

CHAPTER 16

THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006

Background:

16.1 Forest dwellers are among this country's poorest people. For many tribal people and other forest communities, forests are the source of livelihood, identity, customs and traditions. The forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers inhabiting forests for generations were in occupation of the forest land for centuries. However, their rights on their ancestral lands and their habitats had not been adequately recognized despite them being integral to the very survival and sustainability of the forest ecosystem. The traditional rights and interests of forest dwelling scheduled tribes and other traditional forest dwellers on forest lands were left unrecognized and unrecorded through faulty reservation process during consolidation of State forests, in the past.

16.2 The forest dwelling tribal people and the forests are inseparable, a factor that also ensures conservation of ecological resources stemming from the very ethos of tribal life. The conservation processes for creating wilderness and forest areas for production forestry somehow ignored the bona fide interests of the tribal community from legislative framework in the regions where tribal communities primarily inhabited. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources in areas where they belonged and depended upon. The modern conservation approaches also advocated exclusion rather than integration. It was much later that forest management regimes initiated action to recognize the occupation and other rights of the forest dwellers and integrated them in designs

of management. Insecurity of tenure and fear of eviction from the lands where they had lived and thrived for generations were perhaps the biggest reasons why tribal communities felt emotionally as well as physically alienated from forests and forest lands. This historical injustice needed correction and, therefore, the Government enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, which is commonly known as Forest Rights Act (FRA). The Act came into operation with the notification of Rules on 01-01-2008 for carrying out the provisions of the Act.

16.3 The Act also goes beyond the "recognition" of forests rights and also empowers the forest rights holders, Gram Sabhas and local level institutions with the right to protect, regenerate, conserve and manage any community forest resource. This marks a decisive step forward in resource governance itself. Hailed rightly as a milestone in the history of tribal peoples' and forest dwellers' movements, the Act endeavors to facilitate their political empowerment to govern the forests for sustainable use and conservation. Precisely for these reasons, it becomes important to take firm proactive steps to make the necessary paradigm shift, particularly by the State Governments.

16.4 Salient Features of the Forest Rights Act:-

- (1) Section 3 of the Act lists the rights which shall be the forest rights of the forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers. These forest rights are :
 - (a) right to hold and live in the forest land under the individual or common

- occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dweller;
- (b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;
- (c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
- (d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
- (e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- (f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;
- (g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;
- (h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;
- (i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
- (j) rights which are recognized under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;
- (k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
- (l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be which are not mentioned in clause (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;
- (m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other Traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.
- (1) Section 3(2) of the Act provides for diversion of forest land for certain facilities managed by the Government notwithstanding anything contained in the Forest Conservation Act, 1980 and which involve felling of trees not exceeding seventy five trees per hectare and the forest land to be diverted for the purpose is less than one hectare and the clearance of such development project is recommended by the Gram Sabha.
- (2) Section 4(1) of the Act recognizes and vests forest rights in forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers notwithstanding anything contained in any other law for the time being in force.
- (3) Section 4(2) of the Act provides for

modification or resettlement of forest rights in critical wildlife habitats of National Parks and Sanctuaries for the purpose of creating inviolate areas for wildlife conservation subject to fulfilment of conditions such as process of recognition of rights is complete in all the areas under consideration, no other reasonable option exists, it has been established that the activities or the impact of the present right holders will cause irreversible damage and threaten the existence of wildlife and their habitat, free and informed consent of the concerned Gram Sabhas has been obtained, resettlement or alternative package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected families and communities given in the relevant laws and policy of the Central Government, and the resettlement should take place only after the facilities and land allocation at the resettlement location are complete. It is also provided that critical wildlife habitats from which right holders are relocated shall not be subsequently diverted for other users.

- (4) Section 4(3) of the Act subjects the recognition and vesting of the forest rights to the condition that the forest dwelling Scheduled Tribes or Other Traditional Forest Dwellers had occupied the forest land before the 13th day of December, 2005. Section 4(4) stipulates that the rights conferred under this Act shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons.
- (5) A very important and crucial safeguard has been provided to the forest right holders vide Section 4(5) which mandates that no forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers shall be evicted or removed from the forest land under his occupation till the recognition and verification procedure is complete.
- (6) The right to hold and live in the forest land

under the individual or common occupation for habitation and for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribes or Other Traditional Forest Dwellers shall be restricted to area under actual occupation and shall in no case exceed an area of four hectares as per Section 4(6) of the Act. Section 4(7) of the Act provides that forest rights shall be conferred free from all encumbrances and procedural requirements.

- (7) The forest rights recognized and vested under this Act includes the right of land to forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition as per Section 4(8) of the Act.
- (8) Section 5 of the Act empowers the holders of forest rights, the Gram Sabha and the village level institutions to (a) protect the wildlife, forest and bio-diversity (b) ensure that adjoining catchment area, water sources and other ecological sensitive areas are adequately protected (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage and (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the bio-diversity are complied with.
- (9) Section 6 (Chapter IV) of the Act deals with the authorities and procedures to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers. There is a three tier structure of authorities to vest forest rights, the Gram Sabha is the initiating authority for determining the nature and extent

of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers. The Sub-Divisional Level Committee examines the resolution passed by the Gram Sabha and forwards it to the District Level Committee for the final decision. Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee and any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee. The decision of the District Level Committee on the record of forest rights is final and binding. There is a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called by that agency.

- (10) Section 7 of the Act has a provision for punishment of any authority or officer for contravention of any provision of this Act or any rule made thereunder.
- (11) The Ministry of Tribal Affairs, Government of India is the nodal agency for the implementation of this Act as per Section 11 of the Act.
- (12) Section 12 empowers the Central Government to issue directions to the authorities referred to in Chapter IV of the Act.
- (13) As per Section 13 of the Act, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

16.5 Status of Implementation of the Act:-

As on 31-12-2014, the total number of claims filed under FRA is 39,59,019, out of which 32,70,195 claims have been disposed off and 15,56,676 titles (15,26,969 individuals and 29,707 community) have been issued. Odisha has the distinction of issuing highest number of titles which is 3,44,068 (3,40,594 individual titles and 3,474 community titles).

16.6 During the current financial year, the Ministry has taken the following initiatives:

- A National Resource Centre has been set up in TRI, Odisha, which will undertake Training & Capacity building related programme under FRA for Government functionaries and develop Training Modules and Resource mechanism.
- Under UNDP– MOTA Project, three important studies were undertaken to study in-depth implementation related issues of FRA. A study pertaining to implementation challenges in LWE areas was conducted and appropriate suggestions were communicated to the LWE states for effective implementation of FRA. Two other studies on recognition of Habitat Rights of PVTG and impact of CFR have also been conducted and under examination.
- Consultations were also organised in the state of Maharashtra on implementation of FRA with state and district level functionaries.
- Ministry has also proactively addressed various issues related to FRA violations and have issued guidelines to states to adhere to the law.
- Ministry has also vigorously addressed with other Central Ministries for protection of rights of forest dwellers before diversion of forest land.
- With the Ministry repeatedly emphasising the importance on community rights, there is significant increase in community rights title distribution. As on 31.3.2014, 3131 community titles were issued whereas as on 31.12.2014, 29,707 titles have already been issued.

Way forward

16.7 With the continued efforts by this Ministry, it is hoped that the implementation of the Forest Rights Act will further gain momentum in all the States in the coming years. The State Governments, with the support from the Ministry of Tribal Affairs will take forward the implementation of the final Action Plans in a mission mode to realize the purpose of this historic Act in letter and spirit at the ground level.