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Constitutional Validity of Forest Crimes Affecting the Livelihood of Indian Indigenous Communities under various Indian Forest Laws

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Abstract—**The Indigenous Communities in India constitutionally recognized as Scheduled Tribes. Because of their special culture, socio-historical and geographical location these scheduled tribes differentiated from the rest of Indian society. Rather this historical position was resulted into their backwardness from the rest of Indian society. British govt. in pre-independence era by making forest laws tried to control the forest land in order to raise or generate the revenue for their govt. In order to continue this, British govt. restricted their activities including routine (day-to-day survival activity) activities required for their survival, first in reserved forests, then the protected forest and then lastly in the village forest where these scheduled tribes lived. Their basic survival needs were satisfied from the forest land itself. However British govt. made these needs as an offence or crimes under these forest laws and tribal therefore comes under the category of criminals. Thus, these tribes were exploited socially, economically and thus they became more marginalized and vulnerable group and hence after independence they were given constitutional protection. In-spite of constitutional protection Indian govt. continued with these historical injustices. This paper specially deals with their livelihood activities which were brought under the purview of crimes defined under various forest laws and Indigenous communities became criminals and therefore more vulnerable and hence there is a need to check the link between their livelihood activities and crimes defined under various forest laws and also need to check its constitutional validity from the socio-legal perspectives.**

Index Terms—**Constitutionality, Scheduled Tribes, Forest, Crimes, Vulnerability, Marginalized, Tribal**

I. INTRODUCTION

Tribals or Adivasis belonging to various tribes or the Indigenous Communities in India constitutionally or legally recognized as Scheduled Tribes (ST). As per 2011 Census the population of tribal in India is 10.45 Cr. that is 8.6% of the total population of India. They (from their origin to till date) always lived in a forest as a community and still recognized with some

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primitive culture such as tribal distinct languages, dress codes, rituals, lack of modern education and hence easily distinguished from the so called civilized developed societies in India. As a part of their culture they never accumulate the forest resources (except present day-today's need) and therefore except for their need they never damage the forest properties or trees or natural resources of the forest and earn profit from it. This culture of the tribes indirectly one of the cause for their poverty. Hence, for their livelihood they were come in contact with the society especially the dominant castes society to whom they were able to sell certain forest produce and sometimes also available for them as a cheap labour force. Because of this (different culture, language etc.) the society treated them not only outsiders/outcastes/avarna but equivalent to lower castes and hence their geographical isolation cannot convert to their social inclusion among this so-called civilized society.

On the other hand, British govt. also recognized the importance of forest as one of resource for generation of revenue and the other commercial benefits for their govt. Especially with respect to Timber and for their Naval expansion govt. need to control this forest, which was possible by controlling the tribes. Hence, British govt. brought historical forest laws which declared tribes as born criminals and their routine activities as crime against the State. In addition to the tribe's culture, their geographical position that is forest itself became one of the barriers for accessing the basic necessity institutions (such as transport, communication, medical, educational, administrative etc.) required for their development which leads to their social exclusion, backwardness, marginalization, exploitation, vulnerability. This in turn increase their dependency on the state & society. In addition to this, to retain commercial benefits (availability of cheap labour and illegal use of resources of forests with the help of tribes) State with the help of Dominant Castes society and vice-a-versa exploited tribes more effectively by engaging them in illegal activities, commits atrocities and false implications against them. This makes them more marginalized and vulnerable and hence they (tribes) were constitutionally protected through various provisions of Indian Constitution after independence of India. However, in spite of protection under Indian Constitution and various amendments to forest laws, the above said historical legal injustices were and are still carried out by the above said entities [that is dominant caste society and State (legislature & executives)] and thus systematically retain or maintain the system of tribe's exploitation.

Various govt. has not brought any changes in the lives of these tribes as they still have no other livelihood option than these forests. And now the new way of exploitation was discovered in the name of "Balancing the Development & Environment Protection". Therefore the Constitutional validity of these unjustifiable forest laws need to be studied especially in the context of the co-relation between the livelihood and socio-economic exploitation of these indigenous communities by the above stake holders/said entities under the name of Balancing the Development & Environment Protection which in turn results into their criminality. This paper especially covers the part of correlation between crimes and livelihood of the tribes under these laws and its constitutional validity.

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For this purpose we should first know the historical traces of these relations between routine livelihood activities of the tribes and various types of crimes identified under these forest laws:

II. HISTORICAL BACKGROUND:

As discussed above the Scheduled Tribes were outside the varna system and secondly, they were geographically also far from the Hindu/Vedic Society of India and hence they were considered as lower castes and thus like Dalits/untouchables they were socially, economically exploited and socially excluded. Because of this they become more marginalized and vulnerable community and thus they along with their forests always controlled by these dominant castes Hindu society and the respective regimes or govt./s. But except customary law there is no written laws before British govt. and hence here particularly for this paper and in order to have historical study we can divide the laws framed for the regulation of the forests (which includes tribes) as Pre-Independent and Post- Independent Forest laws. However it has to be remembered that the customary exploitation was the base of these pre-independent forest laws and same is carried in post-independent forest laws.

1] Pre-Independent Forest Laws:

i) Indian Forest Act, 1865 – This Act empowered the British govt. to declare any land with trees as govt. forest and make rules for it. Govt. prohibited the shifting cultivation, felling of trees without sanction of it. British govt. set up the Forest Dept. for this purpose. This actually hampering the ownership right of these indigenous communities w.r.t. the forest land. Thus, this was the 1st attack on the very essential part of livelihood of tribes and that was residence and farming which was the primary source of their livelihood.

This Act was the 1st attempt through which British govt. established state's control over the forest i.e. tribes. However, there were protest against this Act and to remove the defect from this Act, Forest officer's Committee was appointed and in 1878 new Indian Forest Act passed.

ii) The Criminal Tribes Act, 1871 – Under this Act the tribes and other communities identified as "criminal tribe' under section 2 & 5 of the Act. This criminality not based on the commission of a crime by an individual but it was the whole community (irrespective of the commission of crime) termed as 'criminal'. Thus British govt. identified these tribes as criminals which was not only discriminatory but also (Collective Criminalization) against the basic principle of Criminal laws. This tool worked like a dangerous weapon for exploitation of these tribes.

iii) Indian Forest Act, 1878 – This Act 1st classified forests into three parts – Reserved Forest, Protected Forests and Village Forests, however, the British govt. enables to administer all these forests. Through this classification govt. prohibit the entry of tribes fully in case of reserved forests and partially to the protected forests and in case of village forests all the provisions of this Act was applicable. As per Sec.4 govt. was empowered to declare through notification any forest land which includes village forest land as reserved forest land. Through this Act govt. regulate

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the collection of forest produce by tribes which includes trees, timber, grass, flowers, honey, wax, gum, silk worms & cocoons, shells, bones or horns etc. as per section 2 of the Act. These forest produces were part of their livelihood. In addition to this any cattle which includes sheep, goat, buffaloes, pig, horse, assess etc. if enter in reserved forest or if tribes enter in reserved or protected forest, it amounts to trespass. The cattle were seized & impounded under Cattle Trespass Act, 1871. If tribes burn trees or leaves or charcoal or collect any forest produce or kills fishes, sets traps etc. were declared as offences for which various penalties were provided under sec.32 of the Act. Now collection of forest produce, use of cattle, shifting, burning leaves for cultivation or animal food were part of their livelihood became offences under this Act. The worst part of this Act was absolute power given to executives/govt. such as power to arrest without warrant, power to impose duty on timber, power to declare any forest no longer reserved or reserved etc. In addition to this Act hold presumptions that the forest produce, forest land was belongs to govt. and if land required then it deemed to be needed for public purpose only. This Act, thus, made govt./state not only powerful but helped to establish its monopoly over the forest/tribes.

iv) Indian Forest Act, 1927 – This Act was consolidated Act of the above forest Acts and hence retained the same offences, presumptions, powers and state monopoly as stated in previous Acts. However, in order to maximize the revenue, govt. became more commercialized and for that it imposed more tax not only on timber but also on other forest produce under sec. 39 of this Act. It regulates the transit of forest produce under Sec.41. Under the name of preservation of land slips, protection against land erosion, for preservation of public health more strict restrictions were kept on their daily needed activities such as grazing of their cattle, collecting firewood, shifting cultivation etc. and if tribes cross these restrictions then they deemed to be 'encroachers' and thus forced to give up their daily livelihood activities and thus they forced to live in poverty or became a cheap forced labour for the forest dept. This Act laid down more power to the forest officers who not only manage the forest administration but also adjudicative power and also empowered civil courts & criminal courts. Forest officers and police officers abused their powers which results into victimization of the tribes.
Thus, these laws leads to their more exploitation, extortion and harassment which ultimately make them more marginalized and vulnerable.

2] Post-Independent Forest Laws:
After considering the vulnerability, social exclusion and marginalization of these communities the tribal leaders like Jaipal Singh Munda – a member of constituent assembly asked for their rights and Dr. Ambedkar being President of Drafting Committee consider that tribal's vulnerability, criminality and backwardness is the direct result of caste system and hence Scheduled Tribes be given constitutional recognition and protection. However, after independence, Indian Congress govt. primary focused on industrialization to raise the revenue and forests were best proven source for this purpose. Thus, even after constitutional protection

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the historical unjustifiable forest laws retained by the Indian govt. It frame new forest policies which will facilitate industrialization than protecting the rights of tribes.

The National Forest Policy (1952): Indian govt. in order to have massive industrialization forcibly displaced these tribes from their millions of hectares of their ancestral tribal/forest land for various mining projects, steel plants, dams etc. As a result of this, millions of the tribes became landless and when such landless tribes for their residence enter into protected or reserved forest they were termed as encroachers and their encroachment became the offence of trespass and thus, they became criminals. Although the Criminal Tribes Act, 1871 repealed by Criminal Tribes Laws (repeal) Act, 1952 which de-notified the 'criminal tribes'.

The Wildlife Protection Act, 1972: This law allowed the Indian govt. to create a National Parks and Tiger Reserves for which entire village forests were evicted forcefully where tribes were lived for centuries. In addition to this, govt. classified forest and wild life as govt. property and to protect its property govt. declared hunting of wild animal as a crime under sec. 9 of the Act. However, as tribes were engaged in animal husbandry occupation due to limited cultivation for their livelihood, they need to kill wild animal if they that animal killed their domestic animals. This act of the tribes were considered as crime and hence he was penalizing for the same. In the same manner if they retained the possession of any orphan wild animal, their possession were considered as unauthorized which is an offence under sec. 39 of the Act.

The Forest Conservation Act, 1980: This Act under sec. 2 make it illegal to use any forest land for non-forest purpose without approval of the central govt. By misinterpretation of non-forest purpose tribes were harassed or caught for commission of crime even for the cultivation of forest land. State authority brought their residence as deforestation or use for non-forest purpose and they were held criminal being encroachers or trespassers (on their own ancestral tribal forest land).

During all this period the forest land records with respect to the title of the tribes were not maintained and hence in absence of records forceful displacements of tribes were taken place. The Ministry of Environment destroyed the homes of these tribes and around 3 lacs tribal families across India were displaced by this action. However, in T.N. Godavarman Thirumulpad V/s Union of India[1] Supreme Court ruled that the Forest Conservation Act is applied to all the lands of a forest irrespective of their ownership or official status.

As a result of this mass eviction which leads to massive tribal protests, social movements along with another force of left-wing extremism forced the Indian govt. to change the National Forest Policy. The National Forest Policy 1988 recognizes tribes' traditional rights of fodder, fuel and livelihood and state also introduces Joint Forest Management (JFM) and thus was ready to share the revenue generated from the timber and fruits with the tribes. In addition to this govt. also ready to reverse the historical injustice to Indian tribes by enacting new law for them. However, it took 18 years to pass The Indian Forest Rights Act (FRA), 2006.

The Forest Rights Act (FRA), 2006: This Act officially known as "The Scheduled Tribes and Other Traditional Forest Dwellers Act. Under this Act tribal's status from 'encroachers' to 'right-

[1] (1997) 2 SCC 267

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holders' is legally recognized. Their few traditional rights such as right to collect or use and sell Minor Forest Produce like Bamboo, Tendu leaves etc. are legally recognized. This Act provide authority to Gram Sabha (Local Village Council) to manage and protect the ecosystem. Thus retained Community Forest Management.

However, implementation of this Act is the major issue. Especially the State Forest Dept. frequently delayed or mostly reject the tribal's land claims. This is mainly due to unavailability of documents related to their residence on that specific forest land for at least 3 generations (that is 75 years) prior to 2005. Now, from the above discussion the land records were and are not maintained and they were forcefully displaced because of which the availability of documents were not possible. In addition to this, the illiteracy, social exclusion, unknown official language etc. of the tribes hamper to get these documents. Thirdly Satellite data provided by the Forest Survey of India unable to verify small patches of cultivation or farming of tribal in the dense forests. The administrative authority failed to consider the oral evidence of village elders or traditional boundary marks as a valid evidence under Rule 13 of FRA than Satellite data and hence massive rejection of forest land claims of these tribal. In addition to this the land verification by Gram Sabha as the primary authority was totally sidelined or ignored by the higher authorities like Sub-Divisional Level Committee (SDLC) and District Level Committee (DLC). These higher committees are dominated by forest officials rejecting their claim arbitrarily. After rejection of massive claims of these tribes a group of Wildlife organization and retired forest retired forest officers filed a writ petition namely Wildlife First & ors. v/s Ministry of Forest & Environment & Ors.[2] Which challenge the Constitutionality of FRA, 2006 on the basis that it legalizes the encroachments done by tribes and destroying the wildlife's habitats. Supreme Court ordered the Chief Secretariats of 21 States to execute forceful mass eviction of 19 lacs families of tribes.

Thereafter massive nationwide protests by tribes were taken place because of which there is intervention of Central Ministry of Tribal Affairs and therefore the Supreme Court stayed its eviction order on 28th Feb. 2019 and directed govt. to file detailed affidavit stating which and how the legal procedure is followed in rejection of claim and asked forest survey of India to have satellite survey to find these encroachments.

Thus after so many (around 80) years the historical injustice were removed in 2006 by FRA Act, however, Indian govt. or the State govt. not implemented the benefits through this law, rather the matter was pending in Supreme Court from 2008 (within 2 years from the passing of 2006 Act) till 2026. Thus FRA 2006 Act became the dead letter for these Indigenous Communities.

However in Niyamgiri Judgment i.e. in Orissa Mining Corporation V/s Ministry of Environment & Forests[3] where a multinational mining giant (Vedanta) sought mining of Bauxite in the Niyamgiri hills of Odissha, an area considered to be sacred by the Dongria Kondh tribe. Here all 12 Gram Sabhas unanimously voted against this project. Thus by using their veto power they pressurized central govt. to cancel the project. Supreme Court in this case delivered a historic

[2] Writ petion No. 109/2008
[3] (2013) 6 SCC 476

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verdict that the Gram Sabha have the absolute legal authority to decide whether mining would destroy their culture and religious rights.

However, this judgment recognized only cultural & religious rights of the tribes but silent on their livelihood rights. However, from 2015 onwards the environmental Ministry through various notifications/rules etc. bringing the same historical injustices by bringing new private player that is Indian Corporates and replacing British govt. by Indian govt.

However, severe attack or blow was given by Indian govt. to the whole tribes by enacting FCCA, 2023.

The Forest Conservation Amendment Act (FCCA), 2023: Indian Govt. again on the ground of development of Infrastructure Projects strategically bypass the consent of Gram Sabha representing tribes and thus violating their own law made in 2006 (FRA) and also overrule the above Godavarman's judgment (1997) passed by Supreme Court, stating that this amendment is applicable to the land which is officially recorded or notified as forest in govt. record.

In addition to this, in the name of National Security this amendment completely exempted any forest land located within 100 km of India's International borders from requiring forest clearance, provided it is used for 'Projects of National Importance'. Because of this provision, the whole Northeast India (7 Sister States) falls under 100 km zone which has no legal recourse to challenge the same. In addition to this, it is quite possible that because of this amendment the constitutional protection to these states under Art. 371A (Nagaland), 371G (Mizoram) or 6th Schedule (covering Maghalaya, Assam, Tripura etc.) may be diluted or removed. It also permits massive infrastructure projects to bypass Environmental impact Assessments which damage the ecology (landslide prone zones).

Further, this amendment also hamper the economical right of the tribes specially tribal women who are mostly engaged in collection of MFP (Minor Forest Produce) because the definition of MFP now includes non-timber forest items such as Bamboo, honey, beeswax, medicinal herbs and Tendu leaves which are primary economic sources of these tribes especially during the non-agricultural seasons.

This amendment also redefined 'non-Forest Purpose' which includes setting ups zoos, safaris, eco-tourism facilities etc. without approval of central govt. Central govt. also has a power to lease out the forest land for forest conservation to corporates. Thus, this secure corporate's entry in forest and encourage commercialization of forest produce hampering the very basic rights of livelihood of these tribes.

Because of the above barriers a PIL is filed against FCCA 2023 in Supreme Court namely Ashok Kumar Sharma & Ors. V/s UOI[4] , where it is stated that 20 million hectares unrecorded forest land will hamper the tribes and make them landless, also hamper biodiversity. This PIL also challenge 100 km border exemption of forest land. In 2024 Supreme Court again consider 1997 Case which will prevent the degradation of unrecorded forests and also directed Environmental Ministry to digitize and publicly release the consolidated data/records of all forest lands. Also directed no new zoo construction or safaris on forest land without approval of Supreme Court.

[4] (2024) 9 S.C.R. 194

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Thus here the Supreme Court restricted both Central and State Govt. from taking any action which would result in reduction of the forest land. Court also made it legally binding that even if forest land is used for projects, then alternative land must be provided for compensatory re-forestation.

This is the current position of the Supreme Court w.r.t. the forest laws and the rights of the tribes. However, our constitution through various articles give more protection to the rights of the tribes being very marginalized and vulnerable community and Supreme Court is the protector of their constitutional rights but above verdicts of the Supreme Court not reflecting this role.

Co-relation between the Livelihood of the tribes and Crimes defined under the forest laws against them and their Constitutional validity:

The above all discussion indicates the exploitation and historical injustices against Scheduled tribes which make them more vulnerable and marginalized and one of the reason that they have only one source of livelihood and that is forest. Because of their social backwardness, marginalization and peculiar cultural and geographical identity which differentiate them from the rest of the Indian society and hence special protection (to the whole community) is given to them by our constitution. The 5th and 6th Schedule of the constitution protect and govern the scheduled tribal area. Art. 330, 332, 243D & T provides their political representation. In addition to this under Art. 15(4) special provision for their educational advancement. Art. 24 prohibits child labour from hazardous industries. Art. 46 Directive principles which direct states to promote educational and economic interests of Scheduled tribes and protect them from social injustices. So also Art. 275(1) provides special financial grants-in-aid from central govt. to state to fund development schemes and raise the level of administration in Scheduled areas and so on. All these provisions show that these vulnerable groups required more protection than any other group in India, especially considering their historical injustices through the legal system adopted by British govt. as well as by the Indian Govt. However, neither legislature nor executives and nor the judiciary able to protect these tribes from the exploitation.

Supreme Court without considering their cultural, socio-economical and geographical location, and historical socio-economic exploitation, treated tribes same as that of any other Indian Citizen and therefore their encroachments interpreted in a very general and with strict sense. Supreme Court not consider their distinct culture of not accumulate or reserve the forest produce for longer period and their way of conserving the forest by cultivation. In addition to this, govt. is not able to approach them or not taken special efforts to reach them with all facilities which any citizen of India requires such as education, dignified life to earn their livelihood. However, govt./state make their life more miserable by taking away their earning resources such as taking away land or not maintain their title-records, putting restriction on collecting the basic essential needs through forest produce which needs for their survival, rather law make them as an offence/crimes and hence, tribes as criminals thus violate their right to life under Art. 21 of Indian Constitution. The only source of their livelihood is forest land or forest and it is also the source for their dignified shelter but forest laws declared themselves as encroachers/trespassers and thus they became criminals upon their own land as held in Godavarman's Case. Supreme

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Court has not applied the precedent held in Olga Telis[5] judgment that is right to shelter and right to livelihood under Art. 21. Whereas Supreme Court in Niyamgiri case has protected Art.25 on priority than protecting their rights under 5th, 6th Schedule, Art. 21, Art. 46 etc.

In addition to this, forest subject falls under Concurrent List under the Constitution and even after objections from the State, Central Govt. unilaterally in the name of the National Security damaging the federal structure as mentioned in Indian Constitution.

From the above forest rules framed by the Environment Ministry in 2015, there is provision that 80-90% area of land is used by corporates/industry for commercial or profit-making purpose and whereas tribes used only 10-15 % and that too for their basic livelihood. Thus, by allowing 80-90% use of natural sources by dominant caste society than marginalized vulnerable tribes is the violation of 'socialist structure' of Indian Constitution which is the part of Basic Structure.

In addition to this, de-forestation by corporates will affect the legal traditional rights of the tribes. It also affects biodiversity and destruction of various medicinal plants which are necessary for their health maintenance as no hospitals or heath facilities are provided by the govt. Thus, this is again a violation of their right to life as it includes right to health.

Outside the forest land reforestation or plantation by the corporates is possible which will not result into landlessness of these tribes. The massive eviction by the order of Supreme Court without any rehabilitation (presuming the shift of tribes' residence as encroachment) is not justifiable, especially when our Supreme Court itself protected their encroachment in Jagpal Singh V/s State of Punjab[6]. Retaining their landlessness is equivalent to loss of livelihood as in case of tribes especially because the forest land is only source of their livelihood. Indian Judiciary also denied their own precedent in case of tribes and that 'Right to a speedy trial as a part of Art. 21' in case of Hussainara Khatoon v/s State of Bihar[7] and in Anil Rai v/s State of Bihar[8] held that 'Justice delayed is justice denied' and the same is confirmed in Ravindra Pratap Shanti v/s State of UP.[9] However, in case of tribes the basic right of shelter of tribes after mass eviction is yet not decided by the S.C. [pending since 2008 (Worldlife First case)].

III. CONCLUSION AND SUGGESTIONS:

Thus, considering the peculiar culture, socio-economic exclusion and geographical and constitutional location/status of these scheduled tribes and their livelihood totally based only on forests and their routine activities required for their livelihood declared as an offence under the various forest laws as discussed above and thus the indigenous communities became criminals. And from this we can conclude that their livelihood and crimes under forest related laws are co-related with each other.

[5] AIR 1986 SC 180
[6] (2011) 11 SCC 396
[7] AIR 1979 SC 1369
[8] (2001) 7 SCC 318
[9] 2025 SC 1264

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On the basis of various studies carried out in respect of these tribes and their constitutional rights it is crystal clear that tribal are not equivalent to normal citizen of India and hence they required more protection than any other community in India. In addition to this tribes were and till date through various forest related laws faces social injustices by denying the very existence of them and Supreme Court – the protector of their constitutional rights unfortunately generalized the process of encroachment of other citizens with that of tribes and thus violates its own precedent of Jagpal Singh and hence the basic right of livelihood which as per its judgment includes right to shelter, right to dignified life, right to education, right to profess their culture or identity violated not only by the legislature through the alleged forest laws but also by executives and supreme court and hence those laws should be held constitutionally invalid and judgment of supreme court need to be judicially reviewed again on the basis of violation of Basic Structure' of the constitution.

The legislature should now strictly follow, implement & provide the protection of basic legal rights of these indigenous communities and rehabilitate the massive evicted tribes either in forest or in urban areas on community basis with land and monetary relief. And also compensate them by providing share of profit in the corporate commercial projects and thus stop the historical injustices against tribes.