

**WILDLIFE FIRST & ORS v. MINISTRY OF ENVIRONMENT &
FORESTS & ORS**
CASE COMMENTARY¹

COURT'S ORDER ON 13TH FEBRUARY, 2019

India's forests are home to lacks of people including the many scheduled tribes who live in or near forest areas of the country. In 2006 the Forest Rights Act was passed to give legal rights to these forest dwellers, their homes, lands and livelihoods. The Act is crucial to the rights of the millions of tribals and other forest dwellers spread across multiple states of our country as it proves for the restitution of deprived forests rights. But several wildlife groups say the Act has encouraged further encroachment on the already battered forest lands. Challenging the constitutional validity of the Forests Rights Act, they filed several petitions in the Apex court in 2008. In the long- drawn case the Supreme Court on February 13th, 2019 directed 21 states to evict illegal forest dwellers whose claims over the land has been rejected by the authorities. The eviction order could have affected 11.8 Lakhs forest dwellers residing in different parts of the country. However, following the centre's appeal the Apex Court has put on hold the eviction order passed on February 13th, 2019. In a major referee for 12 Lakhs forest dwellers and tribals, the Supreme Court stayed its February 13th order that could have resulted in their forcible eviction from forest lands. A two judge bench comprising Justices Arun Mishra and Naveen Sinha directed state governments to file an affidavit giving details about the process adopted in rejecting the claims of forest dwelling scheduled tribes and other traditional forest dwellers. Supreme Court has stayed its order which had in some way asked states to update itself on the steps it has taken to evict those who are not eligible under the Forest Rights Act.²

The application that was moved by the central government Ministry of Tribal Affairs represented by the Solicitor General of India, the Supreme Court has stayed the execution of its earlier order and given for once time basically for the states to submit the progress with regard to the implementation of this Act and till that time no evictions or any coercive steps should be taken by any of the state governments against any forest dwellers whether they were eligible or ineligible that does not matter. 17 states Andhra Pradesh, Assam, Bihar,

¹ Anukriti, Galgotias University.

²https://economictimes.indiatimes.com/news/politics-and-nation/bjp-stakes-claim-to-form-government-in-karnataka/articleshow/70390505.cms?utm_source=ETMyNews&utm_medium=ASMN&utm_campaign=AL1&utm_content=10

Chhattisgarh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, Uttarakhand, Uttar Pradesh and West Bengal submitted states reports on rejection of claims of forests dwelling scheduled tribes and other traditional forest dwellers. Based on these reports, the Supreme Court directed chief secretaries of these states on February 13th, 2019 to ensure the eviction of these people from forest lands whose claims under the Forest Rights Act, 2006 have been rejected on or before July 24th. The eviction order of the Supreme Court drew flags from tribal rights groups and activists. The scheduled tribes have been the first occupants of the unclaimed forests and they were depending on it for their livelihood.³ On February 27th, the Ministry of Tribal Affairs moved to the Supreme Court seeking an urgent hearing. In its plea the ministry sought modifications of the previous order. It has the top court to direct state governments to file detailed affidavits regarding the procedure to examine all claims as well as the details of the rejection. Till this was done, eviction of Forest dwelling scheduled tribes and other traditional forest dwellers was to be put on hold. The Ministry also said that after examine the affidavits filed by the state governments it could not be ascertained if the rejection orders were fast after following due process and whether appeal mechanisms had been exhausted.

The centre further added that it has been periodically monitoring the implementation of the Forest Rights Act by state governments. The high rate of rejection of claims is mostly due to a wrong interpretation of the Act. The Ministry also underlined the lack of awareness about filing claims among Gram sabhas. In many cases reason for rejection was not communicated to the claimants. The Ministry of Tribal Affairs contented that as forest dwellers are poor and illiterate, it was difficult to substantiate their claims before competent authorities. The Apex court order on February 13th came in a case challenging the constitutional validity of the Forest Rights Act of 2006. A number of petitions were filed by NGO wildlife first and a few retired forest officials who argued that the Right to Forest Act has led to deforestation and encroachment of forest land. The petitioners sought recovery of forest land from possession of forest dwellers. The case has been going on in the Supreme Court since March 2008. The latest hearing was on July 10th, 2019.⁴

³<https://www.indiatoday.in/india/story/supreme-court-stays-its-feb-13-order-directing-eviction-of-11-8-lakh-forest-dwellers-1467541-2019-02-28>

⁴<https://www.thehindu.com/news/national/modify-feb-13-eviction-order-of-lakhs-of-forest-dwellers-centre-urges-sc/article26386134.ece>

OBJECTIVES OF FOREST RIGHTS ACT, 2006

The Forest Rights Act of 2006 was enacted to protect was enacted to protect rights of forest dwelling communities to land other resources of the forests which are essential for their livelihood. The Forest Rights Act also gives the forest dwellers rights to use minor forest produce along with community rights. The Forest rights holders are also bound to protect and conserve biodiversity wildlife as well as forest resources of the area. The scheduled tribes and other traditional forest dwellers recognition of forest rights act 2006 was passed on December 18th, 2006. Also known as the Forest Rights Act it was enacted to recognise and provide forest rights an occupation of forest land for scheduled tribes and traditional forest dwellers. These people have been residing in forests for generations but whose rights have not been recorded.⁵ The Act provides the right to hold and live in the forest land for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling scheduled tribe or traditional forest dwellers. It gives the right of ownership access to collect; use and dispose of minor forest produce which has been traditionally collected within or outside village boundaries. Community rights, rights of entitlement such as fish and other products of water bodies etc. Habitat rights for primitive tribal groups and pre- agricultural communities, Right to protect, regenerate or conserve any community forest resource which they have been traditionally protecting and conserving for sustainable use. However, conversion of forest villages into revenue villages is to be adjudicated by the Gram Sabha, Sub- divisional level committee and the district level committee as per the procedure.⁶

The Act defines its beneficiaries as forest dwelling scheduled tribes which means the members of the scheduled tribes who primarily reside in forest and depend on them for livelihood needs. Other traditional forest dweller means any person who has lived for at least three generations prior to December 13th, 2005 primarily resided in forests and who depend on them for livelihood. Anyone who is dwelling on forest is not a traditional forest dweller. A person who is dwelling in the forest must be a traditional forest dweller and who has been residing the area for about three generations. In which one generation is twenty five years. Even with regard to tribals, there is a requirement that you must prove that you are dependent on the forest for the livelihood.⁷ Along with the rights the holders of forest rights also have

⁵<https://www.thehindu.com/news/national/sc-stays-feb-13-order-for-eviction-of-tribals-forest-dwellers/article26396154.ece>

⁶ <https://forestrightsact.com/what-is-this-act-about/>

⁷<https://www.hindustantimes.com/analysis/the-sc-s-february-13-order-on-fra-was-consistent-with-its-earlier-stand/story-JNYBxveKIRiTb3FZnVNeuL.html>

certain duties to perform. They have to protect the wildlife forest and biodiversity, ensure that 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, to ensure that decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects wild animals, forest and the biodiversity are complied with. The Act also provides for diversion of forest land for public utility facilities managed by the government like schools, dispensaries fair price shops, electricity and telecommunications lines, water tanks, etc. with the recommendation of Gram Sabhas. However any of these facilities should not involve felling of more than 75 trees per hectare. Some areas have high tribal concentration while in other areas the tribals form only a small portion of the total population. There are several challenges which the community has been facing but the government has been giving greater emphasis to the development of the tribal population and the area. The Supreme Court's stay on its earlier order has once again focused attention on the challenges faced by the tribals in India. Issues of tribal development, integration and autonomy have confronted Indian society right from the British rule. The complex nature of the tribal population has made their integration and autonomy even more difficult. Autonomy allows development policies to be shaped to help tribal culture and lifestyle but at the same time leaving the tribal in their own state only deepens the divide between the mainstream and the tribals.

If tribals are integrated into the mainstream, their own needs and desires are neglected, also exploitation of forests accelerated as most of the mineral resources fall in forest and tribal areas. Tribal lands were rapidly acquired for new mining and infrastructure project. The main problems the tribals face are small and uneconomical land holdings because of which their crop field is less and keep them chronically indebted. The tribes follow many simple occupations based on simple technology. Most of the occupation falls into the primary occupation like hunting, gathering and agriculture. The technology belongs to the most primitive kind. Only a small percentage of the population participates in occupational activities in the secondary and tertiary sector. Beside this literacy among tribals is very low. After independence many steel plants, power projects and large dams came up in the tribal inhabited areas. Mining activities were also accelerated in these areas. Acquisition of tribal land for these projects led to large scale displacement of tribal population. Because of economic backwardness and insecure livelihood, tribals faced health problems like malaria, cholera, tuberculosis, diarrhoea and jaundice. Problems associated with malnutrition like iron

deficiency and anaemia, high infant mortality rates, low levels of life expectancy among others, degradation of the natural environment; particularly through destruction of forests and as rapidly shrinking resource space has also harmed tribals. Extinction of tribal dialects and languages is another cause of concern as it indicates an erosion of tribal identity. Some areas have high tribal concentration while other areas the tribals form only a small portion of total population.⁸

LEGAL PROVISIONS AND BENEFITS FOR TRIBAL COMMUNITIES IN INDIA

The constitution of India provides Special provisions relating to scheduled tribes. Article 342 of the constitution of India lies down that President may specify the tribes or tribal communities or part of all groups within tribes or tribal communities or parts to be deemed scheduled tribes. Article 164 provides for Ministry of Tribal welfare in each of the state of Bihar, Madhya Pradesh and Orissa which have large concentration of scheduled tribes population. Article 244 provides a fifth schedule in the constitution for incorporating provisions for the administration of scheduled areas and tribes of the states which have sizeable tribal population.

The constitution prescribes protection and safeguards for scheduled tribes to promote their educational and economic interest. Under Article 330 and Article 332 of the Constitution of India, seats have been reserved for the scheduled tribes in Lok Sabha and state Vidhan sabhas. Government has also made provisions for their adequate representation in the services. Scheduled areas have been declared in the states of Andhra Pradesh, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Orissa, Himachal Pradesh and Rajasthan. The scheme of administration of scheduled areas under the fifth schedule visualises a division of responsibility between the state and union governments. The fifth schedule of the constitution provides for the setting up of Tribes Advisory Council in each of the state having scheduled areas. Under Article 338 of the Constitution of India, a commissioner has been appointed by the President of India to investigate all matters relating to the safeguards for scheduled casts and scheduled tribes under the Constitution and to report the President on working of these safeguards measures to provide educational facilities have been taken by the government.⁹ Emphasis is being laid on vocational and technical training. The central government awards

⁸ <https://barandbench.com/forest-dwellers-tribal-eviction-order-stayed-supreme-court/>

⁹ <http://legislative.gov.in/sites/default/files/COI-updated-as-31072018.pdf>

scholarships to deserving students for higher studies in foreign countries. Tribal research institute which undertake intensive studies of tribals arts, culture and customs have been set up in Bihar, Madhya Pradesh, Orissa, Rajasthan and West Bengal. The claims of nearly 11 lakhs tribals and other forest dwelling household have been rejected on various grounds which includes the absence of proof that the land was there possession for at least 3 generations. The decision of the Supreme Court has triggered protests by various tribal groups and activists with the Adivasi Adhikar Rashtriya Manch gearing up to file review petition in that said the appearance of the tribal affairs ministry in the case was primarily for the name sake and had the centre shown sincere commitment to tribal rights, the decision of the Supreme Court could have been something else altogether The petition was challenging the law were filed by Wildlife First, a NGO and the Bombay Natural History Society and the retired forest officials who blamed the law for deforestation and encroachment of forest land. These claims largely mean that the increasing population of the forest dwellers and tribals is posing a threat to the forests. The Forest Rights Act was passed by the Parliament in 2006 after a massive people's movement to correct the historical injustice which was done to the forest dwellers. The Act was meant to recognise the scheduled tribes and other traditional forest dwellers who have be residing in the forest for generations but whose rights could not be recorded due to the lack of documentation. But the judgement is been seen as a complete betrayal of the tribals.