitution of India was a significant departure from this governance set-up, giving constitutional recognition to local self-governance. This devolved the power upon the local bodies to manage their own affairs and not rely on the higher-up authorities for their basic needs. Though this constituted the last tier of Government and thus was subject to conformity with the regulations of both Central and State Governments, it opened up the way for people to be directly involved in decision-making at the grassroots level. The application of Part IX of the Constitution of India was explicitly excluded from the

areas covered under the Fifth Schedule to the Constitution of India. This was an essential aspect of Part IX since, by such exclusion, it recognised the need for a special law to devolve such authority upon the forest-dwelling areas. This paved the way for the constitution of the Bhuriya Committee and the introduction of the noteworthy enactment of the PESA Act, 1996, which encompassed considerate provisions for such special areas.

The PESA Act, 1996 was the first landmark law which can be cogitated as a benevolent legislation for forest dwellers. While the subject of 'Local Government' is enlisted at serial number 5 in State List (List-II) under the Seventh Schedule to the Constitution of India, the PESA Act, 1996 provided the guideline for the State Governments to enable self-governance in Scheduled Areas. The powers of the local bodies and the State's responsibility towards them were sturdier under the Act than under Part IX. It recognised the ancient concept of community decision-making within the tribal society and thus suggested formulation of governance structure in consonance with the customary laws, social and religious practices and traditional management practices of community resources. The Gram Sabha was made more powerful and the Act mandated consultation with Gram Sabha before acquiring lands within the Scheduled Areas. Such consultation was also mandated before rehabilitation of persons affected by it. Thus, the Act incorporated the spirit of international instruments by devolving the right of self-determination and self-governance upon the indigenous population, including the vesting of the right of the tribal community over their land, forest and other natural resources in the true spirit of democracy.

Despite the PESA Act, 1996 being a robust enabling tool for the State Governments to introduce and expound upon the principles of self-determination, the State of Chhattisgarh failed to implement the Act in its true spirit. The law was adopted by bringing half-hearted amendments to the Chhattisgarh Panchayat Raj Adhiniyam, 1993. This local legislation exceeding 132 Sections, along with more than 87 Rules and 10 Sub-Rules, dropped the provision of consultation altogether while incorporating the elements under the PESA Act, 1996. Thus, the Chhattisgarh Panchayat Raj Adhiniyam, 1993 could only stimulate the vision of self-governance, not self-determination. Moreover, over-complicating the law appended by several regulations and reliance on other ancillary statutes for its interpretation defeated the implementation of the legislation within simple tribal communities. The Act failed to incorporate the essence of the PESA Act, 1996, whereby the Bhuriya Committee (1993) had suggested that "while shaping the new Panchayati Raj structure in tribal areas, it is desirable

to blend the traditional with the modern by treating the traditional institutions as the foundation on which the modern super-structure should be built." (p. 15).

Due to the failure of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 to implement the right to self-determination, the newly introduced Chhattisgarh Panchayat (Extension to Scheduled Areas) Rules, 2022 has attained significant importance for the forest dwellers in expecting the devolution of autonomy, which was promised to them way back in the year 1996. The Rules, 2022, though not perfect, has brought in the elements of prior and informed consultation and has aspired to affect the spirit of the PESA Act, 1996 by opening up avenues of dialogue with the stakeholders. Rules, 2022 devolve ample powers upon the Gram Sabha for managing their *Jal, Jungle* and *Jameen*, being the three pillars of their demands for autonomy since the ancient ages. The requirement of prior information before acquisition has been explicitly ingrained within the Rules, whereby the Government is required to inform the Gram Sabha about the conditions and objectives of land acquisition and also to provide a detailed description of the project, including the impact of the project and proposed plan for rehabilitation and livelihood (Rule 36(3) & 36(4), CPESAR, 2022).

However, the Rules, 2022 fall short of incorporating the international benchmark, since elements of 'free' and 'consent' are missing. While the draft rules of 2022 contemplated seeking consent before the acquisition of land, yet the notified rules apparently suffered from either bureaucratic engrossment or industrial lobbying. Thus, the Rules, 2022 only provides for consultation with the Gram Sabha before such dispossession and is not clear about the stage of acquisition when the Gram Sabha would be engaged. There is no provision under the Rules, 2022 to ensure such consultations are free and without coercion, which has been found to be often the case. Moreover, every such consultation leads to its culmination under bureaucratic discretion, whereby the District Magistrate, who is also the Land Acquisition Officer, has the absolute option to override any inputs by the Gram Sabha. This renders the process of dialogue a mere façade and redundant. The Rules, 2022 is not very clear on the requirement of such consultation before rehabilitation and has failed to address the issues of restoration of community rights and community forest resources upon rehabilitation. The Rules are very nascent in their formulation and their application is awfully open to interpretation. If interpreted aptly, the Chhattisgarh Panchayat (Extension to Scheduled Areas) Rules, 2022 can bridge the gap of autonomy between the Fifth and Sixth Schedule

Areas and thus can indoctrinate the principles of free and prior informed consent before dispossession and land acquisition in Chhattisgarh.

The conferment of authority to govern would have been scrawny without recognising rights over such resources. While the PESA Act, 1996 and its ancillary legislations grant management autonomy to the forest dwellers, their rights over the forest and its resources are instilled under the Forest Rights Act, 2006. Often regarded as the watershed moment in the annals of tribal history, the Act truly is an ambitious legislation that seeks to answer the historic injustice faced by these communities, who were regarded as encroachers over their own land. The degradation of 'rights' to 'privilege' and then to meagre 'concessions' under the British Raj, and continued as such by the Government of free India for 60 years, was reversed by this legislation, which strongly and unequivocally recognised the right of the forest dwellers over their ancestral domain. This ensured a life of dignity and self-sufficiency for the forest dwellers, who were living a life of mere sustenance under the constant threat of harassment.

The Joint Committee on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 had undertaken the exceptionally painstaking task of understanding the plight of the forest dwellers and thus sympathising with the prejudice faced by the forest dwellers for centuries. By conferring title over the forest and its resources, upon both individuals as well as the community, the Act grants proprietary rights to the forest dwellers, which had been a question in limbo since the advent of British rule in India. The Act recognises the traditional rights of forest dwellers in the form of Community Forest Resource rights (Section 2(1), Forest Rights Rules, 2007), which can be an exceptional device in ensuring the livelihood and dignity of the forest dwellers. The Act respects the community-based social structure of the tribal societies and thus is community-centric rather than individual-centric in its spirit, whereby the rights of an individual are nestled within the rights of the community.

The Act provides legitimacy to several rights claimed by forest dwellers for centuries, thus granting them a political stage to seek justification for their entitlements. Moreover, the Act protects the forest-dwelling Scheduled Tribe and other traditional forest dwellers from eviction from their land pending the recognition and verification procedure for their rights (Section 4(5), Forest Rights Act, 2006). As a corollary to its interpretation, any land acquisition in the forest can only be undertaken after the due process of recognition of rights

is done and thus can only be effected after all the rights therein are settled. Thus, enacting the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is not an end but a beginning of restoring meaningful life and dignity to the forest dwellers.

Though the Forest Rights Act, 2006 is a globally lauded legislation, it is not without its vices and ambiguities. Several researchers have found the Act plagued with numerous practical difficulties in its faithful implementation. The issue of weak nodal agency and lack of mutual trust between the forest dwellers and the bureaucracy, with the latter forging and fabricating documents to bypass the mandate of the Act, are some of the practical problems hampering the honest implementation of the Act. Yet, most of these issues can only be solved by active mobilisation of the people and the community, with the inevitable help from civil society organisations.

Apart from the disquiet towards its failure at the grassroots level, the law lacks legal strength for its robust implementation. The law has been weakened in its spirit by adopting the phrase ‘Act not in derogation of any law’ rather than ‘Overriding effect of the Act’, thus making the Act subservient and in conflict with other laws affecting dispossession. Dropping the duties of the Government from the enacted legislation has also hindered the cause of the forest dwellers in matters of land acquisition, whereby Joint Committee (2006) had suggested that “No forest land shall be acquired or diverted that may adversely affect the rights recognized under this Act without prior intimation to and prior consent of the Gram Sabha and the affected persons without paying adequate and equal compensation on the principle of "cultivable land for land" and proper rehabilitation.” (Clause 5). The induction of this provision in the Act could have meaningfully imbibed the need for deliberation and dialogue before land acquisition and rehabilitation. However, the current Act is absolutely silent upon matters of land acquisition and thus unwittingly puts its faith in acquisition laws to recognise the Act during its implementation. Too much reliance on bureaucracy, with the final say in all matters, remains a concern under the Act.

While the Forest Rights Act, 2006 and the PESA Act, 1996, bequests ownership and autonomy upon the forest dwellers, the RFCTLARR Act, 2013 governs the field of dispossession and acquisition of such rights and property. Regardless of the prime objective of the Act, which is to cause acquisition and dispossession, it would be amiss not to repute

this legislation as one being benevolent to the interest of the forest dwellers. The RFCTLARR Act, 2013, has replaced the 119-year-old draconian colonial law Land Acquisition Act, 1894 and thus emanates the sentiments of a modern and free nation. The exhaustive Act has brought the land acquisition law in India to par with the international benchmarks prescribed for such involuntary dispossession of indigenous lands. Thus, it is theoretically the most progressive law amongst all the benevolent legislations. I justify this to my premise since it would be futile to suggest that forest lands should not be acquired at all. Thus, upon such acquisition of forest land in a Scheduled Area, the RFCTLARR Act, 2013, is an excellent instrument to quench a majority of concerns and anxieties faced by the forest dwellers.

The RFCTLARR Act, 2013 is the first legislation to explicitly mandate the requirement of consent of the Gram Sabha before any acquisition of land in a Scheduled Area. Section 41 of the Act encompasses special provisions for acquiring land in Scheduled Areas and for acquiring tribal lands, which is to be done only as a matter of last resort, while recognising their vulnerability and unique relation with their habitat. This provision is an excellent piece of legislation that brings within the Act the elements of both the Forest Rights Act, 2006 and the PESA Act, 1996, thus ensuring their implementation in matters of land acquisition. The Act also squarely incorporates the doctrine of free and prior informed consent while mandating the requirement of Social Impact Assessment before any mass acquisition of land, thus overall recognising the crucial right of self-determination.

The Act is a welcome departure from the strict colonial version of the doctrine of eminent domain, which only entailed the grant of monetary compensation in lieu of dispossession. It thus gives statutory recognition to the duty of the government to rehabilitate and resettle those who have been displaced due to expropriation. Under the special provision for the Scheduled Tribes and Scheduled Areas, such rehabilitation has been suggested to be done in a similar habitat. However, the Act is silent towards the restoration of the community rights and community forest resource rights of the forest dwellers, which is a matter of serious concern. It also has not addressed the issue of post-resettlement support, which is essentially a moral responsibility of the State.

The RFCTLARR Act, 2013 addresses the centuries-old power asymmetry between the land owners and land acquiring authorities, and thus, provides a platform for discussion between

the land loser, the project proponent and the appropriate Government. However, the law decimates its efficacy by excluding its application for laws enumerated under its Fourth Schedule. Some of these exempted legislations are frequently used for causing large-scale displacements within forests, thus effectively restoring the Land Acquisition Act, 1894 for such acquisitions. Recent efforts of the Government to dilute the provisions of the Act are alarming and will undo the endeavours of this contemporary legislation, which has buoyed from its colonial past after 119 years.

Though the implementation of these laws has realised fluctuating success and frequently encounters manifold practical difficulties, it has opened up multiple possibilities for establishing a progressive and democratic forest governance regime in the arboreal landscapes of the Country. Together, these legislations provide enough jurisdictive competency for the forest dwellers to utilise law as a tool to claim and assert their rights over their habitat. Historically, ‘voting by foot’ and armed rebellion have been popular methods of expressing descent by the forest dwellers. Today, the law provides a powerful tool for the forest dwellers to assert their rights and fight for the recognition and exercise of their ancient and traditional domain. Thus, law can be an efficient instrument for forest dwellers to contend their rights, and its practical implementation will inspire them to give up arms.

The laws discussed above are not exhaustive and yet are so intermingled that they fail to clearly represent the forest dwellers' rights and the State's duties upon acquisition of forest land. Thus, the difficulty of the legal arena in India is that laws exist on both sides without being clearly cogent with one another. While one set of laws recognises the rights of forest dwellers over the forest and its resources, grants them the right of self-determination and acknowledges their vulnerability in matters of land acquisition, a series of colonial laws continue to operate from under the trap doors designed within benevolent legislations. Such divergence of laws and interests often leads to conflict between the State and the forest dwellers, both of whom are contesting for the forest and its land, rather than finding ways to share it.

As envisaged under the central theme and purpose of this paper, forest land has significant importance in the life and livelihood of forest dwellers and is a part of their ancestral domain. Upon being asked about their association with the forest, 100% of the respondents across all the districts expressed themselves traditionally and spiritually connected with their ancestral

habitat. 95% of the respondents were found to be dependent upon forest resources for their livelihood. [12]

However, 90% of all mineral wealth generated in India comes from States that have Scheduled Areas, whereby Scheduled Areas comprise only 13% of the entire geographic area of the Country (Wahi, 2017). This makes the most downtrodden population of India most vulnerable to large-scale acquisition and extensive displacement.

The global economic race has further fueled this fire of exploitation since mining the earth and extracting the elements is vital to most industries relying upon such raw materials. This is mainly directed towards the uncivilized who chose to live in nature rather than building cities by desecrating the forests. One may find it hard to apprehend that the Government would be willing to excavate cities for mining if reserves are discovered underneath them. It may thus be safely concluded that the exploitation and acquisition of forests happen due to social and political inequality, since forest dwellers are soft targets for such large-scale displacements. Moreover, unplanned acquisitions kickstart a vicious circle of increasing this wedge of social and political inequality, since the loss of land deprives the forest dwellers of their livelihood and shelter, thus pushing them towards poverty by annihilating their self-sufficiency.

Under the current development aggression, Governments today are entering into Memorandums of Understanding (MoUs) with large private business conglomerates to establish industries and form Public Private Partnerships (PPPs) to excavate mines. Under these agreements, the State promises to play a significant role in abetting the private corporations to establish large industries or mining projects within their borders. As such, the democratically elected Government, expected to protect its citizens from exploitation, is now being increasingly seen as a facilitator for ensuring 'expeditious' and 'smooth' permissions towards forest and environmental clearances.[13] By executing such MoUs and PPPs, the Government has become a party to private agreements and executes land acquisition on behalf of private corporations. Thus, rather than negotiating for its forest-dwelling population, the State is gradually losing its neutrality and acting as an agent for these private companies, in a perfect case of tail-wagging the dog. As such, the bureaucrats are engaged in

[12] Questions of the survey conducted on the field
[13] As per the MoU between Godawari Power &. Ispat Ltd. and the State of Chhattisgarh available at https://industries.cg.gov.in (Last Accessed on 02.04.2022)

enabling easy and expeditious acquisitions of land for these private companies and the security forces are being used as guns for hire to crush any protests. This has led to several allegations of forged Gram Sabha resolutions or fraudulently obtained consent. Where such Gram Sabhas have been held, it has reportedly been undertaken in an intimidating environment and in high-security zones, with minimum information and maximum bureaucratic pressure, thus leaving no scope for negation or negotiation by the forest dwellers (Shrivastava et al., 2020).

Such acquisition of land by the Government for private players under incentivized 'ease of business' policy has been severely criticized by experts and researchers alike, whereby the Xaxa Committee had observed that "the Public-Private Partnership mode of acquiring land is simply a backdoor method of alienating land in violation of the Constitutional provision to prohibit or restrict transfer of tribal land to non-tribals in Scheduled Areas." (p. 299). Similarly, the Parliamentary Standing Committee on Rural Development had recommended that the Government should not undertake acquisition for a private party, which was never implemented (Sampat, 2013, p. 44) Moreover, it is ironic that today the Ministry of Environment, Forest and Climate Change is batting against the Ministry of Tribal Affairs, while claiming that the recognition of forest rights has slowed down the process of project approvals and forest clearance and thus was against the Government policy of 'ease of business.' (D.O. NO. 23011/18/2014-FRA, 2014).

Unfortunately, even the Supreme Court has stretched the doctrine of eminent domain to justify the acquisition of land for private corporations, if the State deems it fit for public purpose (Sooraram Pratap Reddy vs. District Collector, 2008). As discussed, public purpose engrosses an extensive definition. Thus, even an industry engaged in private business may seek forceful acquisition of land through the State for its own profit. The Supreme Court, while reaching this conclusion, relied upon various foreign judgements and colonial jurisprudence, without any sympathetic insight into the effects that such casual use of land acquisition laws may ensue upon the downtrodden land loser in India. Furthermore, such an acceptance of private-gain-being-public-good would foreseeably open channels for corruption. It would allow the private corporations to persuade the authorities to declare their industrial usage of land as being one towards 'public purpose' and thus use forceful legislations to snatch land from those unwilling to sell it through private negotiations.

If one has to find a silver lining in this practice of Governments entering into agreements with Private Companies, thus acquiring forest land for them purportedly under public purpose, it can be argued that the Government must exercise its negotiating capacity to protect the interest of its citizens thus sought to be affected and displaced due to such project and thus must incorporate such terms and conditions towards their benefit within the MoU itself.

Counterbalancing economic development and unconditional protection of forest rights is an arduous task, as it would be impossible to choose one over another. It would be an unrealistic conclusion, possible one only in a utopian world, to suggest that forest lands should not be acquired at all and that the dwellers of the forest should be left alone in peace. The forest dwellers are also aware that such anticipation would be hallucinatory. Moreover, it would be wrong to presume that the forest dwellers do not want development as ground reports insinuate that forest dwellers are not against development per se and understand the nation's economic needs, but have been questioning the development mode imposed upon them (Xaxa, 1999, p. 31). They do not want development at the cost of losing their cultural identity and thus need to be compensated satisfactorily for such loss. Though a 51% majority of respondents themselves did not want to leave the jungle, more than 80% of respondents wanted a better life for their children and thus wanted their children to shift to the city for a better lifestyle and education.[14] The data demonstrates the difficulties and hopelessness bourn by the forest dwellers, who do not want a life of struggle for their children.

The intricate evaluation of benevolent legislations reveals their potency in addressing the anxiety of forest dwellers. The PESA Act, 1996, the Forest Rights Act, 2006 and the concerned provisions under the RFCTLARR Act, 2013, when read together, minus the trappings of exclusion from their application, encompasses almost all the rights sought to be ensured for the indigenous population towards involuntary land acquisition under the International Human Rights instruments discussed hereinabove.

Undeniably, there are loopholes in the policies which are required to be plugged to achieve the desired results, yet the laws and provisions enacted for the benefit of the forest dwellers provide enough tools in their hands to protect their interests. Today, the demand from the quarters is not for a better law, which they acknowledge is potent enough, but is for the

[14] Questions of the survey conducted on the field

implementation of existing laws in their true spirit while asserting that “If the government genuinely wants to do good by us, all it needs to do is to give us our constitutional rights over our jal-jangal-zameen (water-forest-land) as per the FRA.” (The Hindu, 2016), Thus, it can be argued that if the Government, without resorting to the escape doors to employ colonial legislations, truly implements the provisions granting the right of free informed and prior consent, the forest dwellers would not have much to complain against even if their land is acquired.

However, too much reliance on the Judiciary is not worthwhile for the forest dwellers to seek such favourable interpretation of the laws. Courts are not easily accessible to forest dwellers, who live a life of isolation and thus fail to seek redressal to their grievances through the application of the law. Moreover, practical realities like ignorance of the law and lack of education among forest dwellers furthermore encumbers such endeavors. Due to their extremely debilitated economic conditions, most forest dwellers cannot afford to contest expensive litigations before the Courts of the Country with fervour, more so when they are contesting for their rights against giant corporations with deep pockets. The expensive nature of litigation in India is a reality and thus need not be vindicated (Indian Express, 2020). It is non-affordable to the poorest lot of the country with a non-existent economy. Furthermore, the Supreme Court has curtailed the locus in challenging such ‘development projects’, thus stating that those affected by such land acquisitions should only invoke Public Interest Litigations, closing the doors for Civil Society Orgsnaisations supporting the cause of the forest dwellers (Balco Employees Union vs. Union of India, 2002).

Nonetheless, some fortunate cases reach the Constitutional Courts of the Country for adjudication with the aid and support of civil society organizations. However, these cases are often trapped in the humdrum of the system and face extreme delays in justice dispensation. This muddle of the procedure is easily exploited by the battery of lawyers engaged by the rich and powerful to defer final adjudication and frustrate the litigation. Any hope of an interim relief pending the final adjudication is also curtailed, since the Supreme Court has time and again cautioned against staying such land acquisition proceedings and development projects on allegations of violation of laws or even fundamental rights, unless ‘extraordinary circumstances’ exist (Girias Investment Pvt. Ltd. vs. State of Karnataka, 2008). These acquisitions are deemed to be done for the public good, which has a vague definition and is at the absolute discretion of the Government (State of Bihar vs. Kameshwar Singh, 1952).

Hence, land acquisitions are rarely interfered with by the Judiciary, while recognizing the same to be a matter of public policy decision (Balco Employees Union vs. Union of India, 2002). It may be apt to quote the reflections by the Supreme Court of India regarding the plight of such litigations by these downtrodden citizens of the country in the case *Delhi Jal Board vs. National Campaign for Dignity and Rights of Sewerage and Allied Workers & others* (2011):

"15. In last 63 years, Parliament and State Legislatures have enacted several laws for achieving the goals set out in the preamble but their implementation has been extremely inadequate and tardy and benefit of welfare measures enshrined in those legislations has not reached millions of poor, downtrodden and disadvantaged sections of the society and the efforts to bridge the gap between the haves and have-nots have not yield the desired result. The most unfortunate part of the scenario is that whenever one of the three constituents of the State i.e., judiciary, has issued directions for ensuring that the right to equality, life and liberty no longer remains illusory for those who suffer from the handicaps of poverty, illiteracy and ignorance and directions are given for implementation of the laws enacted by the legislature for the benefit of the have-nots, a theoretical debate is started by raising the bogey of judicial activism or judicial overreach and the orders issued for benefit of the weaker sections of the society are invariably subjected to challenge in the higher Courts. In large number of cases, the sole object of this litigative exercise is to tire out those who genuinely espouse the cause of the weak and poor."

Above all, the Constitutional Courts of this Country are bound by the limitations of the laws. Due to the strict separation of powers within the Constitution of India, the Courts have hesitated in formulating laws, which is the prerogative of the legislature (RK Garg vs. Union of India, 1981). The Courts often limit their function to test the legislations or executive actions, primarily on the touchstone of Part III of the Constitution of India, the doctrine of basic structure and legislative sanction (Kuldip Nayar vs. Union of India, 2006). Even these tests have been suggested to be applied leniently to such decisions which ensue economic ramifications (RK Garg vs. Union of India, 1981), which invariably include the acquisition of land for mining and industrialisation.

Fundamental Rights enshrined under Part III of the Constitution of India have been regarded as sacrosanct and guaranteed by the Constitution of India and recognised as such by the

highest Constitutional Court of India in a plethora of judgements (Srimathi Champakam Dorairajan vs. The State of Madras, 1951). The importance of Article 21 of the Constitution of India and its role in the expansion of human rights in India under judicial activism has been discussed in detail. It has been read by the Supreme Court to include a life with dignity and all that goes along with it, including the right to livelihood, shelter, exercise of tradition and culture, social and economic empowerment, self-determination and free and informed choice. A life of dignity for the forest dwellers depends on their right over their land, which has been sufficiently harped in this paper. Upon acquisition, their right to shelter and livelihood are severely damaged due to dispossession. Thus, their rehabilitation should consider their right to exercise tradition and culture, social and economic empowerment, self-determination and free and informed choice. However, the inviolable nature of the right has been diluted by the Supreme Court in matters of land acquisition, whereby it has been held that violation of Article 21 cannot be beseeched while challenging the acquisition of private land, since the right to property is only a constitutional right under Article 300-A and not a fundamental right. Hence, the Supreme Court has observed that "Acquisition of property for a public purpose may meet with lot of contingencies, like deprivation of livelihood, leading to violation of Art.21, but that per se is not a ground to strike down a statute or its provisions." (K.T. Plantation vs. State of Karnataka, 2011)

Though a few landmark judgements like *Samatha vs. State of Andhra Pradesh* (1997) and *Orissa Mining Corporation Ltd vs. Ministry of Environment & Forest* (2013), have given some sliver of hope to the forest dwellers, the former has been doubted by the Supreme Court itself and has been declared to be not applicable in the State of Chhattisgarh (Mangal Sai Armo vs. Union of India 2022), while subsequent legislative and executive actions have diluted the latter. Thus, an analysis of judicial trends points out that forest rights are upheld when not in conflict with the 'greater good' (Menon, 2007). Where juxtaposed with laws propagating economic development in the name of industrialisation or excavation of mines by the acquisition of forest land, these rights are read by courts in a minimal sense. While conserving the environment and protecting wildlife in the Jungle has often been posed as at-risk on the face of human existence within the forest, even such considerations of the greater good have found a back seat when the forest is stripped for exploitation.

Recently, in *Wildlife First vs. Ministry of Forest and Environment* (2019), the Supreme Court directed the State Governments to evict those forest dwellers whose claims have been

rejected, while considering them encroachers over forest lands. As per the Affidavit filed by the State of Chhattisgarh, this would have led to the eviction of more than twenty thousand forest dwellers, with an estimate of more than 17 lakh forest dwellers being evicted across India (The Telegraph, 2019). The political pressure from such an order saw the State Governments coming into action and thus accepting that such rejections were done without following the due procedure under the Act and hence seeking a stay on the direction of eviction (Roy, 2019). This was a close call for the forest dwellers, who were neither adequately represented before the Supreme Court in this matter nor were defended by the Central Government, thus presenting a case enough to understand their plight while undertaking litigation.

As demonstrated, serious incoherencies exist between laws governing similar spheres, with the legislature astutely saving escape doors in benevolent legislations to resort to colonial repressive laws upon need. Also, too much interplay of law in the arena of policymaking is bound to generate judicial reluctance in interpreting the law. Policy decisions are based on shifting social forces and thus are born out of changes in government or the general outlook of the Nation. The Supreme Court has time and again exercised restraint in venturing into policymaking and hence has refused indulgence in interfering with such decisions of the Government (RK Garg vs. Union of India, 1981). Thus, despite having enough tools under the law to safeguard the interest of forest dwellers, until there is no change in the policy that brings about clarity within the legal entanglement, the Courts are bound by the laws and judicial presidents in existence.

By far, it can be conclusively stated that the acquisition of forest-dwelling lands is inevitable for anything deemed to be ‘public good’ by the State. Researchers and forest dwellers deem the legislations in place to be good enough to solve the difficulties the forest dwellers face upon forest land acquisition. However, admittedly, certain loopholes in these laws are exploited by the State or the land-requiring agency to get around the mandates under these Acts, while resorting to despotic dispossessing legations. As such, there are laws that: acquire the land, acquire rights over the land, exclude rights over the land or change the nature of the land, with little accountability towards the stakeholders dwelling therein. Till the puzzlement of precedence amongst these laws and the gap in policy exists, the Constitutional Courts of the Country cannot do much towards protecting the interest of the forest dwellers upon land acquisition.

Hence, after assessing the literature available and the data collected, I suggest two requirements under the law which, if stimulated, could minimise the conflict and ease the living of the forest dwellers despite the land being acquired for development purposes. They are: 1) ensuring a free and prior informed choice, and 2) deliberative and effective rehabilitation. While the former is suggested to be an exercise to be carried out before the acquisition of the land, the latter would be a result of the first exercise and would continue even after the acquisition. These elements are already present in the legal framework of benevolent legislations discussed and hence, I would be proposing some changes in the regulations and policy to implement these suggestions effectively.

With this reiterated, I will not be nipping with the Central laws, primarily because I do not expect any positive changes in them owing to the social factors and policy outlook in vogue. The current Union government has established through its actions that it represents the other side of the coin and is fervently pushing the country's economic growth by adopting development aggression. This is inevitably important and would ultimately result in better living conditions for Indian citizens, including the forest dwellers, by improving the economy of the Nation. I have thus surrendered to the Central laws and will not be suggesting any changes to them, while only focusing on proposing changes that can be executed at the State level.

Recognition of Community Forest Rights

The solutions suggested hereby have one prerequisite condition, which has been suggested with practical providence: recognition of the rights of forest-dwelling communities. This paper aspires to find the gaps in the law and suggest changes in legislation to plug such fissures without venturing into assessing or answering the practical difficulties faced at ground in implementation of the law. However, executing these proposed policy changes would not be comprehensively possible if the very basis of such claims could not be established. The rights of the forest dwellers over their land emanate from the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Such recognition and settlement of the rights of community or individuals over their forest land builds the foundation for them to exercise their powers and responsibility under other

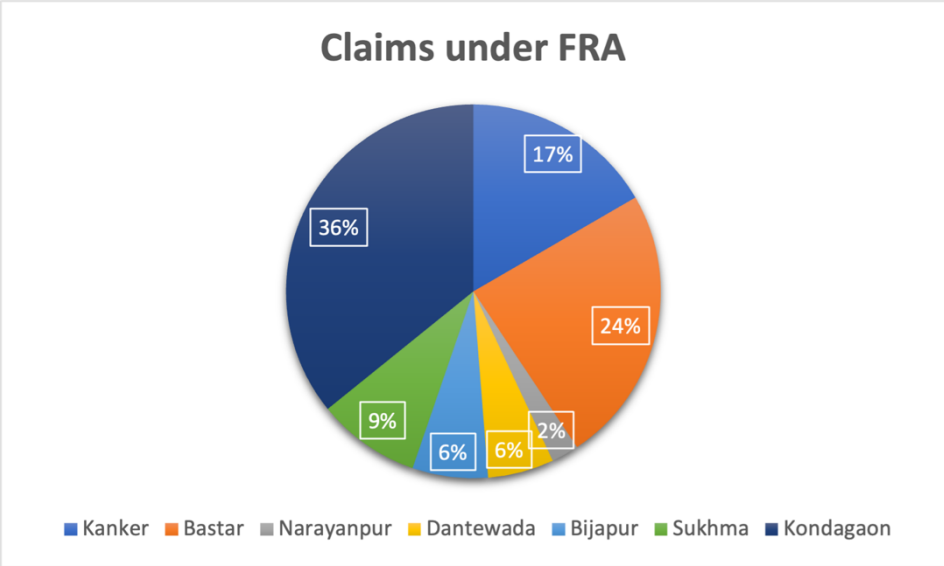
benevolent legislations. Thus, an exercise towards recognition of these rights is immediately required, before the condition of their land being acquired.

The recognition of forest rights in Bastar is better than in the rest of Chhattisgarh, and thus, I hope for the steadfast implementation of this suggestion. To establish this, it is vital to marshal the data and documents which suggest that the Government of Chhattisgarh is keenly interested in protecting the rights of forest dwellers by recognising them under the Forest Rights Act, 2006.

As per the information available up to 31st December 2022, the total number of claims for the grant of individual rights under the provisions of the STOTFD (Recognition of Forest Rights) Act, 2006 stood at 8,77,173. Out of the total number of applications, 6,43,757 applications had been made by individuals from the Scheduled Tribes while 2,33,416 applications were made by Other Traditional Forest Dwellers, towards which 3,38,858.896 hectares and 33,178.954 hectares of land were allotted respectively (RTI Reply, 2023).

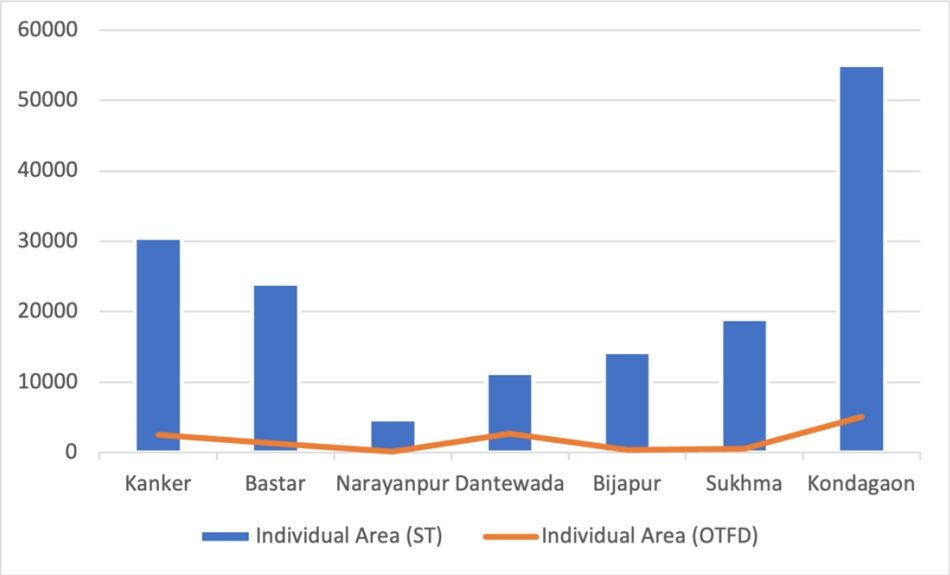
As of 31st December 2022, out of 8,77,173 claims made, 4,65,888 applications were rejected. Here, 2,30,303 claims made by Scheduled Tribes were rejected and 1,80,982 claims made by Other Traditional Forest Dwellers were rejected at various level. Thus, while the average rejection rate of claims in Chhattisgarh stood at 47%, 36% of the applications made by Scheduled Tribes were rejected, and a whopping 78% of the applications made by the Other Traditional Forest Dwellers were rejected under the Act, 2006 (RTI Reply, 2023).

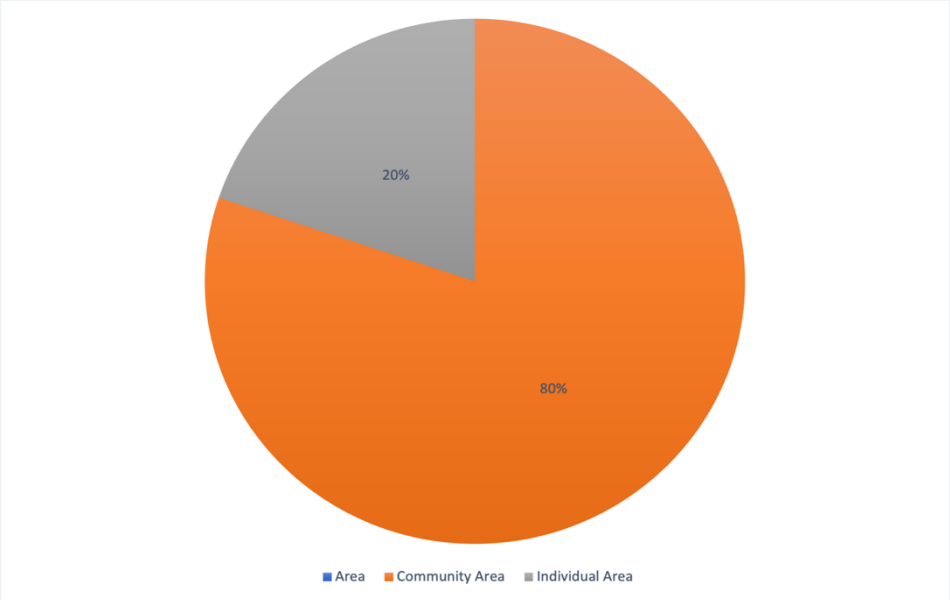
Bastar's average rejection rate was only 23%, with 77% of the claims being approved. 85% of the claims made by the Scheduled Tribe Forest dwellers were found to have been approved, with only 15% of the claims getting rejected. However, the situation is different for OTFDs, as 56% of the claims made by the OTFDs were rejected in all of Bastar Division. Hence, as individuals, the recognition of traditional rights for the OTFDs has been low due to the difficult benchmarks set by the legislation. The evidences thus sought under the Act, 2006, being different for the Scheduled Tribes and OTFDs, makes it harder for the latter to fall within the eligibility criteria to be protected under the Act and hence reflects upon the data thus marshaled from the information obtained.



Source- Data calculated through information obtained under RTI Act, 2005

The recognition of Community Rights in Bastar also presents promising figures. The general approval rate of community rights for both Scheduled Tribes and OTFD in Chhattisgarh is 91%, which is even better for Bastar with a 96% approval rate. Data shows that 100% of the claimed community rights have been recognised in Kanker, Narayanpur, Dantewada, Bijapur and Sukhma, 5 out of 7 Districts in Bastar. Though the number of applications for community rights is far less than the number of applications for individual rights, the area of forest recognised under Community Rights is far more than the area recognised towards individual rights, with the former covering about 80% of the area of forest recognised under the Act of 2006. Since the data for the grant of Community Forest Resource rights is not separately available, it would not be possible to segregate them from the data. Most of these community rights have been recognised only for the Scheduled Tribes, with Bijapur being the only district where community rights of OTFD have been recognised (RTI Reply, 2023). Thus, the data collected through the Right to Information Act, 2005 presents a promising picture for Bastar, whereby there is preponderance of indigenous tribal population. These tribal communities have been residing over the forests of Bastar since time immemorial and hence have rich traditional rights and hence ample claim over the forest.





Source- Data calculated through information obtained under RTI Act, 2005

The primary legislation for land acquisition, the RFCTLARR Act, 2013, provides for concurrently settling land rights simultaneously with the land acquisition (Section 41(4), RFCTLARR Act, 2013). Also, as per the Forest Rights Act, 2006, forest dwellers cannot be evicted from the forest without following the procedure of recognising and verifying their rights under the Act (Section 4(5), Forest Rights Act, 2006). However, several laws escape the requirement of concurrent settlement of rights under the Fourth Schedule to the

RFCTLARR Act, 2013. Moreover, the apprehension of a time-bound and eviction-oriented settlement of rights presents a grave picture whereby the claims are more likely to be rejected if the notification for acquisition has already been issued. Also, the protection under the Forest Rights Act, 2006, is often lost due to bureaucratic failure. Several researchers have delved into the faulty implementation of the Forest Rights Act, 2006 and the major issues leading to its implementational failure have been briefly discussed elsewhere in this paper.

For apt execution of the suggestions and to avoid a hurried recognition on the face of acquisition, I hereby recommend immediate identification of the community rights of the forest dwellers. Though it would not be possible to lay down the exact modus operandi to be followed by the Government for its realisation, which will have to be formulated after much deliberation and hands-on consideration, I have strived to present some suggestions for its practical and urgent implementation.

I recommend immediate identification of the community rights and community forest resource rights, instead of giving preference to recognition of individual rights, to minimise practical failures of the Act. As per the scheme of the Forest Rights Act, 2006, individual rights are nested within community rights. As such, once the community-owned village boundaries are demarcated, working out the individual rights within those areas can be more manageable. Such recognition of community rights would cause the privatisation of common land and resources, without having to divide the resources into individual holdings. This would moreover be important as once the boundary of the village forest is fixed; it would exclude any claim over the land by the State as being res communes, since the community would legally own it under its title. Thus, the practical hitches of interference by the bureaucrats in curbing individual rights within these boundaries would diminish and the Gram Sabha can function independently in dividing the rights within its recognised territorial jurisdiction. Also, even if individual rights are delayed in recognition, the dwellers living in the forest would be entitled to the land and its resources as part of the community.

Recognising community rights as per due process rather than individual recognition would be easier. The Ministry of Tribal Affairs, often regarded as a weak and understaffed nodal agency, can be involved in verifying Community Rights. Bastar Division has only 1102 forest villages, much smaller than potential individual right holders. Since the active participation of the Ministry of Tribal Affairs as a nodal agency is essential for adherence to

the due procedure towards recognition and verification of forest rights, it would be viable for them to prioritise the recognition of community rights. This can be done with its minimum staff and yet cover the maximum area under claim of rights.

The recognition of community rights and the area designated for the exercise of such rights would furthermore protect the forest dwellers from the 'tragedy of commons', whereby it would no longer be *res communes* for everyone, including the Government, to stake a casual claim (Hardin, 1968). Without the recognition of community rights, such forest land would be public property, open for a claim of exploitation by anyone and thus face the commons dilemma, resulting in short-term selfish interest taking precedence over long-term group interest (Meyer, 2009). This would indeed be a tragedy, since every stakeholder would try to maximise the profit, resulting in the property's wastage. After recognising the rights, the 'commons' would be legally owned by the forest-dwelling community to be protected and managed from over-exploitation. Enough provisions in the law enable forest dwellers to assert their ownership and governance rights over the community forest once they have been recognised. The devolution of authority and recognition of rights of the community over the community-protected land has been assessed and proved to avoid the tragedy of commons by the Political scientist Elinor Ostrom, who has been awarded the Nobel Memorial Prize in Economic Sciences for her work on the issue. Recourses, including the resource of land with a definable boundary, have been found by Elinor Ostrom to be preserved more efficiently, and the owners can confidently contest any deprivation thereof (Ostrom, 1990).

I do not suggest that individual rights should not be recognised at all or that the Government must undertake such recognition under a campaign mode. Such attempts at time-bound execution of the act have often led to the subversion of the due process prescribed under the law, ultimately leading to the failure of the faithful implementation of the legislation (Oxfam, 2015). I also cannot suggest that the Government must undertake such an exercise of filling out the claims on behalf of the community, since there is profound distrust between forest dwellers and State agencies. In the absence of the involvement of the Ministry of Tribal Affairs, the authorities of revenue or forest departments have been found to be indulged in curbing the area and rights claimed by the forest dwellers, whereby it has been reported that the claims filed by the NGOs are rejected only to enable the government to undertake the process, with an oblique intention of rejecting and reducing the village boundaries (Kumar, 2016).

The exercise of recognition of the rights of the community must be community driven and there is no other solution to this. This could be done by the participation of the Ministry of Tribal Affairs and civil society organisations in educating the forest dwellers about their rights and the process under the law. The survey conducted for this paper in Bastar Division suggests that the forest dwellers of Bastar are pretty aware of the law and their rights. 72% of the respondents seemed to know about the Forest Rights Act, 2006, as a law granting them rights over the forest, while only 58% of the respondents claimed to know about the particulars of rights granted under the Act. 57% of respondents knew of the Panchayat (Extension to Scheduled Areas) Act, 1996. Of those who were aware of the laws, 56% came to know about them through Government schemes and officers, while Civil Society Organisations told 26% of the people about the law. While 98% of the respondents felt that the Act of 2006 had brought a change in their favour, all of the respondents knew that their consent was required for the diversion of forest land.[15]

Recently, there have been significant efforts to ensure the recognition of community forest rights in Chhattisgarh. A perusal of the meetings and discussion of the State Level Monitoring Committee of Chhattisgarh (SLMC) displays their concerns towards a low number of Community Forest Resource Rights recognised in Chhattisgarh while cogitating its importance in livelihood and raising the standard of living. Thus, the SLMC has recommended the formulation of SOP to recognise Community Forest Resource Rights for its immediate implementation and has instructed the departments to conduct campaigns for broadcasting about the CFRR and mobilisation of the community. Earlier, a draft SOP for urgent recognition of community rights was formulated, which significantly relied upon the forest department for its implementation. This was objected to by the public representative members of the SLMC and has been sent for reconsideration and reformulation. As an aftershock to the order of eviction issued by the Supreme Court, the SLMC issued directions to the Ministry of Tribal Affairs to play a proactive role in conducting random inspections of accepted/rejected claims, om-spot verification and authenticate the demarcation of land under the Act, 2006 (RTI reply, 2023).

[15] Questions of the survey conducted on the field

It would be amiss to emphasis upon the important role of Maps in marking the boundaries of the forest and recognising the community rights as envisaged and suggested hereby. Under the Forest Rights Act, 2006, the sole condition for admitting community forest resources rights of the Gram Sabha is by establishing that the claimed resources and area of the forest fall within the traditional borders of the village. However, the still in use old maps of the colonial era cannot be relied upon for such an assessment. In the current government setup, mapmaking is an exclusive bureaucratic process based on British cartography. It has been sufficiently described that the British did not recognise any right of the forest dwellers. Thus, unlike the maps of revenue lands, which reflect scaled borders of individual Khasras, the forest maps have divided the jungle into compartments, with no reliable delineation of community or village boundaries. Himal (2023) has termed such maps and mapmaking processes "non-negotiable, deterministic and not without their silences."

Recently, the district administration of Bastar has digitised the Forest and Revenue maps for the convenience of mapping the Community Forest Resources (Jha, 2022). The Ministry of Tribal Affairs has been tasked with the responsibility of ensuring the marking in the forest. Thus, the revenue and forest department have a minimised role in deciding the forest boundaries in Chhattisgarh (RTI reply, 2023). Though the complete dependency on technology has been impeded under the Act, 2006 and cannot be a substitute for the evidences prescribed under the Act, the fair use of technology can benefit the forest dwellers to conform with the government in delineating such boundaries.

The Government may devolve the duty to demarcate the forest land upon the Gram Sabha. Allowing the forest dwellers' participation, along with their elders who have knowledge about their land, while marking the points of village boundaries with GPS, can create an apt border of the community forest. This can then be superimposed in the cadastral maps maintained by the forest department to present a clearer picture of the area and the compartments of the forest land which are thus sought to be recognised as a community forest. Once the process for recognition of the rights is completed and the rights are instilled, these community-generated maps must be made a part of the official maps, along with the mandate of updating the same under the record of rights.

The Union Ministry of Environment, Forest and Climate Change has recently emphasised the need to expeditiously update the record of rights to show the titles granted under the Forest

Rights Act, 2006. It thus aims to integrate the digital information on the record of rights with a unified national portal along with GIS data to bring transparency about the boundaries of such recognised areas (Jha, 2022). The use of technology by the Government to delineate the boundaries of the area recognised under the Forest Rights Act, 2006 is a welcome move since this would protect the forest dwellers from any uncalled interference by the forest and revenue department. The lack of demarcation of traditional boundaries has been a cause of frequent stirs between the forest dwellers and the officials, since there is no clarity about where the right of one end and the authority of the other begins. The geo-referencing of the area by undertaking a geographic information system (GIS) survey as per the record of rights would grant legitimacy to the rights and the area recognised for such exercise of rights to the forest dwellers.

The fight for community forest rights and resources has been challenging and has been attained only after a struggle. The reluctance of the Government in recognising such community rights defies the entire gamut and spirit of the Forest Rights Act, 2006, which is community-centric. Perhaps the idea of common ownership is incomprehensible to the civilised society and a lack of understanding of the importance of such rights to the forest dwellers may be the reason for such lethargy in its recognition by the State. Furthermore, Chhattisgarh has become the first state to cancel community rights granted under the Forest Rights Act, 2006 (Seetharaman, 2016). Such casual nullifications of the title granted under the Act, to facilitate land acquisition for coal mining by avoiding any obligation, is illegal. There is no provision under the Act for the authority to cancel the titles once issued as the authority becomes *functus officio* after granting the title. Unless the lack of such power to cancel recognised rights is clarified either by regulation or through adjudication, this will remain a threat to this proposed requirement and its implementation.

Thus, the right to property of the forest-dwelling tribes must be viewed broader than mere individual rights but as a right of the community over the land and its recourses. Once the rights have been instilled in the community, they gain a political stage and a legal right to be compensated for the loss of their land, even under the archaic doctrine of eminent domain. The immediate recognition of community rights by involving the forest dwellers and using technology, without waiting for an imminent acquisition, can instill them with the right to seek fair treatment upon acquisition of their land and resources.

Free and Prior Informed Choice

The forests in India were never formally acquired, and yet today, they belong to the Government. However, government property is not owned by the State as its proprietor but is held by it as a trustee, with a duty of accountability towards its citizens. The State cannot do as it may please with such public property and requires permission or approval from its citizens before taking decisions regarding its disposal (M.I. Builders vs. Radhey Shyam Sahu, 1996). Thus, as a trustee, the Government is expected to share the sovereign power with the community residing over such areas and involve them in decision-making. Free and Prior Informed Consent has been recognised as an essential element for exercising the right to self-determination, whereby the process devolves to 'share and transfer of decision-making authority to those who will be directly affected.' (Shrivastava et. al, 2020, p. 21). As such, the Free and Prior Informed Consent doctrine represents "highest standard possible for the involvement of Indigenous Peoples in decision-making processes" upon their lands being involuntarily acquired ("Oxfam Australia" (n.d.)).

The process of consent has often been frowned upon by the private sector and Government as a delaying factor in the denudation of forests for setting up of industries or excavation of earth in the current development aggression under the banner of ease of business. Shockingly, the requirement of obtaining consent from the forest dwellers before land acquisition or forest diversion has been regarded as an "impractical requirement" under the law by the Union Minister of Environment, Forests and Climate (Sethi, 2016). Thus, the Government has been ardent in not respecting the internationally recognised doctrine of free and prior informed consent and has expressed its displeasure towards the right to self-determination, which has been recognised as a basic human right under all significant human rights conventions. The dominance of private sectors in the economy of the Country and increasing acquisitions on their behalf has amplified the discontentment of the forest dwellers, who are being evicted for private profit rather than the development of the Nation. Constant efforts to dilute such requirements under the national laws and the autocratic attitude of the State in unilaterally evicting the forest dwellers, without following due process or choosing to follow the process under colonial laws, have resulted in tussle between the State and the forest dwellers. Providing choices to the forest dwellers and thus respecting their right to self-determination can decrease their hostility against the State and address their anxiety.

I have used the word ‘choice’ in my suggestion, since there has been much debate upon the use of the words ‘consent’ and ‘consultation’ to designate the process of deliberation. Like all other sovereigns of the world, the Government in India has frowned upon the word ‘consent’ as one granting authority over and above the power of the Government to make policy decisions. The word ‘consultation’ has been criticised as being lukewarm and susceptible to being trampled over by the State, thus crushing the voice of the stakeholders and making the exercise redundant.

Both these words appear in legislations and policies discussed hereinabove in an analogous context. While the RFCTLARR Act, 2013 mandates prior consent of the Gram Sabha before issuance of any notification of acquisition or alienation of any land in the Scheduled Areas (Chapter III, RFCTLARR (Social Impact Assessment and Consent) Rules, 2014), the PESA Act, 1996 requires the State to consult with the Gram Sabha before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects (Section 4(i), PESA Act, 1996). Consultation with Gram Sabha was also made a precondition for the grant of permission towards the diversion of forest land (Letter No. F. No. 11-9/1998-FC, 2009), the legal sanctity of which is now uncertain after the recently introduced Forest (Conservation) Rules, 2022. The element of consultation is missing from the Forest Rights Act, 2006, which, surprisingly, was dropped by the Ministry of Tribal Affairs itself. The Ministry of Tribal Affairs relied upon the specific laws for such acquisitions while justifying the non-inclusion of the mandate of consultation before the acquisition of land or rights conferred under the Act. Thus, in its Memorandum (2005), the Ministry of Tribal Affairs stated that “Once rights are created, the holder will be entitled to the remedy as provided in the relevant Acts/regulation/policy whenever or for that matter anyone else wishes to infringe on such vested rights.”

My idea of solving this conundrum of words is inspired by the work of Arpitha Kodiveri, whereby she has suggested a model of deliberative engagement with the forest dwellers, which would reflect upon the principle of shared sovereignty (Kodiveri, 2021). In her work, she has expounded circuits for such deliberative engagement, which would result in positive participation of the forest dwellers by sharing the decision-making authority over forest land. Adopting this model through legislation can open up the possibility of dialogue between the stakeholders and the requiring or acquiring agency, thus giving the forest dwellers the

authority to put forth their concerns and negotiating their demands in lieu of involuntary displacement. The suggested model of participation is somewhere in between the strict requirement of consent and the weak nature of consultation. Under my suggested interpretation, while the forest dwellers would have all the right to seek better compensation and negotiate the terms of rehabilitation, they would not have the authority to veto the land acquisition. This is a shift from the conventional conversion of consultation to mere a paper suggestion, which can be ignored by the bureaucracy in closed-door proceedings. It is a participatory platform for discussion between the parties in an open platform, with discussions and negotiations to reach a conclusion.

Under my suggestion, we can continue using the word 'consultation' if the same results in free and prior informed deliberation and a binding negotiation. This idea is supported and expounded by the definition of 'consultation' propounded by Justice Subba Rao in the case of *R. Pushpam vs. The State of Madras* (1953) as:

"The word "consult" implies a conference of two or more persons or an impact of two or more minds in respect of a topic in order to enable them to evolve a correct, or at least, a satisfactory solution. Such a consultation may take place at a conference table or through correspondence. The form is not material but the substance is important. It is necessary that the consultation shall be directed to the essential points and to use core of the subject involved in the discussions. The consultation must enable the consuitor to consider the pros and cons of the question before coming to a decision. A person consults another to be elucidated on the subject-matter of the consultation. A consultation may be between an uninformed person and an expert or between two experts. A patient consults a doctor; a client consults his lawyer; two lawyers or two doctors may hold consultations between themselves. In either case the final decision is with the consultor, but he will not generally ignore the advice except for good reasons. So too in the case of a public authority. Many instances may be found in statutes when an authority entrusted with a duty is directed to perform the same in consultation with another authority which is qualified to give advice in respect of that duty. It is true that the final order is made and the ultimate responsibility rests with the former authority. But it will not, and cannot be, a performance of duty if no consultation is made, and even if made, is only in formal compliance with the provisions."

Deliberation in consultation has been observed to be an essential element by the Constitutional Bench of the Supreme Court in the case of *Union of India vs. Sankal Chand Himatlal Sheth* (1977), while perceiving that "Thus, deliberation is the quintessence of consultation. That implies that each individual case must be considered separately on the basis of its own facts. Policy transfers on a wholesale basis which leave no scope for considering the facts of each particular case and which are influenced by one-sided governmental considerations are outside the contemplation of our Constitution."

Such deliberations must be 'free' in their nature, which denotes that the consultation must be done without coercion, intimidation or manipulation. Apart from the RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015, which to some extent mandates measures to make the process heckle-free, none of the other legislations prescribe any requirements or procedures to ensure this. The bureaucratic inhibitions in matters of land acquisition are largely unchecked under legislations, which is often reflected in their action. Such consultations have been found to be conducted under governmental pressure and in the presence of a large number of security forces. A report by BBC estimates that there are 1770 security personnel in Bastar per lakh population, which is more than 800 in Kashmir and 139 in India (Bharadwaj, (n.d.), p.4). Failure to ensure the free nature of consent or consultation, by creating an intimidating environment, makes the whole process superfluous. Thus, there is a need to ensure regulations requiring proof of the 'free' nature of the consultation and hence fix accountability upon those who violate it.

The doctrine requires the State to equip the stakeholders with comprehensive information about the project and thus enable them to formulate their views about it. The requirement of prior information can be regarded as an element of Natural Justice, which has been recognised as part of the basic structure of the Constitution and thus has been held to be inviolable by the Supreme Court of India (Maneka Gandhi vs. UoI, 1978). The 'prior' nature of such information must ensure the process is conducted before any authorisation or commencement of activities at the early stages of a development or investment plan. The information dissemination stage must ensure that those required to give their consent have sufficient time to process the information, discuss the consequences and thus come to a conclusion amongst themselves first.

Thus, equipped with the aforementioned understanding and definitions, I suggest a model of consultation based on a constant loop of deliberation and dialogue till a decision is reached. This would require constant dissemination of information to the forest dwellers and continuous negotiations to arrive at conditions under which they are willing to give up their habitat or rights over forest resources. Towards this, multiple options must be made available to the stakeholders and the State must be open to suggestions from the forest dwellers. These suggestions would carry the weight of being binding in nature to the acquiring or requiring authority, unless the same has been renegotiated with the stakeholders. If even after renegotiations there is no possibility for incorporation of such terms or demands under the scheme of acquisition, the State may be at liberty to override such conditions, but only after according justification towards such negation. The demands of the forest dwellers must not be autocratically rejected without any explanation, and thus, the State should not be arbitrary and irrational in its consideration. Furthermore, the requirement of reasoning in accepting or rejecting the negotiated terms would allow the courts to test the validity of such inclusion or exclusion, thus upholding the rule of law.

The consultation process must be concluded before any MoU or PPP is entered between the State and the requiring agency, to prevent the putrefaction of such an engagement. As has been discussed, any consultation requirement after project sanctions and bureaucratic clearances attains *fait accompli*. Thus, defining the stage of such consultation is very important. Once the terms and conditions have been negotiated between the forest dwellers, the State and the requiring agency, the same must be recorded in black and white and must be made a part of the MoU or PPP agreement. The Gram Sabha must be a party to these agreements, or its interests should be fairly represented through the State. This would legitimise the negotiated terms since the agreement would be justiciable before a court of law and bring fairness in its execution.

The information given to the forest dwellers for consideration should be exhaustive and explain the necessity of land acquisition and the possible extent of dispossession. If the land is being acquired for commercial activity, the company should share the details of commercial projections, including the particulars of funds proposed for compensation and rehabilitation. The information must clearly elucidate the environmental risks that may be caused due to its operations and thus explicate the measures it will take to minimise such damage. The information must not be bare and must be flexible to keep the possibility of

negotiation open. It should provide the prospect of seeking inputs from the forest dwellers towards the apportionment of funds marked for acquisition as per their priority of demands and give options to exercise their right to self-determination. This should include the procedure for answering any quarries raised by the land losers and thus must be a continuous process of dissemination of information to address their concerns. Such information must be fair and accurate, acting as an estoppel against any deviation from the declaration therein.

Forest dwellers must be free to discuss these proposals without governmental or corporate involvement. Once the community has culminated its demands and requirements, the Government must entertain their concerns and claims as a community through Gram Sabha and hence must negotiate with them the terms of the surrender of their property and resources through constant meetings. These meetings must be attended by such officers of the requiring agency who are competent to take decisions and carry out negotiations on behalf of the company. The Government's role must be minimised or be limited as an umpire in negotiations between the land losers and the requiring company. There may not be any limitation on the number of such meetings before the conclusion of the final terms and after every such meeting, both parties must be given opportunities to examine the proposal by the other and thus put forth their counteroffer. The terms thus negotiated between the parties must meet the minimum benchmark under the law and be put in black and white with endorsements by all the parties to the engagement. This model of shared sovereignty between the State and forest dwellers fulfils the requirement of free and prior informed consent and is compliant with the public trust doctrine.

The suggested model would fuse the elements of private negotiations with that of the doctrine of eminent domain and thus result in a fair acquisition of land and resources. The terms thus reached through negotiations would clearly define the rights and liabilities between the parties and thus be a win-win situation for all. This would furthermore limit bureaucratic coercion in the acquisition since the terms would have been arrived at through deliberations and thus would be acceptable to all. It would allow the Courts to counterweight both sides of the arguments while taking a decision, guided by the spirit of the Constitution, rather than the current scenario where only the official narrative is available, thus projecting the proposed plan as the only possible narrative and the coerced land acquisition as the only possible way. A win-win condition of acquisition would foreseeably reduce litigation, which has been a waterloo for the forest dwellers.

Negotiations between requiring agencies and forest dwellers, beyond minimum statutory requirement, would give such corporations 'Social license to operate' (Gunningham et al, 2004, p. 307-341), thus giving legitimacy to the project in the eyes of those affected. Such a deliberative democracy in seeking consent brings about fairness in the process by recording the terms and concerns of both parties and helps in facilitating a fair adjudication of the outcome (Cohen, 1989, pp. 17-34). Thus, the suggested model should see private negotiations between the landholders and the requiring agency, which, when finalized, should see the application of laws for acquisition along with the binding nature of finalized terms and conditions.

Deliberated and Appropriate Rehabilitation

Displacement is an inevitable result of land acquisition. Such displacement may be caused due to forfeiture of land, loss of livelihood and rights over forest resources or degradation of the environment, making it inhabitable for the dwellers. The displacement of forest dwellers from the forest results in their desolation and loss of identity as they are not acclimatized to civic life and find it hard to settle once uprooted from their traditional land. This is more so because such displaced forest dwellers cannot fulfil the eligibility criteria and benchmark prescribed under the Forest Rights Act, 2006, which requires proof of their traditional dependence on lands being claimed towards their title (CFR-LA & AJAM, 2013). Any inter-state percolation of the population may also lead to the forest dwellers losing their Scheduled Tribe identity, manifoldly increasing their difficulties.

Displaced forest dwellers thus suffer a dire situation whereby they have lost the land upon which they could have claimed their right and now will have to move to the land upon which they could never claim such a right. Hence, the lack of rehabilitation presents a very grave picture for these forest dwellers, who are pushed to social and economic destitution upon being evicted from their land, without any hope for recuperation. The figures better express my anxiety as, between 1950 and 1990, land acquisition for development had displaced twenty million people, out of which only 25% had been rehabilitated (Fernandes, 1991, p. 244). Thus, the mass nature of displacement in large projects presents an even grimmer

picture, with several villages being left to their own with payment of only meagre compensation, in lieu of the loss of their political, social, economic and cultural rights.

Thus, though the dispossession of forest land for a greater purpose might be inevitable, restoring the traditional ecology for forest dwellers is possible. As per the survey conducted for this paper, 99% of the respondents were happy and satisfied with their life in the forest, but given the option, 47% wished to convert their habitat into a village, while less than 0.01% wanted to move to cities. This clearly demonstrates the wish of the forest dwellers to live within the forest, even if as a village. Furthermore, when asked if the respondents were willing to stop living in the jungle upon being offered employment and monetary compensation, 95% of the respondents across all districts refused to leave the jungle for such tantalisation.[16] Thus, relocating the forest dwellers from their traditional habitat is shameful and the cruelest way of forced acquisition. Their resettlement in their conventional ecology would quench many difficulties and anxieties that they faced due to dispossession.

The doctrine of eminent domain does not postulate any requirement to rehabilitate and resettle those displaced due to land acquisition. It only provides for compensation and thus abandons the homeless land losers to fend on their own. The strict application of the doctrine of eminent domain entails the commodification of land and thus justifies its recuperation by quantification in terms of money. This interpretation is reflected in the colonial legislation of the Land Acquisition Act, 1894, which had no provision for rehabilitation or resettlement of land losers under the Act.

Historically, when faced with the responsibility of reimbursing the forest dwellers for their loss of land, private entities and the Government often offset everything under financial compensation. Although monetary compensation is essential, the forest lands and traditionally accessed resources are deeply associated with the social and cultural identities of communities that depend upon them. While individual land and assets could be repatriated in terms of money, the loss of identity through loss of ecology cannot be squared by mere payment of compensation. Central to their folklore and existential identities, these lands are not merely tangible assets for the forest dwellers. Keeping forest dwellers away from the forest and expecting them to settle elsewhere is killing their way of life and dignity.

[16] Questions of the survey conducted on the field

However, with the increasing demand from civil society organisations, the Government in the 80s recognised the need for convalescence of such displaced persons and formulated policies for their rehabilitation. The Central Government formulated several rehabilitation draft policies in 1985, 1993, 1994, 1998, 2003 and finally in 2006. However, the National Policy on Resettlement and Rehabilitation had always "been looked down upon as a super-diluted, pro-industry policy." (SCSTRTI, 2020, p. 38)

The mandate of rehabilitation and resettlement attained statutory status with the enactment of the RFCTLARR Act, 2013. The Act of 2013, including the special provisions for Scheduled Areas under Section 41, when read along with the RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015, presents close-to-perfect model for ensuring appropriate rehabilitation. It provides the time limit for completing rehabilitation and has provisions to ensure such rehabilitation before taking possession of the land (Section 38, RFCTLARR Act, 2013). The process of Social Impact Assessment provides a platform for free and prior informed consent towards the scheme of rehabilitation (Rule 17, RFCTLARR (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015). The Act furthermore anticipates a better rehabilitation policy in place by State Governments and thus gives the forest dwellers a choice to elect rehabilitation under such beneficent policy (Section 108, RFCTLARR Act, 2013). However, the Act is shrouded with ambiguities and open to interpretation and thus may not acknowledge compensation towards those who do not hold title over their land. The Act also is silent upon the restoration of community forest resources and seeks to compensate, rather than restore, the recognised community rights (Section 42(3), RFCTLARR Act, 2013). Moreover, unfortunately, the Collector can dilute the responsibility of the requiring body to rehabilitate the land loser and thus can quantify it into mere monetary compensation to be paid instead of resettlement. The provision does not prescribe any say of the land loser before the Collector takes such a decision (Section 47, RFCTLARR Act, 2013). Above all, the banes of Section 105, read with the Fourth Schedule to the RFCTLARR Act, 2013, have been dealt with in detail in this paper and hence continue to present a hazy picture of the situation of rehabilitation upon land acquisition under the excluded Acts. Thus, there is a need to mandate and ensure rehabilitation as a fundamental right under Article 21 of the Constitution of India.

Black's Law Dictionary[17] defines 'rehabilitation' as "Investing or clothing again with some right, authority, or dignity. Restoring person or thing to a former capacity, reinstating, qualifying again. Restoration of an individual to his greatest potential, whether physically, mentally, socially, or vocationally." Though acquiring land is habitually a hurried process, the rehabilitation of the displaced is often ignored. This may be due to a lack of legislations and policies mandating the serious nature of rehabilitation and resettlement.

Rehabilitation and resettlement of the displaced forest dwellers is not *sensu stricto* a part of land acquisition, but has been deemed to be the moral responsibility of the State in supporting the recuperation of the displaced community (State of Madhya Pradesh vs. Narmada Bachao Andolan, 2011). As such, there is a need for a comprehensive policy that mandates rehabilitation and resettlement, thus fixing the timeline and accountability towards its execution.

The suggested rehabilitation policy for the forest dwellers must not only focus on mere physical relocation of the community but must mandatorily aspire to encompass the restoration of their livelihood and ecology. Since the Government is involved in requisitioning the land for the Corporations, it should also be responsible for allocating land for such rehabilitation. The same should not be subject to the availability of land but must be a mandatory condition for acquisition. As such, forest dwellers must be given a choice of 'land for land' in a similar environment and at a place of their choice towards restoring their habitat.

A satisfactory rehabilitation scheme can be an outcome of the consultation process suggested above. Thus, the policy should be malleable to accommodate such negotiations reached between the concerned parties. Rehabilitation of the forest dwellers must be done in accordance with their needs and demands, for which they must be presented with options for choosing the site of their resettlement. The proposal of rehabilitation put before the stakeholders for negotiations should not be obscured under legal limitations and must be flexible to allow the forest dwellers to seek more than what has been lost, including the promise to develop community-centric resources such as hospitals, schools and community centres. Though the forest dwellers, expressed their intention of not leaving their ancestral

[17] Black's Law Dictionary (Sixth Edition)

habitat for any alternative option, almost 100% of the respondents wanted the benefit of development programs run by the Government and wished to enjoy the public amenities such as roads, schools and irrigational facilities.[18]

While negotiating the terms of rehabilitation, the requiring agency must provide exhaustive information about their presence within the area and the environmental concerns that may arise due to their operation. The options of employment or monetary settlement must be clearly presented to the affected families and communities, along with ecological details of the forest where they could be rehabilitated. The affected families may not only include those who will be displaced due to loss of land but must also include those who will be forced to dislocate upon such operation due to loss of livelihood or degradation of the environment. Thus, if an individual or community requests to be relocated owing to the damage to the ecology or loss of livelihood due to the acquisition and operation of industry, the same must be mandatorily considered by the authority.

Under the current legal regime, rights over community forest resources are the worst affected. The rehabilitation scheme must strive to restore a similar extent of reach to such resources upon relocation and thus preserve the livelihood of the forest dwellers. This has to be negotiated and affixed under the negotiation stage itself, since upon rehabilitation to an alien environment, the forest dwellers will not be able to establish their traditional dependence to these resources and hence will lose any access to the assets necessary for their livelihood. Recently, the SLMC of the State of Chhattisgarh has suggested giving the forest dwellers a choice in selecting the place for rehabilitation upon land acquisition, which an excellent step in furtherance of the suggestions herein (RTI reply, 2023).

Thus, the rehabilitation scheme negotiated between the parties should be made a part of the MoU or PPP and a separate budget should be allocated towards it. The complete cost for rehabilitation and resettlement should be included under the project cost estimates and no attempt should be made to cut expenditures in order to achieve a favourable cost-benefit ratio. Thus, the projects for profit must undertake the entire obligation to restore and improve the productive basis and the livelihood of the population whose lands they take (Fernandes,

[18] Questions of the survey conducted on the field

1991, p. 15). Where the private players are not involved, funds from the District Mineral Foundation Trust and CAFs must be utilised to support the resettlement.

Though the Supreme Court of India has excluded land acquisition from being tested under Article 21 of the Constitution of India, it has frequently supported appropriate rehabilitation of the land losers. The Supreme Court has regarded Rehabilitation as a mandate emanating from Article 21 of the Constitution of India. Thus, the right to rehabilitation has been declared a fundamental right under Part III of the Constitution of India. A rehabilitation scheme can be tested on the touchstone of Article 21 of the Constitution of India, including the right to right to livelihood (Olga Tellis vs. Bombay Municipal Corporation, 1985), right to shelter (State of Karnataka vs. Narasimhamurthy, 1995), right to clean air and water (Subhash Kumar vs. State of Bihar, 1991) and right to economic equality (Life Insurance Corporation vs. Consumer Education and Research Centre, 1995).

The model of rehabilitation hereby suggested finds its support in the views expressed by the Supreme Court of India in *N.D. Jayal vs. Union of India* (2014), whereby while holding the right to rehabilitation as a fundamental right, the Hon'ble Court went on to define the elements and objective of such rehabilitation as:

"Rehabilitation is not only about providing just food, clothes or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated locations. Thus observed this Court in Narmada Bachao Andolan case. The overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted. And none of them should be allowed to wait for rehabilitation. Rehabilitation should take place before six months of submergence. Such a time-limit was fixed by this Court in B.D. Sharma v. Union of India and this was reiterated in Narmada. This prior rehabilitation will create a sense of confidence among the oustees and they will be in a better position to start their life by acclimatizing themselves with the new environment."

Though time is of the essence in ensuing and completing rehabilitation, the same must be a continuous process till the forest dwellers become self-sufficient and thus have a restored

livelihood. The State must ensure accountability towards such implementation and thus fix liability and penalty for its dereliction, including cancellation of permission to operate within its jurisdiction. The entire process of ensuring rehabilitation and post-relocation support should be monitored by an independent body comprising public representatives from the affected area with representatives from both, the State and requiring agencies, to address the dilapidation through mediation and immediate corrective implementation. The current reliance upon the District Magistrate to ensure its compliance is nonsensible and illegal as being violative of the principles of natural justice. The terms thus reached through negotiations must be sacrosanct and justiciable before the High Courts under Article 226 of the Constitution of India.

An apt *in situ* restoration after negotiations would not leave any reason for the forest dwellers to be anguished by the dispossession, apart from any religious or cultural loss. However, under the first suggestion, the mitigation of such losses can also be negotiated between the parties, and such traditionally significant cenotaphs can be protected or allowed to be accessible for the displaced population. Thus, through dialogue and discussions, both parties can be made aware of each other's concerns and limitations, resulting in a rehabilitation scheme that would be a win-win situation for all. The dialogues between the forest dwellers and the requiring party must be conducted as if the lands were being acquired through private negotiations. However, once the negotiations are reduced to black and white, the doctrine of eminent domain would come into play in its mandatory nature of the acquisition. Similar to the suggestions above, these recommendations made by the forest dwellers would bear the weight of being binding in nature to the acquiring or demanding authority, unless they have been renegotiated with the stakeholders. The State may be free to disregard such requirements, but only after justifying such negation if, even after renegotiations, it is not possible to incorporate such terms or demands into the scheme of acquisition. The State must not arbitrarily and irrationally examine the requirements of the forest residents and reject them without providing any justification. The necessity of reasons in accepting or rejecting the corresponding terms would enable the courts to examine the legality of such inclusion or exclusion, thus testing it on the yardstick of Constitutionalism.

CHAPTER V

SUGGESTIONS AND CONCLUSION

After analysing the history and legislations and also germane practical considerations, I have suggested the necessity of law to mandate the requirement of free and prior informed choice before any dispossession. As a post-acquisition support, I have suggested deliberated *in situ* rehabilitation, being a continuous process till the realisation of self-sustenance by the forest dwellers. Though formulation of the law to bring about these changes would demand a detailed evaluation, being a topic worthy of independent research and consideration, I would broadly suggest some legislative policy changes that can be stimulated at the State level. The proposed regulations are not stand-alone solutions to all the problems discussed above and may require support from one another towards its proper execution. As a further forewarning, I will not be discussing the gaps in my proposition under this chapter, which can be gauged from the prior detailed assessment of the incubating legislations The feasibility of the ensuing suggestions have been sought to be tested within the parameters of Constitutionality and legislative competency, and thus have been found to be within the jurisdiction and competence of the proposed legislative authorities. They would significantly, if not wholly, alter the law to incorporate the elements of free and prior informed choice and in situ rehabilitation, if brough to effect by the State.

THROUGH THE GOVERNOR

The powers of the Governor under Section 5(1) of the Fifth Schedule to the Constitution of India are extraordinary in nature. It confers the Governor with the legislative power of both the Central and State Governments to decide upon the applicability or exclusion of any Act of Parliament or the State Legislature to a Scheduled Area (S.K. Gupta vs. K.P. Jain, 1979). Notwithstanding anything in the Constitution, this power can be exercised through a simple public notification and can be made effective retrospectively (Chebrolu Leela Prasad Rao vs. State Of A.P, 2021).

As discussed, the suggestions proposed under this paper are adequately present within the RFCTLARR Act, 2013, read with ancillary rules. The requirement of Social Impact Assessment, consent before acquisition and special treatment towards the Scheduled Areas and tribal lands incorporates the doctrine of free and prior consent and thus mandates consultation before acquisition. The Act provides a decent consideration towards the ethnic, cultural and linguistic identity of the Scheduled Tribes residing in the Scheduled Areas, whereby the Scheduled Tribes thus affected from the involuntary acquisition and displacement have been sought to be resettled in the same Scheduled Area.

However, the functioning of the law has been curbed under Section 105 of the Act, which excludes its application upon land acquisition under laws mentioned under the Fourth Schedule to the RFCTLARR Act, 2013.

In a letter dated 4th April 2013, the Ministry of Tribal Affairs urged the Governors of the States to exercise their executive powers under the Constitution of India to protect the rights of the Scheduled Tribes in Scheduled Areas, specifically for protecting the forest rights and livelihood of the forest dwellers in the context of land acquisition (Desor, 2013).

Thus, it is proposed that the Governor of the State, in the exercise of its powers under Section 5(1) of the Fifth Schedule to the Constitution of India, can exclude the application Section 105 of the RFCTLARR Act, 2013 over the Scheduled Areas of Chhattisgarh.

The exclusion of Section 105 would obliterate the exception accorded to the legislations under the Fourth Schedule to the RFCTLARR Act, 2013 and bring about the requirement of Consent, Social Impact Assessment and special treatment towards the Scheduled Areas and tribal lands in matters of land acquisition and rehabilitation. The apt implementation of the Act of 2013 would uniformly mandate the requirement of free and prior consent from the forest dwellers before dispossession and would take into account their requirements towards rehabilitation, thus incorporating both my suggestions.

Under Section 5(1) of the Fifth Schedule to the Constitution of India, the Governor is competent to exclude the application of any particular provision of a Central Act from applying to the Scheduled Area. Once Section 105 stops applying to the Scheduled Areas, its dependent Schedule, the Fourth Schedule to the Act of 2013, will cease to have any

legislative sanction. Thus, all the laws under it will have to confirm with the Act without any exception. Thus, by way of a simple notification, the Governor can remove the protection granted to the colonial legislations, which will have to follow the strict obligations under the RFCTLARR Act, 2013.

THROUGH THE STATE LEGISLATURE

Formulation of Consultation Rules

The proposed model of consultation requires deliberation through dialogue and negotiations. Such collaboration must be free from intimidation and based on sufficient prior information, to facilitate internal discussion amongst the forest dwellers.

Requirement of consultation before acquisition and rehabilitation is already present within various legislations, which opens up the avenue to initiate dialogues and deliberation. The RFCTLARR Act, 2013 mandates consent before land acquisition (Chapter III RFCTLARR Rules, 2014). However, due to the strict interpretation of the word 'consent', constant efforts are being made to dilute the application of the law and most of the land acquisitions are being sought to be exempted from this requirement. Executive instructions issued under the Forest (Conservation) Act, 1980 has directed the requirement of consultation before a proposal is sent for permission for forest land diversion. Also, the prerequisite of consultation finds its place under the PESA Act, 1996, whereby the forest dwellers have to be consulted before acquiring land in the Scheduled Areas and before re-settling or rehabilitating persons affected by such development projects (Section 4(i), PESA, 1996). This requirement is also reflected under the Chhattisgarh PESA Rules, 2022 (Section 36, CPPESA Rules, 2022).

However, none of these legislations elucidate upon the process for effecting the such consultation, thus leaving much discretion in the hands of bureaucracy. The authorities and private parties exploit this lack of guidelines to override the necessity under the law, rendering it to be a mere façade. Wide discretion, unguided by regulations, allows arbitrariness and irrationality in actions, which has been regarded as antithetical to principles of fairness imbibed under Article 14 of the Constitution of India (E.P. Royappa vs. State of Tamil Nadu, 1974).

Therefore, there is an imminent need to devise rules to govern the procedure of seeking consultation, as required under various legislations, which can be formulated to reflect the principles of free and prior informed choice. Such rules, if formulated by State legislature, would have a binding effect on Central legislations without any repugnancy.

The subject of 'Local Government' (Entry 5 List II, Seventh Schedule) falls within the State List (List-II) under the Seventh Schedule to the Constitution of India. Thus, the State Government is competent to make such rules that it may deem fit in furtherance of the requirements under the law. 'Local Government' includes Gram Sabha and Panchayat in Scheduled Areas, constituted and empowered under the PESA Act, 1996, which also postulates the requirement of consultation before acquisition and resettlement. The legislative competence to formulate such rules can be derived from the PESA Act, 1996 read along with section 95 (1) and section 129-A to 129-F of the Chhattisgarh Panchayat Raj Act, 1993. Furthermore, under the Forest (Conservation) Act, 1980, the State sends the request for diversion of forest land to the Centre. Thus, the requirement of consultation can be incorporated as a prerequisite condition before any such proposal for diversion is made by any requiring agency or sent by the State Government for approval.

Thus, the State Government is competent to formulate rules for defining the procedure to be followed by the authorities while seeking consultation with the forest dwellers. Unlike the Rehabilitation Policy, 2007, the rules must have a clear recognition regarding the special needs and requirements of the forest dwellers and thus must specifically address to their need for special rehabilitation. As suggested in this paper, the rules can incorporate the idea of free and informed choice to facilitate deliberation and negotiation between interested parties before acquisition and rehabilitation. The rules must be made equivocally binding on any legislative requirements of consultation with the Gram Sabha and thus must be made applicable towards all the situations of land acquisition in the Scheduled Areas.

Consultation must be defined as a continuous process of negotiations between the land losers and other stakeholders, till the culmination of consensually agreed terms of acquisition. The rules must define the type and extent of information which must be made available to the forest dwellers before seeking a deliberation. The information thus required under the rules must be comprehensive and require divulgence of possible risks and benefits out of the

project, including details of the risk to the environment, particulars of funds proposed for compensation and rehabilitation and the benefits proposed for the forest dwellers. The rules must prescribe enough time for the information to be understood by the forest dwellers and thus must provide for the initiation of negotiations after the community has reached a consensus about their demands. These negotiations must be free from any pressure and conducted without intimidation.

Any internal discussion process must be free from outside interference, and the rule must strictly prohibit the presence of any officer of the State or requiring agency during such internal discussion. Rule 36(2) of The Chhattisgarh PESA Rules, 2022, must be amended to be coherent with this requirement, as it does not provide a cap for the number of government officials present during the Gram Sabha for seeking consultation. The rules must provide for reducing everything in black and white and, hence, must neutralize the role of the government in such negotiations. The rules must make the concluded conditions binding upon the concerned parties and must provide for an independent authority to conduct mediation upon its dereliction.

The proposed rule may also ensure the free nature of such consultation by mandating video recording of the Gram Sabha proceedings, as suggested by the Ministry of Tribal Affairs (Ministry of Tribal Affairs Letter, 2012) and directed by the Supreme Court in *Orrisa Mining* (2013). These recordings must be a part of the public record and be open to scrutiny. The rules must appoint an independent body with representatives from Scheduled Areas to evaluate complaints regarding false and fabricated Gram Sabha and must have the power of the Civil Court to call for witnesses and records.

If the allegations are found to be accurate, the rules must prescribe strict punishment for both the authorities and private representatives thus responsible for fraudulent submissions, along with prescribing for registration of offence under relevant provisions of the Indian Penal Code. If the forged or forced nature of Gram Sabha is found attributable to the requiring agency, it must immediately lose all the clearances and validation granted towards the development project. Providing strict consequences for such grave action is imperative since any less would not create enough deterrence from committing such offences.

Thus, the State Government is competent to formulate rules under the PESA Act, 1996 and any such rule will not be repugnant to any Union Legislation, deriving its legislative sanction from a Central Statute. Since the element of local governance is derived from Part IX of the Constitution of India, any statute or provision thereof, which is inconsistent with the law derived out of this Constitutional provision, can be struck down by Constitutional courts as being ultra vires to the Constitution of India (Bondu Ramaswamy & Ors vs. Bangalore Development Authority, 2010). Thus, the proposed Rules will have a precedence over other legislations and can ensure its compliance in matters of land acquisition and rehabilitation. The State Government can exercise this power to incorporate the international benchmark necessitated upon land acquisition and thus, as suggested and explained earlier, can diminish the anxiety of the forest dwellers by paying heed to their concerns.

Formulation of New Rehabilitation Policy

The Chhattisgarh Rehabilitation Policy, 2007 is based on the National Rehabilitation and Resettlement Policy, 2007. It is an outdated piece of legislation which has failed to observe the provisions under the PESA Act, 1996 and the Forest Rights Act, 2006. Moreover, after the enactment of the RFCTLARR Act, 2013, this weak rehabilitation policy needs a serious upgrade to reflect the spirit of the current legislations governing the field.

As discussed, Rehabilitation and resettlement of the displaced forest dwellers is not *sensu stricto* a part of land acquisition, but that the State has been deemed to be morally responsible to provide land and other support for the recuperation of the displaced community. Thus, while the subject of 'Acquisition and requisitioning of property' (Entry 42, List I) is in the Concurrent list, the subject of 'Land', that is to say ", rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization" (Entry 18, List II) is under the State List. Hence, the State has the legislative competence to formulate a policy towards rehabilitating the affected communities.

Such a policy has been held to be binding in nature within the State and hence has the force of law in expecting its compliance (Ku. Rattho Bai vs. SECL, 2015). The new policy would be a stand-alone mandatory regulation, which could mitigate the shortcomings created under Section 105 of the RFCTLARR Act, 2013. Furthermore, if the Government can craft it to suit

the better interest of the forest dwellers, the same would supersede its application over and above other legislations, as provided under Section 108 of the RFCTLARR Act, 2013 (Mahanadi Coal Fields Ltd vs. Mathias Oram, 2019).

I, therefore, allege that The Chhattisgarh Rehabilitation Policy 2007 is an obsolete piece of regulation and does not reflect the spirit of the subsequent changes in jurisprudence and legislation. To avoid any repetition, it is hereby suggested that the State Government must formulate a new Rehabilitation Policy, thus incorporating my suggestions of free and prior informed choice in providing a satisfactory restoration.

The policy must venerate the unique distinction of the forest dwellers and the Scheduled areas, and thus must strive to incorporate the spirit of the requirement of Social Impact Assessment and Section 41 of the RFCTLARR Act, 2013. It must provide for the participation of forest dwellers in formulating rehabilitation plans. The Rules must provide for discussions based upon options structured as a choice-based model. Beneficent provisions towards allotment of shops and employment should not be forced, but should be given as an choice for the forest dwellers to develop according to their own genius, thus observing their right to self-determination. The rehabilitation scheme must mandatorily provide the option of 'land for land' in the same or similar environment and thus encourage self-employment and self-sustenance of the forest dwellers through their traditional means and culture. The option of the grant of land must not be subject to the availability of land and thus must be absolute in nature.

Thus, after negotiations following the principle of free and prior informed choice, the policy must strive to provide an apt *in situ* restoration of land and rights to individuals and communities. The suggestion towards this policy can be concluded by quoting the views expressed by the Supreme Court, whereby it has observed in the case of *Mahanadi Coal Fields Ltd vs. Mathias Oram* (2019) that:

"It is, therefore, necessary that when a multimillion big dam project is undertaken to generate electricity and for providing water for irrigation and drinking, we should not leave those living by the side of river from generations to a suffering by displacement to a far off place which would deprive them of their life and life style. In the march of progress, the humblest and the weakest should not be left behind. Man living in the hills or valleys is dependant for survival on natural resources. To remove him and rehabilitate him in the plains is taking a

fish from the river and putting it into a artificial reservoir or an equarium where it might survive but can never be happy. All efforts are, therefore, required to be made that the dispalced or oustees, who were hitherto getting benefits form the river for their survival, are adequately compensated by minimum possible disturbance to their life sources and style of life. In implementation of large river dam projects the utmost concern of the State should be interest of the oustees. Before electricity is generated and drinking water is made available to urban population up to Delhi, care has to be first given to the needs and demands of the people who live in the hills and valley and face ouster. Before the reservoir is full to its optimum capacity to generate electricity and provide irrigation, the work of rehabilitation to the optimum satisfaction of the oustees must be completed. In this direction, the affidavit filed by the Ministry of Environment, does not vouchsafe that the work of rehabilitation has been completed to the satisfaction of not only the officials of the rehabilitation department but the oustees themselves speaking individually or collectively."

The Rules must incorporate supervisory and project-specific authorities, which must include the representatives of the affected communities and members of the civil society organisations active in the area. The authority may also include the representatives of the requiring body, who have the authority to negotiate the terms of rehabilitation and thus can-do course correction upon any dereliction from the agreed rehabilitation scheme. The Government must strictly limit its role as an umpire in negotiations and thus must support the forest dwellers in providing forest land for their rehabilitation. The Government may collect adequate revenue or fee from the requiring agency in lieu of providing forest land to the displaced forest dwellers. The promised development must be carried out by or from the requiring body's funds.

The Rehabilitation Policy, 2007 is inconsiderate towards the forest dwellers and the Government may formulate a new Rehabilitation Policy specifically for the Scheduled Areas in view of the particular vulnerability of the forest dwellers due to their dependency on their land and forest. There are enough enabling provisions within Central legislations for such a special rehabilitation policy to hold water and thus be made binding upon dispossession.

WAY FORWARD

To see the way forward, I quote the Father of the Nation, Mahatma Gandhi, who wrote that "true economics never militates against the highest ethical standard, just as all true ethics to be worth its name must at the same time be also good economics. An economies that inculcates Mammon worship, and enables the strong to amass wealth at the expense of the weak, is a false and dismal science. It spells death. True economics, on the other hand, stands for social justice, it promotes the good of all equally, including the weakest, and is indispensable for decent life." (Harijans, 1937). His wisdom still resonates through ages and reflects upon the truest meaning of economic development. The Constitution of India also envisaged the idea of planned economy and development while balancing the needs of its citizens, with the goal of social and economic justice for all (Sanjeev Coke Manufacturing Company vs. Bharat Coking Coal Ltd, 1983).

The pro-active role of the State is utmost necessary in protecting the rights of the forest dwellers. For forest dwellers, life is not about possessions and indulgence; they own the forests and the forest owns them. They don't require a seal of approval from the State and the laws don't mean anything to them, till the officers come to evict their community. Thus, for them, it is the Government which is stealing their lands and this results in conflict. Due to the long history of oppressive legislations and historic injustice, "A large section of people in tribal heartlands have lost faith in the ability of the law and the willingness of the administration to protect their interests." (Xaxa Committee, 2014, p. 251). Without a change in the stance of the Government in seriously exercising its powers to protect the forest-dwelling population, the conflicts will continue to exist and claim innocent lives, with both sides claiming to be justified in their own eyes.

The trust of the Forest Dwellers can be gradually restored by the State machinery through a change in policy, which sincerely makes them participants in decision making. 95% of the respondents to the survey conducted at Bastar agreed with viability of the solution suggested under this paper.[19] Thus, the promise of a fair process and execution of a democratic settlement can undo much of the damage done before. The administration and the judicial system will then, upon the law legislated to ensure such rights, be bound to respect and

[19] Questions of the survey conducted on the field

protect the right to self-determination. The law can prove to be an important tool for forest dwellers to contest their rights over the forest, even in the face of development. After all, '*Salus populi est suprema lex*', i.e., the welfare of the people is paramount law. The forest dwellers can be made partners in the development, without any tussle or struggle, by bringing laws to devolve their ability in inculcating discussions. There are sufficient elements within the law which can diminish or eradicate the snags of forced dispossession. Moreover, the suggested application of the legislation may probably quench the anxiety of the forest dwellers and convince them to give up arms. Lack of bureaucratic apathy and judicial dependence are not the only reasons for the unfortunate plight of the forest dwellers, as neither can act fittingly without the tweaks in the law. The sanction of the law is the backbone for any administrative and judicial action and thus instruments of the law need to be more engaging towards attaining the end result.

The suggestions herein stand against the absolute powers of the State and would be akin to the Government surrendering its powers to the people. But that is what democracy is all about, for the Government itself finds its existence through the people. Thus, in the era of 'China+1', there is an urgent need to immediately bring a thorough revamp in the administration of forests. It is importunate to create a special niche of participative and rehabilitative law for the protection of this distinct class of citizens from large-scale dispossession. The State Government must now do away with the long-standing strict doctrine of eminent domain and must strive to make development a democratic process for the majority of its population. The State of Chhattisgarh cannot contribute to National development, with more than 30% of its population living in fear of being destitute, impoverished and maltreated. Thus, the State of Chhattisgarh should take a stand, within its powers, to balance the needs of its citizens and thus protect those who lose the most. This will be in line with the idea under Article 38(2) of the Constitution of India, which mandates the State to strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. After dispossession, the State must not only resettle the forest dwellers but must also make all possible efforts to rehabilitate them, by helping in the reconstruction of their social and economic establishments. By making rehabilitation a continuous process, the State as well as the benefiting party, can truly make the land losers partners in the development of the nation.

With the change of Government in 2018 and thus the shift in social forces, the State of Chhattisgarh has emerged as the leading state in recognition of forest rights and has been nationally lauded for the same (The Pioneer, 2020). The tremendous shift in policy towards forest dwellers is apparent and undeniable. The current regime in the past 4 years has taken several significant steps in recognising and respecting the rights of the forest dwellers, which were not done since its creation. This pro-tribal government has made significant efforts in balancing the economic needs of the State with that of the demands of the forest dwellers, while cancelling mining permissions upon resistance by the forest dwellers. The Government has been vocal about its efforts in benefiting the one-third population of the State and thus has appeased them to their expectations. Political stunt or not, the pro-tribal actions by the incumbent Government had significantly benefited the forest-dwelling population.

Under the current regime, Chhattisgarh has become the first state to have recognized Community Forest Resource Rights in an urban area covering 4,127 hectares of forest land (The Indian Express, 2021). The first Community Forest Resource rights in Chhattisgarh were recognized under the current Government. The Government has also done away with the stigma of recognizing rights in protected areas and thus has truly implemented the spirit of the Forest Rights Act, 2006. By recognizing Community Forest Resource rights of the forest dwellers within the core area of a tiger reserve in Dhamtari District covering 5,554 hectares of forest land, Chhattisgarh has become only the second State in India to have done so (Verma, 2022). Towards fulfilment of its poll promise, the Government of Chhattisgarh has been playing a proactive role in revising the rejected claims (Kukreti, 2019). A change in the format of implementation of the forest rights has garnered support from the tribals and have melted the ice between the Government and the Maoist, who have expressed their interest in holding peace talks with the current government (The Hindu, 2022).

A perusal of the agendas in the SLMC meetings demonstrates the special privilege being given to Bastar Division in seeking immediate recognition of all forest rights, whereby the incumbent Chief Minister has been taking special interest in the recognition of forest rights and has issued directions for an appropriate procedure to be followed in their recognition. The SLMC has also shown keen interest in expeditious recognition of Community Forest Resource Rights in Chhattisgarh, whereby the DLCs have been directed to take proactive measures in calling for and recognising such rights (RTI reply, 2023). The survey conducted for this paper found that an average of 72% of respondents acknowledged that the change in

Government has been favorable for the forest dwellers in recognising and respecting their rights.[20]

Thus, considering the prevailing outlook of the State Government towards the forest dwellers, I expect the State Government to bring about the changes suggested in this paper through necessary legislation, so as to truly achieve the highest standards of protection towards the forest dwellers upon involuntary dispossession. The stars are perfectly aligned for such changes, with a pro-tribal State Government at its helm and with both the Governor of the State and the President of India belonging to the Scheduled Tribe, who are expected to sympathetically consider my proposals.

The scope of the instant study is very limited and very few laws which cause dispossession could be studied due to practical limitations and constrains. However, the idea of inclusive decision-making proposed in this research paper may still hold good for other categories and degrees of dispossession. This leaves scope for further research towards testing the proposition over other laws that may cause dispossession. The scope of the paper is limited to the State of Chhattisgarh and thus may have to be re-examined for its applicability in any other State. Moreover, the empirical data relied upon in the paper is of very limited size and only from the Bastar Division. The same may not reflect the opinion of the entire State and thus may not be dependable to assess the outlook of the forest-dwelling population of the Country. Though all possible legislative checks under Union laws have been considered before recommending the suggestions for the State Government, any ignorance could reopen the investigation, which could also happen by a change of law in the future. While this research paper draws an idea of harmonized development, its implementation may still be an uphill task. Further exploration is required to test the practicality and ground applicability of the legislative changes thus suggested in this research paper. The proposed changes in the law may suffer from practical failures, which have already been discussed in detail elsewhere in this paper. The formulation of the legislative framework to implement the suggestions in itself would be an independent herculean task.

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ANNEXURE-I

प्रश्नावली

वनवासियों से पूछा जाए

गांव-.....

ज़िला-.....

महिला/पुरुष

भूमि से सम्बंधित प्रश्न		
1.	क्या आप अपने पुश्तैनी ज़मीन में रहते हैं?	हाँ / नहीं
2.	क्या आपको या आपके पुरखों को कभी आपकी जमीन से बेदखल कीया गया था?	हाँ / नहीं
3.	क्या आप मानते हैं कि आप सांस्कृतिक और आध्यात्मिक रूप से जंगल से जुड़े हुए हैं	हाँ / नहीं

अर्थव्यवस्था एवं आजीविका से सम्बंधित प्रश्न		
4.	क्या आप वनोपज से अपनी आजीविका चलाते हैं?	हाँ / नहीं
5.	क्या आप अपने द्वारा एकत्रित की गई वनोपज का विक्रय करते हैं	हाँ / नहीं

विकास से सम्बंधित प्रश्न		
6.	क्या आप अपनी जीवन शैली से संतुष्ट हैं?	हाँ / नहीं
7.	क्या आप यहां जंगल में रहना चाहते हैं या गांव/शहर में	जंगल/ गांव /शहर

	बसना चाहते हैं?	
8.	क्या आप चाहते हैं कि आपके बच्चे यहां जंगल में रहें या वे गांव/शहर में बसें?	जंगल/ गांव /शहर
9.	क्या आप नौकरी और आर्थिक मुआवजे के लिए जंगल में रहना छोड़ देंगे?	हाँ / नहीं
10.	क्या आप सड़क, सिंचाई नहरों और विद्यालयों से संबंधित विकास योजनाएं चाहते हैं	हाँ / नहीं

जानकारी एवं जागरूकता से सम्बंधित प्रश्न		
11.	क्या आप वन अधिकार अधिनियम 2006 के बारे में जानते हैं जो जंगल पर आपके अधिकारों को मान्यता देता है?	हाँ / नहीं
12.	क्या आप जंगल पर अपने अधिकारों के बारे में जानते हैं?	हाँ / नहीं
13.	क्या आप पंचायतों के प्रावधान (अनुसूचित क्षेत्रों तक विस्तार) अधिनियम, 1996 के बारे में जानते हैं	हाँ / नहीं
14.	यदि आप वन अधिकार अधिनियम 2006 और/या पंचायतों के प्रावधान (अनुसूचित क्षेत्रों तक विस्तार) अधिनियम, 1996 के बारे में जानते हैं, तो ये जानकारी आप को किसके द्वारा प्राप्त हुई	गांव वालों से/ NGO से/ सरकारी अफ़सरों या योजनाओं से/ पंचायत से/

अभिशाशन एवं विग्रह से सम्बंधित प्रश्न		
15.	क्या आप जानते हैं कि खनन के लिए वन भूमि के परिवर्तित	हाँ / नहीं

	करने के लिए गांव वालों की सहमति आवश्यक है	
16.	(ज़मीन अधिग्रहण में गाँव वसीयो द्वारा बात-चीत से समझौता तथा पुनर्वास में उनकी राय लेने के प्रस्ताव को समझाने कि बाद) क्या आपको लगता है कि नीति में इस प्रकार बदलाव से मौजूदा समस्याओं का शांतिपूर्ण समाधान हो सकता है?	हाँ / नहीं
17.	क्या वन अधिकार अधिनियम 2006 के लागू होने से आप के हित में बदलाव आया है।	हाँ / नहीं
18.	क्या राज्य में सरकार बदलने से आप को आपके हित में परिवर्तन महसूस हुआ है।	हाँ / नहीं

टिप-

1. जिस प्रश्न का उत्तर दिया जाता है तो उसके सामने "✓" निशान लगाए और यदि उस प्रश्न का उत्तर नहीं दिया जाता तो "X" निशान लगाए।
2. जो भी संबंधित उत्तर हो उसके ऊपर "✓" निशान लगाए
3. यदि उत्तर हाँ और नहीं में ना हो कर "नहीं मालूम" या "अन्य" में है तो खंड के सामने "0" बिंदु बनाए।

<u>निम्न जानकारी, यदि देने में संकोच ना हो तो:</u>

नाम-
पिता का नाम-
उम्र-
अनुसूचित जनजाति-

प्रश्नकर्ता का हस्ताक्षर
प्रश्नकर्ता का नाम
तिथि:

ANNEXURE-II

To,
The Public Information Officer,
Department of Tribal & Schedule Cast
Government of Chhattisgarh
Nawa Raipur Atal Nagar
Chhattisgarh

Subject: Application under Right to Information Act, 2005

Respected Sir,

Please provide the following details:

1. Year wise data on number of individual rights claimed, number of claims accepted and number of claims rejected in Chhattisgarh under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

2. Year wise and District wise data on number of individual rights claimed, number of claims accepted and number of claims rejected in Bastar Division under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

3. Year wise data on number of community forest rights claimed, number of claims accepted and number of claims rejected in Chhattisgarh under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

4. Year wise and District wise data on number of community forest rights claimed, number of claims accepted and number of claims rejected in Bastar Division under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

5. Year wise data on number of rights claimed by persons belonging to Other Traditional Forest Dwellers in Chhattisgarh, number of claims accepted and number of claims rejected under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

6. Year wise and District wise data on number of rights claimed by persons belonging to Other Traditional Forest Dwellers in Bastar Division, number of claims accepted and number of claims rejected under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

7. Number of recognized Gram Sabha in Bastar Division

8. Number of recognized Forest Rights Committee in Bastar Division

9. Data on total area of forest towards which individual title have been granted in the Chhattisgarh under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Provide year wise if possible

10. District wise data on total area of forest towards which individual title have been granted in the Bastar Division under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Provide year wise if possible

11. Data on total area of forest towards which community forest rights have been granted in the Chhattisgarh under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Provide year wise if possible

12. District wise data on total area of forest towards which community rights have been granted in the Bastar Division under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Provide year wise if possible.

13. How many hectares of forest land has been diverted in Chhattisgarh since 2006. Provide year wise data if possible.

14. How many hectares of forest land has been diverted in Bastar Division since 2006. Provide year wise data if possible.

15. What is the redressal mechanism upon claim of fraud and forgery of Gram Sabha resolution giving consent for forest diversion?

Please Note: for the above purpose, Bastar Division is the revenue division which includes 7 districts namely: Bastar, Dantewada, Bijapur, Narayanpur, Sukma, Kondagaon and Kanker.

The number of questions asked is_____ and thus @ Rs. 10/- per question at total amount of Rs. _____is hereby being deposited for the information, as per rules.

Regards,

Abhyuday Singh,
Advocate,
High Court of Chhattisgarh

To,
The Public Information Officer,
Department of Tribal & Schedule Cast
Government of Chhattisgarh
Nawa Raipur Atal Nagar
Chhattisgarh

Subject: Application under Right to Information Act, 2005

Respected Sir,

Please provide the following details:

1. Note Sheet of steps taken by the Government of Chhattisgarh in compliance of the Circular No. 23011/16/2015-FRA dated 23.04.2015 issued by the Ministry of Tribal Affairs, Government of India

2. Copies of the replies and affidavit submitted by the State of Chhattisgarh before the Hon'ble Supreme Court of India in Writ Petition(s) (Civil) No(s). 109/2008 titled Wild Life First vs Ministry of Forest and Environment.

3. Copies of the recommendations made by the Tribes Advisory Council since 2013.

4. Copies of the minutes of the meetings held by State Level Monitoring Committee constituted under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The number of questions asked is _____ and thus @ Rs. 10/- per question at total amount of Rs. _____ is hereby being paid for the information, as per rules.

Regards,

Abhyuday Singh
Advocate
High Court of Chhattisgarh

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