Tribes and Forest: A critical appraisal of the tribal forest right in India

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Abstract:
India is land of nearly 10.4 million tribes which constitutes 8.6% of its total population and spread over 15% of its geographical area. Tribe has very close relation with the forest and their life and sustenance is harmonized with available forest resources. The ongoing pursuit for economic development and market pressure on government have forced policy-makers to convert forest land into large corporations which again push away the indigenous people from their soils. Since the colonial period the forest policies jeopardized the tribal’s rights over the forest and ignored their voices during framing the laws. In the colonial period the legal and policy instruments transferred the right over forests from communities’ hand to government’s hand. The post colonial law has provided a dignified status to tribals but it will not be able to resolve tribal people’s human rights and livelihood issues without similar or greater advancement in law and administration in other areas such as land acquisition, development – induced displacement and political autonomy. Government and our policy makers should not ignore the importance of tribals and rights should be given to the latter by proper implementation of the law.

Introduction:
Tribes, also known as aboriginal communities/indigenous people/Adivasi/Janjati/Schedule Tribes, are residing in forests since time immemorial. There are nearly 10.4 million tribal people residing on 15% of total Indian geography and constitutes 8.6 % of total Indian population. Forests and tribals are culturally and traditionally linked to each other. Tribals have been living in the forest ecology and that has shaped their life and the society they presently have. Most of them live in close proximity of forest and depend on the forest for their livelihood and sustenance. Their entire existence evolves around the forest as they evolve in these woodlands and extract prerequisites like clean water, air, food, medicines, shelter, and even recreational retreats from these forests. The tribals get food from the forests by shifting or settled cultivation, apart from picking varieties of edible and herbal roots, tubers, creepers, fruits, leaves. Along with that tribals extracts varieties of minor forest produce (MFP), which includes fodder and grasses, raw materials like bamboo, canes and leaves, gums, waxes, dyes and resins and several forms of food including nuts, wild fruits, and honey. National Commission on Agriculture (1976) has classified MFP as i) Fibres and flosses, ii) Grasses (other than oil producing), bamboo, reeds, and canes, iii) Oil seeds, iv) Tams and dyes, v) Gums, resins and oleoresins, and vi) Leaves (Prasad, 2011). Forests are an integral part of tribal social life, because its importance is not only economic but also social, psychological and religious. Tribes worship the trees, bushes and animals, which dwell in the forests, as totem and believe that their gods and ancestors’ spirits reside in the forest. So they never want to deplete it but conserve it through their traditional conservative methods. The symbiotic relationship between forest and tribes was acknowledged and crystallised by the customary right over forest produces. Regarding the relationship of tribals with the forest, the Committee on Forests and Tribal in India (1982) stated that "they are not only forest dwellers but also for centuries they have evolved a way of life which, on the one hand, is woven around forest ecology and forest resources, on the other hand, ensures that the forest is protected against the degradation by man and nature" by evolving their own unique and conservative systems.

If we look at the tribal’s distribution in India we can classify their concentration in three groups i.e. (i) North-Eastern Region (NER) which includes Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura states. (ii) Central Tribal Belt (CTB): Rajasthan, Gujarat, Maharashtra, Madhya Pradesh, Chhattisgarh, Andhra Pradesh, Orissa, Bihar, Jharkhand, West Bengal, Dada and Nagar Haveli and Daman and Diu. (iii) Other States/UTs: Himachal Pradesh, Uttar Pradesh, Uttarakhand, Karnataka, J&K, Tamil Nadu, Andaman and Nicobar Islands and Lakshadweep. The predominant tribal-populated States of the country are: Arunachal Pradesh, Meghalaya, Mizoram,
Nagaland, Union Territories of Dadra & Nagar Haveli and Lakshadweep. Tribals constitute more than 50 per cent of the total population of these States. The following maps show the tribal distribution in India and forest cover in India. An analysis of these two maps shows that those districts which has higher tribal population consists higher green patches which means percentage of forest cover on land is higher than other regions.

Figure 1: Tribal and forest distribution in India
This means tribals not only prefer to live nearby forest areas, but also conserve these forests due to their higher dependency on natural resources and poor and backward technology. These Forest-Dwelling Scheduled Tribes (FDSTs) are integral to the forest ecosystem. They live in the forest villages which were set up in remote and inaccessible forest areas during colonial period, with a perspective to providing uninterrupted manpower for forestry operations (Chaithanaya, 2012). But the traditional rights to these FDSTs over the land occupied by them were not adequately recognized and recorded during consolidation of State forests during the colonial period and subsequently, after independence too. These villages come under the jurisdiction of State forest departments and since these are not revenue villages the rights over the forest resources are of the forest department, not of the tribals. Progressive assertion of state monopoly rights over the forest turning them into ‘reserve’ areas has threaten the tribal existence and resulted in large scale eviction and uprooting of the tribal villages. This has upset the relationship that existed between tribals and forests. The ongoing policies of liberalization, Privatization and market pressure on government have forced policy-makers to convert forest land into large corporations which again push away the indigenous people from their soils. These policies resulted in the beginning of a new forest governance system that was alien, induced and most particularly that excluded forest –dependent communities in the name of scientific forestry, public interest, national development, conservation and industrial growth (Patnaik, 2007). These policies confiscated their rights over the forest and they were not only denied their means of livelihood but also became victims of exploitation and harassment by forest officials. This gradual dispossession was result of the forest policies imposed over them during the colonial and post-colonial periods. Following description is an analysis of the forest policies and its impact over the tribals of India.

Pre-colonial Period:
In the pre-colonial period, i.e. before the advent of British in India, the forest resources were enjoyed by the inhabitants of the forest as the ruler had limited or no interest in the woodlands. As Guha (1983) quoted, "The waste and forest lands... never attracted the attention of former (pre-British) Governments". In most of the cases three kinds of authorities claimed their right over the forests. First were the village communities who claimed their right to cut wood, collect produce graze the cattle and extend their cultivation in to the forestlands. The second category was that of Zamindars and other feudal landlords and, third the Government. Board of Revenue proceedings of 5th August 1871 of Madras presidency stated that, "All of them, without exception, are subject to tribal or communal rights, which have existed from time immemorial and which are as difficult to define and value as they are necessary to the rural population Here the forests are and always have been common property" (Prasad, 2011).

During East India Company Rule:
The company period was characterised by a total indifference to the needs of forest conservancy and a fierce onslaught on India's forest was taken place in the following settled British period. Forests were cleaned for revenue purposes, agriculture and commercial exploitation. Thus the arrival of the British and the exploitation of India's forest resources marked a new phase in the use of forest produce in India. Though free access to the forests for the people was not inhibited, a kind of de-facto ownership of forests and wastelands of the country by the State had begun by this time (Prasad, 2011).

By the mid of 19th Century, British government realised that the forest resources in India were not inexhaustible. A rapid depletion in forest cover was observed which forced British government to formulated regulations to preserve the forest resources (Saldanha 1996). The early years of railway expansion saw an unprecedented assault on the more accessible forests. Great chunks of forest were destroyed to meet the demand for railway sleepers. No supervision was exercised over the felling operations and a large number of trees were felled, whose logs could not be utilised. In 1856, Lord Dalhousie laid down a definite forest policy which realised the impact of forest destruction due to huge usage of timbers in railways and Government of India decided to take energetic steps to protect from further destruction the forests that still survived (Smythies, 1925).
Forest Policies under the Rule of British Crown:
The forest governance established by the British was authoritarian in nature which imposed restriction on the local forest dweller communities through a definition of forest as a national property for the colonial objectives. These policies acquired control of forest for commercial purposes and national development at the cost of local forest based livelihood, rights and privileges. Following is the chronological narration of forest policies and management taken by the British and its impact on the socio-economic lives of the tribals.

The Forest Act of 1865:
This act was first attempt in the direction of regulation of forest produces by the forest dwellers and asserting the State monopoly over the forest. The state was empowered to declare any land covered with tree as forest and to regulate it by notification, provided that such notification should not abridge or affect any existing rights of individuals or communities (sec.2). Thus, socially regulated practices of the forest people were to be restrained by law. So, the customary ‘rights’ of using forest products were transformed as ‘privileges’. The Act was applicable only to forests under the control of the Government and no provisions were made to cover private forests (Kulkarni, 1987).

The Forest Act, 1878:
This Act was more comprehensive than the previous and extended state’s authority over the forests. This act divided forest into three parts namely reserved forests, protected forests and village forests. The Act tightened the government’s control on forest by prohibiting certain activities like trespassing or pasturing of cattle (Husnain, 2009). But this was not applicable to neighbouring forests where right was still in the hands of communities. Through this legislation, by one stroke of the executive pen, obliterate centuries of customary use of the forest by rural populations all over India. Thus, when the Colonial State asserted control over woodlands, which had earlier been in the hands of local communities and provided to work these forests for commercial timber production, it intervened in the day to day life of the Indian villages to an unprecedented degree (Prasad, 2011).

Forest Policy Resolution-1894:
The first forest policy envisaged the supremacy of the State’s interest over the people’s interest. The sole objective of the policy was administration of the state forests for public benefit but it imposed restrictions on the inhabitants of the forest and neighbourhood of the forests. It also classified some forest as minor forest for fulfilling the needs of the communities (Prasad, 2011). The commercial value of the forest has prompted the British Government to restrict the community use of the forest. This helped the British to augment their revenue but in the process the rights of the tribals has been curtailed severely. Consequently, this colonial forest policy not only alienated them from forest but seized their forest rights (Bahrgava, 2002). This policy has made the forest officials to come in the scene and claimed the authority to limit and regulate the traditional tribal rights over the forests (Husnain, 2009).

Forest Act-1927:
The India Forest Act of 1878 was amended in the past by different Acts of local Governments. It was later on replaced by a very comprehensive Act called the Indian Forest Act, 1927. This has not only further regulated the people’s right over forest but also codified all the practices of the forest officials. The forest officials, who played crucial role at the grass-root level, had direct interaction with the communities. They were very authoritative and used their power arbitrarily and played havoc with the lives of tribal people. Their coercive behaviour and abuse of power forced many tribals to leave their native places. The Act deleted the reference to communities’ rights over forests, which were made in the 1878 Act. Persons were expected to put in their claims over forest lands and forest produce before the Forest Settlement Officer who was to enquire into their claims. This Act has put some control on the shifting cultivation, which was considered as biggest reason of forest depletion, with certain special provisions. The gravest consequence of colonial forestry working on commercial and imperial interest
was dwindling of customary rights as well as the decline in traditional conservation and management systems. The restriction of communal ownership of forests by the State severely destabilized the subsistence economy of the forest people. It forced many communities to change their occupation. As Sengupta (1988) observed to compensate for the loss of source of livelihood tribals have been forced to explore alternative avenues of engagements.

So, in the colonial period the legal and policy instruments transferred the right over forests from communities’ hand to government’s hand. The common property had become the state property and alienation of village communities from forest was begun. In 1935, Forest was transferred from the union to state list according to Government of India Act, 1935. This authority of the state over the forest produces continued even after Independence.

POST- COLONIAL FOREST POLICIES

National Forest Policy of 1952:
The first post independence forest policy was formulated in 1952 with a realisation of ‘maximum annual revenue from the forests’ in the nation making. This belied all hopes of tribal people by higher regulation on their rights over the forest resources. It followed the lines of colonial policy makers but it went beyond in infringing on the privileges of the tribes. The private forests of tribals that were not touched in the old policy were subjected to controls under the new one. Free grazing was recognised under the old policy but a fee was imposed on it in the new one. A concession is given relating to shifting cultivation, by the provision that should be curbed not by coercion as earlier but by persuasion. So the ‘rights’ which were converted to ‘privileges’ in the colonial periods were turned to ‘concession’ in this policy. New policy withdrew the right over forestland for cultivation which was provided by the colonial predecessor and it also started controlling the private forests which was totally under the control of the tribals in colonial period. the old policy didn't touch free grazing in forests. The new policy sought to bring it under control. Fees were introduced and grazing was to be kept to the minimum. The forest policy of 1952 of free India was considered worse than its colonial predecessor policy of 1894, particularly for the indigenous people (Reddy 1995).

To analyse the Forest policy and its impact on the tribals of India, The President of India constituted a commission under the chairmanship of U.N. Dhebar. The Scheduled area and Schedule tribe commission emphasized the importance of forests in the life of the tribal people in providing them with all kinds of food, wild game and fish, wood for construction of houses and even income from the sale of forest produce besides fuel and criticised the gradual extension of Government authority over forests to the detriment of tribal life and economy. It also noted the gradual changes in the rights of the tribal communities over the forests and its transformation from ‘rights’ and ‘privileges’ in 1894, then ‘rights’ and ‘concession’ in 1952 and thereafter it remained as concession. The Commission recommended that the policy of 1952 should be reconsidered and tribals should be allowed to cultivate forest lands. Their requirements for grazing and shifting cultivation should be conceded. It also noted responsibilities of forest officials.

The Recommendation of National Commission on Agriculture, 1976:
The recommendation made by the 'National Commission on Agriculture' (NCA), 1976 was disastrous from tribal’s point of view. It recommended a drastic reduction in the people’s right’s over the forest and forest produce and advocated the commercialisation of forest at all cost ignoring the sustenance of forest people derived from the forests. The Commission recommended the regularisation of forest dwellers’ rights over forest produce and stated, “the production of industrial wood should be the raison d’être for the existence of forests. Actually it is in this value that many other values that have been claimed or caressed for forests so far can be absorbed”(NCA 1976). Report opt the extreme conservationist approach towards the forest and forest products and considered tribals and forest dwellers as destructive agents. The local people were considered as destructors of the forest as they extract natural resources at free of cost and contribute less in the maintenance of the forests. It recommended strengthening the forest legislation by changing the forest policy and bringing an uniform forest laws so that incompatibility in forest laws among the states is removed and there is no
multiplicity of legally sanctioned authorities concerned with forestry matters. It also recommended that functionally all forest lands should be classified into protected forests, productive forests and social forests.

In 1976, the Forests subject was brought into concurrent list through the 42nd Constitutional Amendment empowering centre to make laws.

**Forest Draft Bill-1980:**
Based on the recommendations of the NCA (1976) provisions were made in a bill to reduce people's rights over forestlands and produce. The Government was empowered to declare any land, what so ever, to be forestland. The Act prohibited the state governments from declaring any reserve forest or any portion as unreserved and also from allotting any forestland for any purpose without prior permission of the central government, and also made special provisions against the rights of the forest people. So, the central government reserved all rights over forest and forest produce with it. This bill later passed by parliament and became an Act.

**Committee on Forests and Tribals:**
To achieve a co-ordinated policy, the Government of India constituted a Committee in 1980 to suggest guidelines for the re-orientation of forest policy to serve the forest economy under the chairmanship of Dr. B.K. Roy Burman, an eminent Anthropologist. Committee submitted its report in 1982 with emphasise on the importance of forest in the tribal life. Committee noted that tribals rely on forest for not only their basic needs viz. fuel, fodder and wood but they also earn one third of their income from sale of minor forest products. The committee felt that a national forest policy should recognise the importance and positive role of the inhabitants in the maintaining forests which was only long-run solution to question of afforestation, preservation, production and management of lands (Burman Committee report, 1982). Since the committee was more focused on the tribal economy it more emphasised on the forest industry and minor forest products but also gave valuable inputs on the importance of forest in tribal life. The committee pointed out that the benefit should flow to the tribal people through the forestry conservation programmes and recognition of their forestry skills. The Policy-makers should consider the individual, community as well as national interests angles during the policy formulation and the basic need of the tribals should not be hampered during formulation as well as implementation.

Later, in 1985, the Department of Forest was transferred from the Ministry of Agriculture to the newly constituted Ministry of Environment and Forests which drafted the National Forests Policy Resolutions approved by Parliament in December 1988.

**Forest Act-1988:**
The basic objectives of forest Act, 1988 stated, "the principal aim of forest policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim". The concept of joint-forest management evolved in this act. While this policy has more people-oriented provisions, it still has the concept of exclusive state ownership of forest and mention industrial needs as national needs (Choudari, 1987). The practice of Shifting cultivation was permitted for a period of three years. Special provisions were made to prevent encroachments on reserve forests with punitive measures. State was allowed to constitute village forests except reserve forests. Provisions are made to regulate trespassing of cattle in reserved, protected and village forests and penalties for such offences have been made very severe. The Resolution has a special provision on tribal people and forests. It is stated that having regard to the symbiotic relationship between the tribal people and forests, all agencies responsible for forest management should see that the tribal people are closely associated in the protection, regeneration and development of forests so as to provide them gainful employment (Hiremath et.al 1994). A movement by social and human right activists was started which considered Rights of the tribals over local resources as sacrosanct and nonnegotiable and a move was initiated to secure Constitutional
recognition for these rights. These movements along with Bhuria Committee’s recommendation forced government to amend in Vth schedule and known as the Panchayats Extension to Schedule Areas (PESA), 1996. It decentralized existing approaches to forest governance by bringing the Gram Sabha at centre stage and recognized the traditional rights of tribals over “community resources”—meaning land, water, and forests. PESA was important not just because it provided for a wide range of rights and privileges, but also because it provided a principle as well as a basis for future law making concerning the tribals (Patnaik, 2007).

In 2002, Ministry of Environment and Forest, India passed a circular in which tribals were denoted as ‘encroachers’ and were directed to evict the forest. This incapacitation of forest-dwelling tribals was aggravated by the establishment of the Protected Area Network, which meant further sacrosanct areas with no or negligible rights over forests and forest land by the tribals; it enabled the State to evict local forest dwellers without settling their bona fide rights to residence (Patnaik, 2007).

The Forest Act, 2006:
The forest Act, 2006 is a landmark law in the evolution of the government’s attitude towards the tribal community. After Honourable Supreme Court’s decision in 2004, the Parliament has enacted the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (the ‘Act’) to ‘undo the historical injustices’ suffered by tribal communities throughout colonial and post-colonial period. The purpose of the Act is to recognise the rights of forest-dwelling communities and to encourage their participation in the conservation and management of forests and wildlife. The ‘encroachers’ were considered as an important agents of conservation and managements of the forests and wildlife. The bill has identified the forest dependent Schedule tribes and non-tribal forest dependent tribal population and made a distinction between two to on the ground of sustenance and commercial purpose (Bhullar, 2008).

No doubt law has provided a dignified status to tribals but it will not be able to resolve tribal people’s human rights and livelihood issues without similar or greater advancement in law and administration in other areas such as land acquisition, development – induced displacement and political autonomy.

Conclusion:
The colonial and post colonial forest laws considered the tribals as destructor of the forests and wildlife. These laws always regulated tribals rights over the forest produce and forest lands. The British has triggered the commercialisation of forest product in a disguised ‘National Interest’ and confiscated most of the rights over the forests. The tribals who were enjoyed the forests from time immemorial had no clue but to surrender against the mighty powers. This forced them to alienate the forest and come out from their ancestral home. They were depended on the mercy of the colonial rulers for their sustenance and livelihood. These miseries were aggravated by their own Indian rulers who barred them to access the forest resources and used it to commercial profit in the name of nation building and developments. The control has been transferred from communities to the corporate sectors that are making profit by using these resources. In spite of these the policymakers consider tribals as destructor and encroachers of the forest. The indigenous people struggle for autonomy and identity throughout the colonial and post- colonial period demanded state recognition of the integrity of their culture and nature. As far as the tribes are concerned, the forest is inseparable from their existence, the tribal and forest policies of state could not be framed on incompatible premises. However, this demand was never honoured by the state (Mullick, 2007). Tribal people suffer from physical displacement mainly because the laws that do not recognize communal customary rights of people to forest lands (Mathur, 2009). The eviction of millions of tribes from their natural habitat is not solution to the problem of deforestation and degradation. The focus should be on delegating rights of forest dwellers, who are the only people who can become good stewards of forest resources through their traditional conservative knowledge. Government and our policy makers should not ignore the importance of tribals and rights should be given to the latter. Due to lack of the awareness about the law and rights, the benefits of the policies are not reaching to the desired people. No doubt, the forest
Act 2006 has given a ray of hope to the tribals for getting the rights over the forest land and resources but a proper implementation is demanded.

References: