



Challenges and Necessary Legal Reforms for Tribal Farming Rights in India – With Special Reference to the Greater Nicobari Tribals

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Abstract

This paper will analyze the legal concerns and reforms required to protect the Greater Nicobari Tribals' rights to agriculture in the Andaman and Nicobar Islands, namely the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA, 2006). We respond to the fundamental question of the implications of the FRA 2006 on the Nicobari Tribals' cultural and land rights and what legal barriers to its implementation are present. Through detailed analysis of legal regimes and case law research, the paper determines policy implementation gaps and risks to the security of the land and the livelihoods of the Indigenous people. Findings call for particular reforms in augmenting the rights of the tribals over the land and augmenting legal protection from encroachment. This paper proposes legal and policy reforms to secure tribal land and culture and promote sustainable development among the Greater Nicobari Tribals to maintain their long-term prosperity and self-determination.

Keywords

Greater Nicobari Tribals, Farming, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA).

Introduction

Overview of Tribal Farming and Its Significance to the Greater Nicobari Tribals

Agriculture has been the center of Greater Nicobari Tribals' livelihoods, identity, and culture as part of the Andaman and Nicobar Islands' tribal population. According to Sekhsaria (2021), agriculture in the form of shifting cultivation or slash-and-burn has long been the source of food security and sustainable livelihoods that allowed the Greater Nicobari Tribals to live in harmony with the environment. The high biodiversity of the islands and the fragile ecosystems also emphasize the central role of traditional agriculture in maintaining ecological harmony. These tribal populations' sustainable livelihoods notwithstanding, external developmental activities, government policies, and other competing interests increasingly create pressures that threaten the tribals' agricultural rights and ancestral lands.

Introduction to the 2006 FRA and Its Legislative Purpose to Remedy Historical Wrongs

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) intended to reverse the historical wrongs committed on India's tribal population. The tribal people before the FRA had no legal acknowledgment of their customary rights over the forests that had been routinely defined as the property of the state under colonial legislations and post-colonial environment legislations (Pegu, 2021). The FRA intended to reverse this legacy by legally recognizing and entrusting the tribal people with the rights over the lands which they had cultivated and nurtured over generations and rights over the products of the forests that are critical to their livelihoods. The law seeks to empower the tribes by ensuring that the tribes are represented in the government and management of the forests through institutions like the Gram Sabha (village assembly).

Balancing the rights of indigenous peoples and conservation

One of the greatest challenges to the implementation of the FRA has been the conflict between tribal rights over lands and forests and the general protection of the environment and the preservation of forests. Tribal people, such as the Greater Nicobari Tribals, tend to use the products of the forests to sustain their livelihoods, traditions, and food security. These rights tend to conflict with the conservation policies that maintain biodiversity and avoid deforestation. The Wildlife Protection Act of 1972 and other environmental acts have generated contradictions in

the legal framework of the forest lands (Pegu, 2021). Tribal people in most instances struggle to exercise their rights because of the conflicting laws and pressures from the environment's protection programs.

Objectives

The aim of this research is to analyze the current challenges of the Greater Nicobari Tribals in consolidating their agricultural rights under the FRA, 2006. Through the analysis of legal, administrative, and procedural barriers to entitlement claims, the research also seeks to make the right recommendations on legal reforms required to deepen the rights of the tribal community to land and sustainable livelihoods. Focus is given to the analysis of significant legal barriers, implementation gaps, and the extent of inclusion of effective strategies from other regions of the country where the rights of the tribals have been better recognized and guaranteed.

Methodology

Qualitative Methodology

The study takes a qualitative approach to understanding the issues of the Greater Nicobari Tribals in accessing their agricultural rights under the FRA. This is through the undertaking of case studies, the examination of legal documents, and the interviewing of legal professionals and community leaders. The case studies give an understanding of the challenges that the tribal communities face in claiming land rights, including procedural complexities and legal technicalities. Contextualization of the issues and the determination of solutions are through interviews with legal professionals and tribal leaders.

Analysis of FRA Implementation Records

The study entails a close examination of FRA implementation records, such as processing claims and recognizing forest rights in the Andaman and Nicobar Islands. According to Raghavendra and Gangadhar (2022), analysis indicates patterns of rejection of claims, procedural irregularities, and inconsistency in the application of the law. The study also examines the implementation of the FRA in other tribal regions, particularly in states such as Maharashtra, where successful case studies hold valuable lessons for the strengthening of the legal framework in the Nicobar's.

Comparative Analysis of Successful Case Studies

To be able to recommend legal reforms, the research draws comparisons of best practices in other tribal regions. One such example is in Maharashtra, where certain of the tribal communities have seen effective operationalization of the FRA, where the rights of the land and forests have been recognized more extensively and successfully (Raghavendra & Gangadhar, 2022). This comparative study forms the foundation of providing recommendations that can be adapted to the unique conditions of the Greater Nicobari Tribals, where ecological vulnerability and community-driven administration are relevant considerations.

Results

Excessive Rejection of Claims of the Greater Nicobari Tribals

One of the most dramatic features of this research is the high rate of rejection of the Greater Nicobari Tribals' claims to rights over their lands and forests. The rejections are primarily on procedural grounds, i.e., absence of records and documentation of continued occupation of the lands. The intricacies of procedures to make claims and bureaucratic delays have led to the rejection of numerous authentic claims (Pegu, 2021). The Nicobar's' physical isolation and the absence of legal aid aggravate the situation.

Conflict of the FRA 2006 with Other Legislations

The legal conflict between the FRA and other green acts such as the Wildlife Protection Act of 1972 is another significant implication. These rival regimes of law bring uncertainty over the ownership and use rights of the land, particularly in ecologically fragile zones such as the Nicobars. The rigorous aspects of the law of conservation limit the scope of the tribal populations to claim agricultural rights, and this leads to litigation and delays in the recognition of claims (Pegu, 2021). Such conflict has also led to conflicting court decisions with some of the decisions rejecting the claims of the tribals over the land.

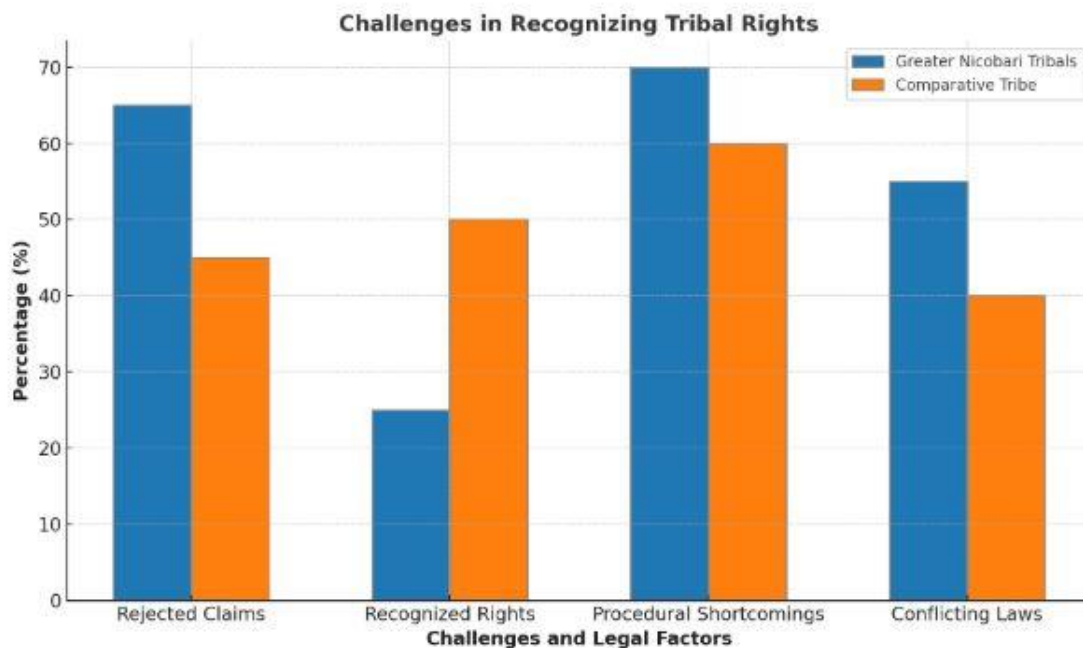
Failure to Recognize the Community Rights to Agriculture

The study also identifies inadequate acknowledgment of community-based rights to agriculture under the FRA. While the FRA does recognize individual and community rights, the focus has generally been on the ownership

of individuals and not on collective use and management of the land. This has restricted the sustainable agricultural activities that the Greater Nicobari Tribals traditionally engage in and that are based on communal management of the land with agriculture as part of the overall forest protection.

Political and Administrative Resistance

The study identifies political and administrative resistance as the biggest obstacle to the full implementation of the FRA in the Andaman and Nicobar Islands. The local administration is under pressure from external sources from industries and developmental activities that aim to promote economic growth at the cost of the rights of the tribals. Political will to facilitate the empowerment of the tribal population is also lacking, and this results in the delays in the recognition of the lands and weak implementation of the law.



Comparison Table of the Issues of the Greater Nicobari Tribals with another comparable tribe in the matter of rejected claims, rights recognized, procedural shortcomings, and incompatible legislations

Discussion

1. Legal Issues: Lack of Clarity and Conflicting Laws

One of the fundamental legal challenges of the Greater Nicobari Tribals is the uncertainty of the type of evidence to prove traditional rights under the Forest Rights Act (FRA), 2006. Even though the FRA tried to undo the wrongs of the past, its execution has been fraught with procedural challenges, especially in the

acknowledgement of traditional agriculture (Pegu, 2021). Tribals have been required to produce hard-to-obtain proofs on account of the unrecorded and verbal nature of their practice and use of the land. Additionally, the ambiguity of the meaning of the term 'traditional rights' has resulted in inconsistencies in the processing of claims.

Adding to the complexity is the contradiction between the FRA and other environment and forest protection legislation, i.e., the Wildlife Protection Act of 1972 and the Forest Conservation Act of 1980. The latter type of legislation tends to override the rights of indigenous peoples with the pursuit of conservation, and this leads to legal contradictions that weaken the effective realization of the tribals' rights over the land. One example is the case of court verdicts at times favoring the protection of forests and wildlife at the cost of the rights of the tribals to utilize the land to farm on it or live off it (Nandwani, 2021). Legal contradiction leaves the Greater Nicobari Tribals in the precarious position of their way of life at odds with overall environmental ends and their claims to rights over the land on grounds of conservation.

2. The Importance of Identifying Community-Level Cultivation

In the case of the Greater Nicobari Tribals, not only the ownership of the lands but the management and cultivation at the community levels also need to be dealt with. The Nicobar Islands are a fragile ecosystem where sustainable agriculture and protection of biodiversity are of prime concern. Community management of the lands and forests has been at the heart of the way the tribal societies of the region have been managing the resources over the years. Through this collective management, the community has ensured biodiversity while maximizing the productivity of the lands. The use of the indigenous knowledge of the ecosystem by the community has enabled it to adopt agricultural practices that are not harmful to the environment. Despite this, the current legal systems are not able to recognize this communal approach.

Sustainability in the long term in this environmentally fragile area must acknowledge community-based management and cultivation systems. Legal reform must allow for the safeguarding of communal rights to the lands and the incorporation of indigenous knowledge in the management of the forests and agricultural lands (Swarnam et al., 2024). It will thereby be possible to allow the Greater Nicobari Tribals to still rely on their cultivation while simultaneously having an interest in preserving the Nicobar Islands' unique ecosystems.

3. Gram Sabhas in the Decision-Making Process

Empowering the Gram Sabhas, or the village councils, is another important step to mitigate the problems of the Greater Nicobari Tribals. According to Swarnam et al. (2024), the Gram Sabhas play a very important role in the determination of the rights over the forests under the FRA as they should determine the rightful claimants and protect the forests. The role of the Gram Sabhas in most cases has been minimized, and their decisions have not been given the importance that needs to be assigned to them within the formal legal process. Empowering the Gram Sabhas can lead to improved administration of the tribal lands. With the participation of the local people in making decisions regarding the allotment of land, use of the forests, and agricultural methods, the needs and priorities of the people depending on the lands can be dealt with more aptly.

In Maharashtra and other states, community-led regimes of governance and conservation have demonstrated that empowering the local people results in effective conservation and livelihood security. Gram Sabha-led government is capable of balancing natural resource protection and protection of the rights of the tribals so the conservation does not come at the expense of the survival of the community (Swarnam et al., 2024). Engagement of local institutions like Gram Sabhas in decision-making would prove to be a turning point in the life of the Greater Nicobari Tribals because it would give the community the autonomy to manage their agricultural lands sustainably and fairly.

Conclusion

The Greater Nicobari Tribals are faced with tremendous challenges in accessing their rights over the forests under the FRA, 2006, in the form of high rates of rejection of claims, legal clashes with the laws of conservation, inadequate acknowledgment of community rights, and political opposition. These challenges result in the marginalization of tribal societies and restrict the Greater Nicobari Tribals from claiming their customary lands and means of livelihood. Safeguarding the Greater Nicobari Tribals' rights to agriculture is paramount to the livelihoods, culture, and biodiversity of the Andaman and Nicobar Islands. Legal reforms that affirm tribal rights ensure sustainable use of the land and bring harmony between the needs of conservation and the community, which are of utmost importance to the long-term health and autonomy of the Greater Nicobari Tribals.

Recommendations for Legal Reforms

To surmount these challenges, some legal reforms are proposed: - Simplifying the procedure of filing claims to remove the procedural hindrances. - Synchronizing the conflicting legislations, i.e., the FRA and the environmental law, to achieve one law that will uphold the tribal rights as well as support the protection of the environment. - Enhancing the involvement of the tribal people in the administration of the lands by empowering the Gram Sabhas and acknowledging the local systems of administration.

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