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Protected Areas, Forest Rights, and the Pandemic

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It seems that the COVID-19 pandemic has created an opportunity for the forest department to evict forest-dwelling communities from the protected areas. Since the situation of pandemic and lockdown has prohibited local communities from the protest against the arbitrary and violent measures of the forest department officials, they have been using it to terrorise and force local communities to leave the protected areas. The recent attack by the forest department personnel on the Van Gujjars of the Rajaji National Park (RNP), which was also granted the status of a tiger reserve in 2015, is an example of using a tragic situation by the forest department to further its agenda. The Citizens for Justice and Peace and the All India Union of Forest Working People (AIUFWP) complained to the National Human Rights Commission (NHRC) that on 16 and 17 June, when there was a strict lockdown in the whole country, the police and forest officials attacked the Van Gujjars at the Asharodi forest in the Ramgarh range of the RNP of Uttarakhand. They assaulted the elders of the community and destroyed their homes. A Van Gujjar woman, Noorjahan, alleged that she was attacked by the forest department personnel and police and some of them hit her private parts. Her father Mustafa has been fighting for the rights of Van Gujjars in the RNP for the last two decades. Mustafa and a few other Van Gujjars were arrested by the police, but released after pressure from many local organisations. It was an attempt to terrorise the Van Gujjars, who are not ready to leave the RNP.

Indeed, there are many crucial questions related to the situation of local communities in the RNP in particular, and all national parks and other protected areas in general. First, what is the exact situation of the Van Gujjars in the RNP, and how has the forest department in this area been dealing with their demands? Second, within the existing legal structures, what are the rights of local communities in the protected areas and does the forest department have the power to evict them by using force, as it has been trying to do in many protected areas, particularly in the RNP? Third, is the present legal structure sufficient to overcome the conundrum between the rights of local communities and wildlife?

Uniqueness of the Van Gujjars

The RNP was established in 1983 and it is situated near Dehradun and Rishikesh in Uttarakhand. It is a unique national park because of a highway and a train line crossing its buffer zone. The RNP is situated on the foothills of the Himalayas and its total geographical area is around 820 km. There are more than 30 tigers in the RNP and many other species, such as elephant, sloth bear, deer species, king cobra, and birds, are found here. It is important to note that the Van Gujjar community has been residing in the forest areas of the RNP for many generations. They are Muslims and their core hereditary work is animal husbandry. Their animals graze in the meadows in the forest and they sell milk to the nearby urban areas. Generally, the Van Gujjars move towards hilly areas in the summer and take most of their animals with them. They, however, leave a few animals back home and one or two family members stay behind to look after the animals.

Apart from the Van Gujjars, there are three taungya villages in the RNP, which were settled by the forest department as moveable villages in the colonial period to plant and protect new trees in the overexploited forest areas. After the end of the taungya system in the mid-1980s, these villages did not move and settled in one place. These villages are, however, in the periphery but the Van Gujjars have to live in a different part of the RNP. Incidentally, even before the notification for the RNP, the forest department started its attempt to relocate the Van Gujjars outside the forest areas. For example, in 1979 the forest department made a plan to resettle them from the forest areas. The Van

Gujjars opposed it with the help of a grassroots organisation Vikalp. At the beginning of the 1990s, the RNP administration started a campaign to resettle all Van Gujjar families in the Gaindikhata and Pathri of the Haridwar district. After a lot of persuasion, many Van Gujjar families settled in these areas in 1996–97. Indeed, the forest department has no clear data about the number of Van Gujjar families living in the RNP. The basic problem with any counting of the Van Gujjars is the fact that they have to move from one place to another according to the change of season and also there has been a custom in these families to give a separate dera (home) to an adult member after their marriage, which leads to an increase in the number of families. It is obvious that the actual number of families of the Van Gujjars has been a contested issue. It was asserted by the director of the RNP that they had shifted 518 families to the Gaindikhata and Pathri in recent years and allotted them 10 bighas of land. The Van Gujjars, however, are not happy with the relocation plans and even those who shifted outside the RNP are dissatisfied because they not only lost their natural habitat but also were not given land as promised by the forest department, and in most of the cases they got less than half of the promised land.

Due to the experience of those who shifted from the RNP, the rest of the Van Gujjars decided not to accept any proposal by the forest department. The forest department has been working with the assumption that to protect the wildlife it is necessary to shift the whole population outside the RNP. It emerged from the discussion with the forest department officials that they suspect the Van Gujjars of poaching or helping the poachers in return for money. Some of them also expressed their concern about the future of the children of Van Gujjars because they would not be able to get a proper education in the RNP and always live as nomads.

The Van Gujjars have been dismissing allegations of helping poachers or cutting trees for money. They have argued that many forest department personnel have been involved in such activities and they feel threatened by the existence of the Van Gujjars in the RNP. One Van Gujjar activist, Noor Jamal, underlined that the members of the community made small ponds for daily use near their homes and various animals also use these ponds to drink water. He emphasised that anyone could see many deer or elephants near the deras of the Van Gujjars. Many Van Gujjars also argued that they never gave their buffalos to the butcher, even when they stopped giving milk.

Indeed, the forest department in the RNP has been working with the determination to create a secure space for wildlife and to make this whole space free from human intervention. A feudal mentality also exists in the mind of many forest department personnel, who think that the forest department is the owner of the RNP and it has every right to decide the fate of the individuals living in the RNP. For many decades now they have been trying to transfer human population from the park and those families which are still living in the RNP are forced to face the day-to-day tortures and atrocities of the petty sovereign, that is, the forest department.

The Van Gujjars living in the RNP have a status of “semi-citizen,” they do not have voter identity card or Aadhaar card and are not eligible for any state-sponsored welfare programme. There is no electricity or even primary school for the education of their children. The forest department officials are not even ready to recognise basic rights given to them by the Indian Constitution. The forest department is ready to provide them some kind of welfare measures (like allotment of some land) if they are ready to leave the RNP.

For the forest department the key legislation for the governance in the RNP is Wild Life (Protection) Act (WLPA), 1972, which presents an ideal for the relocation of the human population, particularly from the national parks. However, it is also true that after the enactment of the WLPA, the forest department could not relocate even 10% of the villages situated in the national parks and other protected areas across the country. Many conservationists have accepted that the entire relocation of the human population is not a practical idea. Even the 2006 amendment in the WLPA makes a provision of Critical Tiger Habitat (CTH), which presents a framework of the relocation of the human population only through consent. The RNP officials, however, still focus on the single agenda of evicting and relocating Van Gujjars. They are not ready to accept the existence of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA), which gives crucial individual and community rights to the forest-dwelling communities. It is, however, important to know that the forest department can use the provisions of the Indian Forest Act, 1927, which is still valid. Both the Indian Forest Act, 1927 and WLPA have crucial penal provisions, which empower the forest department to register cases against local communities for destroying forests or harming wildlife.

However, like many other forest-dwelling communities, for the Van Gujjars of the RNP too, the struggle for the enactment and implementation of the FRA, 2006 has produced a sense of legal awareness and empowerment. Noor Jamal, a senior Van Gujjar, joined the National Forest People and Forest Workers Forum (which later turned as AIUFWP) around 2004–05 and participated in the movement for the enactment of the FRA and he also mobilised other Van Gujjars, who went to Lucknow and Delhi to participate in the movement for the enactment and implementation of the FRA. In May 2006, the forest department destroyed the dera of Noor Jamal and some other Van Gujjars, who were at the forefront of political activities in the RNP. Later, the Nainital High Court gave a decision in favour of the Van Gujjars and ordered the forest department to reinstate their deras in the RNP.

The FRA is also applicable in all protected areas, including the RNP. The legal status of the Van Gujjars is very complex. Since they are not part of the Scheduled Tribes (STs) category, they come in the category of Other Traditional Forest Dwellers (OTFDs). According to the FRA, the OTFDs must prove that they are living in one particular place for three generations and 75 years before 13 December 2005. Since the Van Gujjars have been traditionally doing animal husbandry work and moving from one place to another, they are not in a situation to prove the condition of 75 years to get any individual land rights on the basis of the FRA. They, however, are known as nomadic communities and the FRA gives such communities the right to habitat and habitation. The Van Gujjars have also claimed community rights mentioned in the FRA, which primarily gives local communities rights over non-timber forest products (NTFPs) and also recognises their role in the protection of forestland and its resources. The FRA also makes provision for the making of the Critical Wildlife Habitat (CWH), where the rights of the local communities can be partially or totally modified if a committee of experts, civil society organisation and local communities decide that the existence of the human beings would be detrimental to the wildlife. It makes the provision of the relocation of the local communities from the CWH, but the “free informed consent” of the gram sabhas in writing is necessary for it.

It is also noteworthy that, by an amendment, provision of the CTH has been added to the WLPA in 2006. Like the CWH of the FRA, the CTH is also related to the demarcation of areas highly sensitive to the existence of wildlife. The CTH, unlike the CWH, is exclusively related to the protection of the tigers. Like the CWH, however, there is a provision in the CTH regarding the participatory process for relocation of the local communities. While the CWH makes a provision of free informed consent, the CTH requires “informed consent” only. Both categories also underline that relocation should be the last option, and before that, all possibilities of the human–wildlife coexistence should be explored (however, for the CTHs the exploration of coexistence is restricted to the buffer zones only).

No law related to the governance of the protected areas gives power to the forest department to use arbitrary methods to evict local communities from the protected areas. The use of violence against Van Gujjars by the forest department is against the spirit of the FRA and even the WLPA. There should be a dialogical process for the relocation of Van Gujjars, and before making a CWH or CTH a part of the RNP, the process of recognition of their rights given in the FRA should be completed. And even the creation of CWH or CTH does not imply that the Van Gujjars should be relocated from the RNP. They can only be relocated (with their consent) from the CWH or CTH and then they would be free to use the community rights given in the FRA, that is, they could take forest produce from the RNP and the forest department would not ignore their views in the governance of the RNP.

Arbitrary Legal Pluralism

It is obvious that both forest department and Van Gujjars have their different claims. For Van Gujjars, the RNP is part of their habitat and they are demanding their rights according to the provisions of the FRA. The forest department officials, however, have been claiming that their basic duty is to protect the wildlife from the intervention of human beings. The following points could be underlined regarding the situation of the RNP.

First, the existence of different laws for a particular situation could be termed as legal pluralism, which creates a situation of legal indeterminacy, resulting in different explanations for a situation by different actors. Though the FRA gives some crucial individual and community rights to forest-dwelling communities, its provisions are not supreme vis-à-vis provisions of other laws applicable in the protected areas, particularly the WLPA, 1972 and Indian Forest Act, 1927. The latter set of laws gives immense power to the forest department to control the lives of the forest-dwelling communities.

Second, the forest department in the RNP, like most of the areas, is not trying to engage with Van Gujjars and follow the legal procedures related to the creation of the CWH or the CTH given in the FRA and the WLPA, respectively. Instead, it focuses its strategy on evicting them for the RNP and uses all kinds of illegal methods for it, including destroying their homes and terrorising them through brutal use of power, etc.

Third, the forest department has a stereotypical image of Van Gujjars in which they are nomads, who are unaware of any serious understanding of the wildlife, and due to their pathetic economic condition, they help poachers for money. The forest department has not made any serious attempts to understand their cultural practices and political awareness. Since the members of this community are now more aware of their forest rights, they are not ready to follow the dictates of the forest department, which resulted in the brutal violence unleashed by the forest department.

Fourth, it should also be remembered that since Van Gujjars are Muslims, they are facing double disadvantage. On the one hand, they have been suspected as possible poachers or aiders to the poachers, and on the other, due to their religion they have been identified with separatists, and, during the COVID-19 pandemic, with the members of Tablighi Jamaat, whose members were targeted by the media and the government for spreading COVID-19 in the last week of March and the first week of April. Indeed, the forest department personnel stopped Van Gujjars from selling milk due to their supposed connection with the Tablighis.

Undoubtedly, the question of wildlife protection and rights of forest-dwelling communities is categorically intricate. The problem, however, is that the administrative set-up of the forest governance in our country is not ready to adhere to a law like the FRA. Forest officials, particularly in the protected areas, have always used one or the other excuse for the non-implementation of the FRA. Unfortunately, the situation of legal pluralism has also created a conducive environment for the

forest department officials in the RNP to totally reject the provisions of the FRA. The violence against Van Gujjars during the pandemic and lockdown underlines that the political awareness and mobilisation of Van Gujjars has created a sense of restlessness in the minds of local adherents of the state sovereignty in protected areas. Rather than having a sense of compassion, protection, and cooperation towards the local communities, the forest department -officials have used the situation of the pandemic for evicting Van Gujjars from the RNP, which is a most unfortunate and highly condemnable act.

Source: <https://www.epw.in/journal/2020/51/commentary/protected-areas-forest-rights-and-pandemic.html>