



**ADIVASI LAND RIGHTS AND DISPOSSESSION**

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## ADIVASI LAND RIGHTS AND DISPOSSESSION

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### **Introduction**

Adivasis is a collective term utilized in Asian country by several autochthonic Indians. In Indo-Aryan, the word Adivasi comes in 2 words: Adi, which means 'original,' and Vasi, which means 'inhabitant.'<sup>1</sup> The concept of Adivasi was fabricated within the Nineteen Thirties to forge identities within the varied native teams of India.

Adivasis is a standardized, linguistic and cultural community that speaks over a hundred languages in dialect. Similarities exist and are normally viewed as members of the underprivileged communities of society. 8.6% of the country's

population, which comes around to 104 million inhabitants, were Adivasis throughout official census conducted in 2011.

There are considerably completely different official figures, however they represent a far larger proportion of the population in India. The bulk of Adivasis sleep in mountainous and forest areas of the country and occupy principally a sector of agriculture, fishing and forestry.

### **Historical Overview**

The Adivasis or the endemic people have off-springs since before their arrival on the Indian landmass. Different Adivasi groups existed long before the Aryans reached around 2000- 1500 BC within the Indian sub-Continent. within the Aryan and Adivasi teams there have been still completely different ecological, linguistic, ethnic, social and political spots. Adivoŝsis was used as 'asura' in Rigveda and other ancient Hindu scripts and

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<sup>1</sup> Definition of Adivasi,  
<https://www.lexico.com/definition/adivasi>.

was pictured to serve the Aryans.<sup>2</sup> Adivasis weren't incorporated within the typical Hindu caste society, however bit points exist. within the spiritual autochthonal and the other way around, there have been several aspects of Hinduism. By settling the Aryans and by arising from nearer interaction between the 2 groups, Adivasis was ironed to survive. because the Indian Sub-Continent experienced frequent invasions, the autochthonal population was twinklers of such assaults, and also the dominating civilization was usually not that attentive to certain Adivasiculture throughout history. Social science has sketched and outlined Adivasis, contributing to the invasion and marginalization of populations, as 'primitive, wild,' 'non vilized,' and 'jungle'.'.<sup>3</sup>

## Land Rights and the Constitution of India

According to the Constitution of 1950, Adivasis, along with the people labeled as

the 'untouchables, were subject to specific security provisions. The predominant majority of the tribal people were classed as 'programmed peoples.' The President of India, according to Article 341, is permitted for the purposes of this Constitution to define 'castes, races or tribes that are called scheduled tribes.' In 1950, according to Article 244 of the Indian Constitution, the fifth and sixth timetables established self-governance in unique areas with tribal majority. Inside eight Indian states, known as 'plan areas,' tribal countries can be administered and governed under the fifth schedule. The Fifth Schedule protects adivasi (tribal persons) who reside in scheduled areas from their territories to non-tribal persons. The governors have additional powers in the Fifth Schedule. In compliance with the powers given under the Fifth Schedule, Governors may not only order the Governors that any particular piece of legislation or part of it shall not extend to a Scheduled Region but may also regulate good management and peace within the Fifth Schedule. In conjunction with the Tribes Advisory Council, the Governors can probe on areas concerning a

<sup>2</sup> Manish Meena, the Bahminical and Colonial History Behind Adivasis' Demonisation and Criminalisation.

<sup>3</sup> Christopher Binay Nag, Adivasis And The Indian State: Stereotyped As 'Primitive' And 'Savage', Tribal Communities Fight For Right To Choose Social, Cultural, Land-Owning Systems, Firstpost, August 21, 2019.

ban on or check on the transfer of land by or between members of the Scheduled Tribe and the land allocation regulations in those areas and also on the regulation of monetary lending activities.

For the Indian Adivasis after the colonial era the question of land rights was significant. The notion of land possession started in India as well as Australia, North America and numerous other places with the emergence of the European colonizers. Upon the British' arrival, they created an outsized forestry business within the country to ascertain the construct that forest land is owned, that ends up in several Adivasis losing management of the lands. The effort to revive lost lands was created to initiate serial rebellions from 1832 to 1905. As we have already seen, the land rights of indigenous people is covered under the Fifth and Sixth Schedules of the Constitution. The Fifth Schedule offers special safeguards to the 'programmed tribes' who are a part of the territories of the 'scheduled regions.' The elemental issue of this Law is that the scheduled Areas are comprised of solely eight States with a constitutionally mark

of 10 nations, Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand and Madhya Pradesh.<sup>4</sup> Thus, many States in the South, particularly the people of Adivasis, were not included, raising concerns about Adivasis' rights living in those countries. The population of Adivasis is important. The sixth legislative timetable covers independence for specific north-eastern tribes. Just Assam, Meghalaya, Tripura and Mizoram are covered by the Sixth Plan. In respect of property rights, these organizations are allowed, in accordance with Schedule Six, to include certain autonomous bodies known as the District Council (DAC) and the Regional Council, for the distribution, occupancy, use and separation of land, forest management, for possession and control of money-lending.<sup>5</sup>

### **The Forest Rights Act**

Parliament adopted in 2006 the Scheduled Tribes and other Traditional Forestry Dwelling Act (Forest Rights Act). Within the village boundaries administered by the forest department as a colonial period, the Legislation restored the rights of these residing in a forest to enter, manage

<sup>4</sup> Fifth Schedule Areas, <https://vikaspedia.in/social-welfare/scheduled-tribes-welfare/fifth-schedule-areas>.

<sup>5</sup> Autonomous District Councils, <https://www.drishtiiias.com>.

and regulate forest lands and services. The law makes gram sabha a legislative authority for forestry land management and protection. It provides that there must be no movement in such forests until personal and social demands have been addressed.<sup>6</sup> The Law on Forest Rights answers the long-standing claim for Adivasis' land rights. Adivasis and other forests are radically controlled by the Forest Rights Act and will show that, before the cuts in 2005, both farm and home rights, the right to non-wood forest products and Communal land tenures had been occupied in forest areas. The law's preamble notes that the Forest Rights Act is introduced to cure or compensate the past injustices that were faced by the Adivasis' with respect to their rights to land dispossession and contempt. It will ensure that the Adivasi people are responsible for the management and administration of their own fisheries, forestry, tribal and forestry, etc. of forest resources.

### Shortcomings of the Act

While it is intelligible that the Forest Rights Act contains substantive provisions that are long due regarding land rights for

Adivasis, its carrying out or the execution is somewhat slow. The implementation of the provisions of the Forest Rights Act and acknowledgment of community land rights has been vital solely in handful range of states, like Maharashtra, Odisha and Gujarat. The resistance of powerful vested interests to forest bureaucracy to the successful adoption of, and particularly its radical community provisions, has been hindered and restricted for other countries and regions. Left wing activists in rural Uttar Pradesh, for example, planned to occupy the woodland and build their own village, Ramnagar, in the landless community of Adivasi and Dalit Workers. The aim was to end their dependency on landowners of Yadav and increase awareness among Adivasis by drafting the Forest Rights Act on their rights and privileges. The terms of the Law on Forest Rights (FORD) were shattered by 'Mahila Mazdur Kisan Sangathan,' the leading criterion for land ownership before the 2005 cuts. The occupancy of the land was heavily hit by local elites, and the Yadav population eventually destroyed Ramnagar during a mass invasion. It is important to

<sup>6</sup> Supreme Court orders eviction of more than 10 lakh Adivasi and forest-dwelling families, <https://scroll.in/latest/914002/forest-rights-act>.

remember that historically Ramnagar is only possible by means of its conservative interpretation of the Forest Rights Act.<sup>7</sup> Approximately 74 lakh tribal and other traditional forest residents could potentially assert the land rights under Chattisgarh's Forest Rights Act. Half of these charges were however rejected, the property also being siphoned unfairly. For two generations an Adivasi named Sunder Singh Kumeti belonging to the Gond tribal, was unable to reach a forest area. In 2016, the government purchased land tracts in a railway project to construct a railway line. The staff cut almost 300 salt, saja and fruit trees for forestry and prospecting. When the destruction took place, the property was burned, and it was impossible for Kumeti to know how much land he lost. For Kumeti, it is lucky, at least in principle, to have a legendary piece of redress legislation designed to remedy the historical injustices in Adivasis. The FRA is a laminated paper sheet that contains several thousand tribal lands and traditional Indian foresters. The most precious possession of land owners which helps to ensure their legal claim to their forests is the Patta or Title act and is thus closely watched by the owners. Under

the provisions of the federal government, forest residents have private rights and collective rights can be administered over areas they consider fit.. For purposes outside of the forest any land transfer is subject to the prior approval of the gram sabhas. He is the owner of a 2.5 acres forest property, Kumeti has proofs. But a portion of his property was excluded from his possession by the government in order to expand railway tracks. Kumeti and other villageers' attempts at identifying areas of their territories that are now unavailable are blocked by the heavily armed patrols. Related encounters have been experienced by other tribal villagers where the authorities refused their demands for any particular excuse. These examples show the red tape to effectively enforce and disregard FRA<sup>8</sup>.

### **Historic Judgement in the Samantha Case**

The history of land relationships in tribal Andhra Pradesh and much of the other tribal central India was one of many battles to fight the transition of agricultural land to non-tribal farmers and lenders in the valleys. State governments have

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<sup>7</sup> Alf Gunvald Nilsen, Adivasis and the State: the subalternity and citizenship of Bhil Heartland 257-258 (2018).

<sup>8</sup> Jacob Kushy, Aliens in their own lands: when Chhattisgarh's tribals were turned into enroachers, The Hindu, April 06, 2019.

continually improved farmland's tribal legal rights in the mountains, but state governments held jurisdiction of forestry, making a number of tribals uncertain for decades. For the forest societies, the FRA gave some promise of improvement. Yet dumping of construction projects, including dams and mines, threatened the attempts envisaged by the Act. For Andhra Pradesh Province, legislation has been passed on successively restricting the transfers of land owned by Adivasis, resulting in a 1959 Regulation on the land transfers of the scheduled areas of Andhra Pradesh. As it stands, the Land Transfer Regulation prohibits the transfer of any land to anyone apart from an individual from the company Adivasi or a company registered as Adivasi. It mostly includes the state owned forest land. The statute also stipulates that the property initially belonged to a tribal person in the Scheduled Areas of State, ensuring that the land owned by a non-tribal owner is returned to the original owner. Nominal tribal holdings are also prohibited, if the real recipient is a non-tribal man, known as benami. Nevertheless, the aim of the legislation is not to address forest land ownership and access issues<sup>9</sup>. In the 1990's,

Andhra Pradesh government leased a calcite business to indigenous forests. On behalf of the Adivasis, the High Court of Andhra Pradesh dismissed the Samatha NGO petition. In the so called "Samatha" ruling, the Supreme Court decided on the lower court judgement and dismissed the rental agreement. One of the most significant issues was the significance of the Regulation of 1959 on land transfer of Andhra Pradesh Scheduled Areas, which says that the legal prohibition of the transfer to any other tribal party of the property is imposed.<sup>10</sup> The question before the court was whether 'person' included the State Government.

### Challenges Ahead

Administrative apathy is the biggest barrier to the successful application of FRA. Illegal invasions of Adivasi territories are also taking place, and the officials have still wrongly dismissed their land claims. Second, not just the Adivasis, but the managerial loss of consciousness was appalling. Ignorance of the forestry officials who are expected to assist in processing requests for forest rights is strong, resulting in discrepancies in the

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<sup>9</sup> Patrik Oskarsson, Landlock : Paralyzing Dispute Over Minerals on Adivasi Land in India 33-34 (2018).

<sup>10</sup> Samatha v. State of Andhra Pradesh (1997) 8 SCC 191.

settlement. Instead of being a benefit to clans, the FRA was misinterpreted by the forest bureaucracy as an instrument for regulation of invasion. The Act is diluted because the Member States differ in the assignment to gram sabhas of forest rights which permit local people to manage forest resources, an important part of forest earned by the States. Any environmentalists are also afraid that a number of Member States would dilute FRA to ensure that human interests are preferred and the rights laid down in the law are therefore abolished. Finally, the reticence of the forest bureaucracies to comply with laws, in the fear of losing their immense control over forested territory, has led to the overwhelmingly poor enforcement of the FRA. The Judges applied to the owes of Adivasi and pushed him to the stage that the government and the judge lost confidence. For example, the Supreme Court's ruling on the FRA's implementation in February 2019 jeopardize the lives of over twenty lakh Adivasis, who had been driven out by such decision. The Court requested officials in almost twenty four States to provide information on FRA claims and expel claims whose applications were denied before 24 July 2019. Following a strong resistance and condemnation, the

Court granted the Adivasis interim remedies.

### Concluding points

Land rights was one amongst India's most significant problems. Adivasis secures the government's right to land by offering the chance to remedy the historic injustices inflicted on the poor people. In removing and moving Adivasis from their territories the development projects had an enormous function. To make sure this indifferent attitude towards Adivasi does not last, the Government must strike a cautious balance between its growth agenda and the interests of Adivasi. If the Government stops large-scale building projects, which will strip a considerable Adivasis population from their property, it would be up to it to guarantee the rights of Adivasis to the land.

The expansion and modernisation of Adivasi's lands would only further alienate it and illustrate differential development. This is the only thing that is essential. Adivasis has been entitled to enter forest territory under the Forest Rights Act as a welcome piece of legislation since the colonial hegemony. However, institutional apathy prevents the successful enforcement of the law. Finally, in order to ensure that the Adivasi land claims are recognized and



adequately processed, procedural deficiencies must be promptly remedied.



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