



A STUDY ON TRIBES FOREST RESOURCE RIGHTS ACT 2006

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ABSTRACT

The India majority of the tribes are the inhabitants resides in the forest. The tribes are the ignorant people who are even today fowling their own cultures, tradition and customs. They are been ignored from their legal rights. There is a need to protect the legal rights related to the tribal land rights. Forest Act to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

This forest deals with the importance of the Forest Right Act 2006

KEYWORDS: Tribes, Forest, Community, Right, Development.

INTRODUCTION

This Act not only recognizes the rights to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood, but also grants several other rights to ensure their control over forest resources which, inter-alia, include right of ownership, access to collect, use and dispose of minor forest produce, community rights such as nistar; habitat rights for primitive tribal groups and pre-agricultural communities; right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) legally recognises the rights of communities like the Dongria Kondh to live in and from their forests and to protect and manage their lands. The Act was created to reverse the erosion of their traditional rights by forestry policies, encroachment on their lands by outsiders and the take-over of their forests. But now the Act itself is being undermined.

The Act also provides for diversion of forest land for public utility facilities managed by the Government, such as schools, dispensaries, fair price shops, electricity and telecommunication lines, water tanks, etc. with the recommendation of Gram Sabhas. In addition, several schemes have been implemented by the Ministry of Tribal Affairs for the benefit of tribal people, including those in the forest areas such as "Mechanism for marketing of Minor Forest Produce (MFP) through Minimum Support Price (MSP) and development of Value Chain for MFP". Funds are released out of Special Central Assistance to Tribal Sub Plan for infrastructure work relating to basic services and facilities viz. approach roads, healthcare, primary education, minor irrigation, rainwater harvesting, drinking water, sanitation, community halls, etc. for development of forest villages.

This recognized rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and



authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers; and whereas the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem; and whereas it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 seeks to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded. The Act was notified for operation with effect from 31.12.2007 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 for implementing the provisions of the Act were notified on 1.1.2008.

Over a period of last four years of implementation of the Act, some problems impeding the implementation of the Act in its letter and spirit have come to the notice of the Ministry of Tribal Affairs, such as, convening of Gram Sabha meetings at the Panchayat level resulting in exclusion of smaller habitations not formally part of any village; non-recognition of un-hindered rights over the minor forest produce (MFP) to forest dwellers; non-recognition of other community rights; harassment and eviction of forest dwellers without settlement of their forest rights; rejection of claims by insisting on certain types of evidences, inadequate awareness about the provisions of the Act and the Rules etc. In order to address the above concerns and with a view to ensure effective implementation of the Act, the following guidelines are issued on various aspects of implementation of the Act for compliance by all the State Governments/UT Administrations

COMMUNITY RIGHTS:

- The District Level Committee should ensure that the records of prior recorded nistari or other traditional community rights (such as Khatian part II in Jharkhand, and traditional forest produce rights in Himachal and Uttarakhand) are provided to Gram Sabhas, and if claims are filed for
- recognition of such age-old usufructory rights, such claims are not rejected except for valid reasons, to be recorded in writing, for denial of such recorded rights;
- The District Level Committee should also facilitate the filing of claims by pastoralists before the concerned Gram Sabha(s) since they would be a floating population for the Gram Sabha(s) of the area used traditionally.
- In view of the differential vulnerability of Particularly Vulnerable Tribal Groups (PTGs) amongst the forest dwellers, District Level Committee should play a pro-active role in ensuring that all PTGs receive habitat rights in consultation with the concerned PTGs' traditional institutions and their claims for habitat rights are filed before the concerned Gram Sabhas

TRIBES COMMUNITY FOREST RESOURCE RIGHTS:

- a. The State Government should ensure that the forest rights under Section 3(1)(i) of the Act relating to protection, regeneration or conservation or management of any community forest resource, which forest dwellers might have traditionally been protecting and conserving for sustainable use, are recognized in all villages and the titles are issued as soon as the prescribed Forms for claiming Rights to Community Forest Resource and the Form of Title for Community Forest Resources are incorporated in the Rules. Any restriction, such as, time limit, on use of community forest resources other than what is traditionally imposed would be against the spirit of the Act.

- b. In case no community forest resource rights are recognized in a village, the reasons for the same should be recorded. Reference can be made to existing records of community and joint forest management, van panchayats, etc. for this purpose.
- c. The Gram Sabha would initially demarcate the boundaries of the community forest resource as defined in Section 2(a) of the Act for the purposes of filing claims for recognition of forest right under Section 3(1)(i) of the Act.
- d. The Committees constituted under Rule 4(e) of the Forest Rights Rules, 2008 would work under the control of Gram Sabha. The State Agencies should facilitate this process.
- e. Consequent upon the recognition of forest right in Section 3(i) of the Act to protect, regenerate or conserve or manage any community forest resource, the powers of the Gram Sabha would be in consonance with the duties as defined in Section 5(d), wherein the Gram Sabha is empowered to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the bio-diversity. Any activity that prejudicially affects the wild-life, forest and bio-diversity in forest area would be dealt with under the provisions of the relevant Acts.

Awareness-Raising, Monitoring and Grievance Redressal:

- Each State should prepare suitable communication and training material in local language for effective implementation of the Act.
- The State Nodal Agency should ensure that the Sub Divisional Level Committee and the District Level Committee make district-wise plans for trainings of revenue, forest and tribal welfare departments' field staff, officials, Forest Rights Committees and Panchayat representatives. Public meetings
- for awareness generation in those villages where process of recognition is not complete need to be held.
- In order to generate awareness about the various provisions of the Act and the Rules, especially the process of filing petitions, the State Government should organize public hearings on local bazaar days or at other appropriate locations on a quarterly basis till the process of recognition is complete. It will be helpful if some members of Sub Divisional Level Committee are present in the public hearings. The Gram Sabhas also need to be actively involved in the task of awareness raising.
- If any forest dwelling Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha or Gram Sabha through a resolution against any higher authority or Committee or officer or member of such authority or Committee gives a notice as per Section 8 of the Act regarding contravention of any provision of the Act or any rule made thereunder concerning recognition of forest rights to the State Level Monitoring Committees, the State Level Monitoring Committee should hold an inquiry on the basis of the said notice within sixty days from the receipt of the notice and take action, if any, that is required.

Community forest conservation and management in the FRA Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (hereafter called Forest Rights Act or FRA) is a watershed event in the prolonged struggle of adivasis and other forest dwellers of the country. For the first time in the history of Indian forests the state formally admits that rights have been denied to forest dwelling people for long, and the new forest law attempts not only to right that 'historic injustice' but also give forest communities a central role in forest management.

The FRA addresses the right to live in forestland for habitation or cultivation, right of access, use and sale of minor forest produce, and right to protect, regenerate, conserve or manage any community forest resource, amongst other rights (these rights can be claimed both as individuals and as a community). It provides tribal and other forest dwelling communities the first legislative handle to assertion of tenure rights and addresses important livelihood security issues, while also stressing the rights and responsibilities of forest dwellers in maintaining sustainable forest use patterns and the conservation of forest biodiversity. This space, guaranteed under FRA, has immense scope for community-based or collaborative forest management.

There are two broad aspects of FRA that have great positive potential in this context. One, the package of rights that includes the claim of the community over tenure and management of forests. Second, the decentralized self-governance model that it mandates. The FRA mandates the lowest tier of local self-governance – the Gram Sabha – as a decision-making body in forest governance.

The Act confers secure community tenure on “Community Forest resources”, defined as customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in case of pastoral communities, including reserved forests, protected forests and protected area such as Sanctuaries and National Parks to which the community had traditional access. On such land, they will enjoy (as per Section 3):

- Right of ownership, access to collect, use or dispose of minor forest produce which have been traditionally collected within or outside village boundaries;
- Other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled and trans-human) and traditional seasonal resource access of nomadic or pastoralist communities
- Rights including community tenure of habitat and habitation for primitive tribal groups and pre-agricultural communities.
- Right to protect, regenerate or conserve or manage any community resource which they have been traditionally protecting and conserving for sustainable use
- Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity
- Any other traditional right customarily enjoyed by the forest dwelling scheduled tribes, and other traditional forest dwellers as the case may be, but excluding the traditional right of hunting or trapping or extracting any part of the body of any species of wild animal

Empowers the Gram Sabha to:

- (a) “protect the wildlife, forest and biodiversity;
- (b) “ensure that adjoining water catchment area, water sources and other ecological sensitive areas are adequately protected;
- (c) “ensure that the habitat of the forest dwelling scheduled tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage”
- (d) “ensure that the decisions taken in gram sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with”

The term ‘empower’ is crucial, for it implies that the community has the legal powers to ensure all the measures listed above, which would clearly include the power to stop any project or process which could threaten the forest, wildlife or biodiversity. Given that development projects often end up affecting ‘cultural and natural heritage’, and adversely affect wildlife and forests, the implication is that the gram sabha has the powers to stop such projects, and that project proponents need to get its consent. Reportedly the Ministry of Environment and Forests is also considering issuing a circular to all state governments that they must comply with the FRA’s provisions in any applications for diversion of forest land for development projects, that are made under the Forest Conservation Act.

CONCLUSION :

The Forest Rights Act is not perfect and has not been implemented thoroughly enough, but it is the best instrument that exists for protecting the rights of India’s Adivasi people. Watering it down in the interests of industry is a dangerous violation of these rights and must be stopped. There is a need to protect forest areas in order to save the wild life, wealth and life of the tribes residing in the forest areas depending upon the natural resources.