

## Scheduled Tribes and Forest Dweller's Rights in India: Karnataka and Andhra Pradesh Perspectives

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### Abstract

There is an inseparable link between the forests and the tribes and other forest dwellers. Generation together these communities are residing alongside the forests and are most dependent on the forest products. Some argue that the rights granted under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to the Scheduled Tribes and other Traditional Forest Dwellers will lead to destruction, damage and loss of biodiversity. Others argue that recognition of forest rights and, more importantly, making conservation democratic - is the only way forward. The more power the forest bureaucracy retains, the more it will harm both wildlife and people. It is being observed that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is an instrument which will be implemented for protecting the interests of tribes and other forest dwellers for inclusive sustainable development.

This paper attempts to examine that the measures ensured to protect the interest of tribes and other forest dweller's in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 taking the note of experiences of the states of Karnataka and Andhra Pradesh.

**Keywords:** Conservation; Bio-diversity; Sustainable use; Sustainable Development; Instruments; Policies; Tribes; Forest Dwellers Rights.

### Introduction

Tribes are aborigines of the country who had been sidelined by the progressive societies especially the Aryans in ancient, Mohammedans in medieval and the Britishers in modern period. The tribes remained outside the mainstream even though in scientific and modern era. This is because they were very much attached to the nature especially the forest. Their life was fully associated with the

nature for that they were not come out to the mainstream. Their life even today is dependent on the nature especially the forests. The forests are their hometown, it is their market, and it is their permanent abode. They are very much far away from the taste of literacy and modern life of city and urban area. Their living style, food system, housing pattern, clothing, culture, marriage and other relationships are appears to be highly different from the mainstream people. So they are far from the developmental process of the society remained unchanged in their habits and styles. Because of this

community who is lagging behind in developmental aspects for that we are not achieving sustainable development in society. Sustainable development [1] is the need of the hour for inclusive development of the society including in this process the tribal as well. The Government of India and the respective state governments have carved out many legislative and policy measures supported with schemes and programmes to implement the policies practically for the overall development of the Scheduled Tribes in India. However, still STs are underrepresented in various avenues of public life and their economic and social status still needs to be achieved. One among several legislative measures for the upliftment of the STs is the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which addresses certain issues surrounded with the protection of interest of the STs and recognizes their land rights for which they are entitled.

#### *Recognition and Protection of the Rights of Scheduled Tribes and Forest Dwellers*

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is aimed at protecting the interest of the tribes and other forest dwellers. The Act 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. However, it's all depends upon how best this law is implemented to achieve its goals. The Ministry of Tribal Affairs is the nodal agency for implementing the provisions of the Act. The Act was notified for operation with effect from 31.12.2007 [2]. 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. As per the provisions of the Act and the Rules framed there under, the onus of implementation of the Act lies at the level of the State/UT Governments. The Act seeks to recognize and vest certain forest rights in the forest dwelling Scheduled Tribes and other traditional forest dwellers. The Ministry, to ensure that the intended benefits of this welfare legislation flow to the eligible forest dwellers, has also issued comprehensive guidelines to the State/UT Governments on 12.7.2012 for better implementation of the Act. Further, to strengthen the Forest Right Rules, 2008, the Ministry has also notified the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 on 6.9.2012. [3]

#### *The Main Objectives of the Act are [4]*

The main objectives of the Act have been described in object clause of the Act which are as follows:

1. To provide and vest the forest rights and occupations in forest land in forest dwelling STs and other traditional forest dwellers [5] who have been residing in such forests for generations but whose rights could not be recorded;
2. 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.
3. To recognize rights of the forest dwelling STs 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 STs and other traditional forest dwellers.
4. To declare 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 STs and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.

#### *The Rights of the Forest Dwellers*

The fundamental purpose of this Act is to protect and recognize the rights of the Scheduled Tribes (STs) and others who are the forest dwellers. This Act categorically protects and recognizes three main types of rights which are as follows:

#### *Land Rights*

No one gets rights to any land that they have not been cultivating prior to December 13, 2005 (Section 4(3)) and that they are not cultivating right now. Those who are cultivating land but don't have document can claim up to 4 hectares, as long as they are cultivating the land themselves for a livelihood (Section 3(1) (a) and 4(6)). Those who have a patta or a government lease, but whose land has been illegally taken by the Forest Department or whose land is the subject of a dispute between Forest and Revenue Departments, can claim those lands (Section 3(1)(f) and (g)). The land cannot be sold or transferred to anyone except by inheritance (Section 4(4)).

### *Right to Use*

The law secondly provides for rights to use and/or collect the following:

1. Minor forest produce [6] Section 2 (i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 defines the meaning of Minor Forest Produce as " 'Minor forest produce' includes all non-timber forest things like tendu patta, herbs, medicinal plants etc "that has been traditionally collected. This does not include timber [7].
2. Community rights uses or entitlements such as fish and other products of water bodies and grazing grounds [8].
3. Traditional areas of use by nomadic or pastoralist communities i.e. communities that move with their herds, as opposed to practicing settled agriculture.
4. Right of ownership, access to collect, use and dispose of minor forest produce which has been traditionally collected.

### *Right to Protect and Conserve Sustainably*

Though the forest is supposed to belong to all of us, till date no one except the Forest Department had a right to protect it. If the Forest Department should decide to destroy it, or to hand it over to someone who would, stopping them was a criminal offence. For the first time, this law also gives certain rights to the community:

- a. The rights to protect, regenerate, conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use (Section 3(1) (i)).
- b. The right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity (Section 3(1)(k)).

Section 5 gives the community a general power to protect wildlife, forests, etc. This is vital for the thousands of village communities who are protecting their forests and wildlife against threats from forest mafias, industries and land grabbers, most of whom operate in connivance with the Forest Department.

This Act does not give traditional right of hunting or trapping or extracting a part of the body of any species of wild animal (Section 3(1)(l)).

### *Mode and Method of Recognition of Rights*

Section 6 of the Act provides a transparent three

step procedure for deciding on who gets rights. First, the gram sabha (full village assembly, not the gram panchayat) makes a recommendation i.e. who has been cultivating land for how long, which minor forest produce is collected, etc. The Gram Sabha plays this role because it is a public body where all people participate, and hence is fully democratic and transparent. The gram sabha's recommendation goes through two stages of screening committees at the taluka and district levels. The district level committee makes the final decision (see section 6(6)). The Committees have six members - three government officers and three elected persons. At both the taluka and the district levels, any person who believes a claim is false can appeal to the Committees, and if they prove their case the right is denied (sections 6(2) and 6(4)). Finally, land recognized under this Act cannot be sold or transferred.

### *Diversion of Forest Land*

The Act provides for the diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding 75% per hectare namely: (a) Schools, (b) Dispensaries/hospitals, (c) Anganwadis, (d) Fair price shops, (e) Electric and telecommunication lines, (f) Tanks and other minor water bodies, (g) Drinking water supply and water pipelines, (h) Water or rain water harvesting structures (i) Minor irrigation canals, (j) Non-conventional source of energy, (k) Skill upgradation or vocational training centres, (l) Roads and (m) Community centres.

However, the diversion of forest land will be allowed only if following conditions are fulfilled:

- a. The forest land to be diverted for the purposes above is less than one hectare and
- b. The clearance of such developmental projects should be subject to the condition that the same is recommended by the Grama Sabha [9].

### *Implementation of the Forest Rights Act*

As per the Ministry of Tribal Affairs, Government of India status report till 30<sup>th</sup> September, 2013, 35,39,793 claims have been filed and 14,06,971 titles have been distributed. Further, 18,299 titles were ready for distribution. A total of 30,78,483 claims have been disposed of (86.96%).<sup>10</sup> The same is described in the following table 1.

States of Tripura, Kerala and Orissa are the top states in implementing the Act, while Gujarat is the 11<sup>th</sup> rank and Karnataka is the 15<sup>th</sup> rank in the implementation of the Act. No claims are registered

**Table 1:** Statement showing percentage of titles distributed over number of claims received in each State under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (As on 30.09.2013)

Sl. No.	State	Total Number of Claims Received	Total number of titles deeds distributed/ ready	% of titles distributed over number of claims received
1	Tripura	1,82,617	1,20,473 distributed	65.97%
2	Kerala	37,535	23,167 distributed	61.72%
3	Orissa	5,41,800	3,24,130 distributed	59.82%
4	<b>Andhra Pradesh</b>	<b>3,30,479</b>	<b>1,67,797 distributed</b>	<b>50.77 %</b>
5	Rajasthan	69,677	33,646 distributed	48.28%
6	Chhattisgarh	7,56,062	3,06,184 distributed	40.49%
7	Madhya Pradesh	4,81,128	1,79,526 distributed and 11,607 ready	37.31%
8	Jharkhand	42,003	15,296 distributed	36.41%
9	Maharashtra	3,45,975	1,03,225 distributed	29.83%
10	Assam	1,31,911	36,267 distributed	27.49 %
11	Gujarat	1,91,592	42,752 distributed	22.31%
12	West Bengal	1,37,278	29,852 distributed and 2,969 ready	21.74%
13	Uttar Pradesh	92,433	17,705 distributed	19.15%
14	Himachal Pradesh	5,692	346	6.07%
15	<b>Karnataka</b>	<b>1,68,718</b>	<b>6,577</b>	<b>3.89%</b>
16	Bihar	2,930	28	0.95 %
17	Tamil Nadu#	21,781	3,723 ready#	0.00%
18	Uttarakhand	182	Nil	0.00%
19	Arunachal Pradesh*	--	--	--
20	Goa*	--	--	--
21	Manipur*	--	--	--
22	Meghalaya*	--	--	--
23	Mizoram*	--	--	--
24	Sikkim*	--	--	--
25	A & N Islands*	--	--	--
26	Daman & Diu*	--	--	--
27	Dadra & Nagar Haveli*	--	--	--
	<b>Total</b>	<b>35,39,793</b> <b>(34,68,639 individual and 71,154 community)</b>	<b>14,06,971 (13,86,116 individual and 20,885 community) and 18,299 ready for distribution</b>	<b>39.74%</b>

\*No Claims received

# High Court's restrictive order

**Table 2:** Claims received and titles granted in Karnataka, Andhra and Telangana

States	No. of Claims Received upto 31.01.2016			No. of Titles Distributed upto 31.01.2016			Extent of Forest Land for which Titles Distributed (in Acres)		
	Individual	Communit	Total	Individual	Communit	Total	Individual	Communit	Total
Karnatak	3,66,040	6,208	3,72,248	8,159	144	8,303	11,166.00	26,274.79	37,440.79
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Andhra Pradesh	4,00,053	10,959	4,11,012	1,67,263	2,107	1,69,370	14,56,542.0	--	14,56,542.0
Telangana	2,11,698	3,672	2,15,370	99,486	744	1,00,230	3,29,571.00	5,03,082.00	8,32,653.00
a									

Source: <http://fra.org.in/document/Status%20Report%20January%202016.pdf>

in Arunachal Pradesh, Goa, Manipur, Meghalaya, Mizoram, Sikkim, Andaman & Nicobar Islands, Daman & Diu, Dadra & Nagar Haveli, this is because it may be lack of awareness of the Act or the authorities meant for the implementation are unable to bring awareness of the rights of the forest dwellers.

#### *Present Status of Sts in Karnataka and Andhra*

There are three issues that come up in the majority

of the States. Here's an explanation of the terms and the problems that are being referred to.

#### *Gram Sabhas*

The "gram sabha" (village assembly) is the first tier of decision-making in the Act. But which gram sabha? In reality gram sabhas can be called at three levels. A typical gram panchayat includes multiple revenue villages, which each in turn include multiple

hamlets. Hence the gram sabha can be called either as the assembly of all voters in a gram panchayat, as the assembly of all the residents of a revenue village, or as the assembly of the residents of a hamlet. The movements had long demanded that the gram sabhas for this Act should be at the level of the actual settlements - the hamlets, or at most the revenue villages - and not at the artificial administrative level of the gram panchayat, where they would be very large and make democratic functioning impossible. In the final form of the law, in Scheduled Areas, hamlet level gram sabhas are required, while in other areas the law permits revenue village gram sabhas.

#### *The Forest Rights Committees*

Each village is to elect a committee of 10 - 15 people from its own residents as a "Forest Rights Committee", which will do the initial verification of rights and place its recommendations before the gram sabha (which makes the decision).

#### *Community Rights*

Contrary to common conception, the Act is not solely or even primarily about individual land claims. Many of the rights, such as the right to minor forest produce, are to be exercised as a community. The most powerful sections of the Act concern the community right to manage, protect and conserve forests, the first step towards a genuinely democratic system of forest management (sections 3(1)(i) and 5). In most areas the State and Central governments have made concerted efforts to deny or ignore these community rights and to instead treat the Act as if it is purely about individual land rights. A key aspect of the struggle is to use and expand these community rights and powers.

The present of titles granted under the FRA Act, 2006 as on January 31, 2016 is as follows: 44,13,922 claims (42,99,778) individual and 1,14,144 community claims) have been filed and 17,14,911 titles (16,73,544 Individual and 41,367 community claims) have been distributed. A total of 38,35,914 (68.90%) claims have been disposed of. The status of Karnataka, Andhra and Telangana is shown in the Table 2.

#### *Karnataka*

There was an initial burst of activity in February 2008, when Forest Rights Committees were constituted in several districts of southern Karnataka. In some areas Committees were constituted without even holding a gram sabha. Elected representatives

and local organisations protested to demand the cancellation of these Committees. The process then came to a halt due to state elections. Since then, it appears that District Level Committees and Sub-Divisional Level Committees have been set up in some districts, but information is very poor.

In October 2008, fresh orders were issued by the CM's office to constitute Forest Rights Committees by November 4<sup>th</sup>, but it is not clear if this happened in all areas. The Forest Department has been attempting to push JFM Committees into the role of Forest Rights Committees.

In tiger reserves, the administration along with some environmental NGO's such as Wildlife First has been spreading false propaganda to the effect that people will now be relocated with a compensation of Rs. 10 lakhs per family without clarifying that rights must be recognised first and that relocation can only take place with the informant consent of the gram sabhas and only if it has been scientifically proven that co-existence is not possible..

In the area in which the BRT Hills wildlife sanctuary falls, representatives of Soligas have been made members of both the SDLCs and DLC. The District Collector is willing to approve the Soligas' claim for ownership rights over NTFPs but the DFO has till now refused his consent citing a Supreme Court order of February 2000. Upto date information about further developments is not readily available.

In Nagarhole Tiger Reserve, in mid-May 2009, four adivasi homes were demolished in the hamlet of Nanachicovu hadi. At least seven families have reportedly already accepted cash compensation and moved out, though it is illegal for any relocation to take place prior to the recognition of rights (which has not even been initiated in the area) and it is also illegal to provide only cash compensation. Reportedly the authorities are not accepting claims from tribals under the Forest Rights Act. There is increasing pressure on people to accept the cash compensation and to move.

Tribal leaders in the State have alleged that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act (Forest Rights Act) was not being properly implemented in Karnataka. Applications filed by many claimants seeking lands were rejected for frivolous reasons, they alleged.

The leaders met UPA chairperson Sonia Gandhi and Union Minister for Tribal Affairs Kishore Chandra Deo in this regard in New Delhi a couple of years ago.

In a statement, the Adivasi leaders said the district-

level committees headed by Deputy Commissioners had issued rights to certain Adivasis for land ranging from 10 guntas to an acre. This was against the prescribed norm of granting a maximum of 10 acres to each applicant under the Act.

Community rights covering large areas, encompassing their temples and graveyards, were pending for the last three years, except in some cases. The tribal people were not given access to collect minor forest produce, though the Act gave them the right to do so, the leaders alleged.

Rights over water bodies to allow fishing and cultivation too should be given to tribal people, they demanded.

The leaders appealed to the Centre to advise the State government and district-level committees, particularly in Kodagu, Mysore, Chikmagalur, Chamarajanagar, Uttara Kannada and Ramanagaram, to implement the Act.

#### *PESA Act*

Forest-dependent tribes were dwelling in nine districts of the Western Ghats in Karnataka. All tribal habitats numbering more than 1,300 had to be declared under Schedule V of the Constitution in order to implement the Panchayat Extension to Scheduled Areas (PESA) Act to manage their lives and resources in a traditional manner by adopting local self-governance.

The Betta Kuruba forest-dependent tribal community in the State was identified as Kadu Kuruba (generic name). They should be specifically identified as Betta Kurubas. All ashram schools in tribal areas should be upgraded on a par with Navodaya schools to provide quality education. A tribal university should be initiated to promote higher education, they said [11].

The court of judicial magistrate of Chamrajnagar in Karnataka has upheld the rights of Soliga tribal people to harvest and sell forest produce independent of the forest department. On May 24, the court ordered Punjanur range forest officer to return 1,100 kg of honey seized from the Hosepodu gram sabha, located within the Biligiri Rangaswami Temple (BRT) tiger reserve, during a raid. The honey was returned to the gram sabha.

BRT tiger reserve is the first protected area in the country where community forest rights (CFR) have been granted under the Forest Rights Act, 2006 (FRA). On October 2, 2011, as many as 25 villages of Soliga tribals located inside the sanctuary received community rights, including the crucial forest

conservation and management right to around 60 per cent of the sanctuary area, comprising the Yellandur, K Gudi and Punjanur ranges. Some 30 more villages located inside the sanctuary are awaiting CFR [12].

Court upholds Soliga Tribe's Community Forest Rights, Down to Earth, Tuesday 04 June 2013. See <http://www.downtoearth.org.in/news/court-upholds-soliga-tribes-community-forest-rights-41256>.

#### *Andhra Pradesh*

Forest Rights Committees had been constituted mainly at the panchayat level in February and March of 2008. Despite Andhra's large tribal population and the large area under schedule V of the constitution, leave aside hamlet level gram sabhas, even revenue village gram sabhas have not been permitted. Consequently, residents of remote tribal hamlets of large panchayats have been unable to file their claims under the FRA. In several areas the ITDA undertook surveys with GPS systems to assist in mapping. One "social mobiliser" was appointed in every village under the existing World Bank sponsored Indira Kranthi Patakam scheme (formerly known as the Velugu scheme), and these mobilisers were instructed to help with claims. However, the government has focused entirely on individual claims. ITDAs are sending surveyors for surveying the lands for which only individual claims have been made. The verification forms for these have illegal additional pages that require sanction from beat officers and revenue officials. Many claims were illegally rejected by forest guards during the initial phase of verification by the FRCs. In Adilabad, many claims were initially rejected but the people have re-filed them. In addition, GPS surveys have been abused and people have found smaller areas of land being recorded than those that they claimed, leading to demands for resurveys in many areas. Forest Department interference has also increased, leading to recognition of much smaller areas than were claimed or are actually existing on the ground.

Initially no claim forms were being issued for community rights, and when they were subsequently issued, people were informed to simply tick those that they wished to claim - which clearly led to their rejection. Following mobilisation by movements and grassroots groups, and providing villagers training in mapping their community forest resources, claims for community forest resource rights have now been filed by several hundred villages. This has incidentally also led to rediscovery of many

community lands that had been illegally seized by the Forest Department, and in some areas (as in the case of Orient Cement in a village in Adilabad) contributed to helping people resist handover of their common lands to private companies. Community claims were being sent directly to the SDLCs. Although District Collectors and ITDA officers had agreed to accept claims for community rights, no facilitation for these was or is being provided by the government. Out of an estimated 5000 tribal villages in the state, organisations have been able to mobilise 700 to 800 villages. In protected areas as well the process of claiming rights has taken place to a limited extent.

It appears that the AP government intends to compel those issued individual titles to undertake plantations on their lands instead of self cultivation for which the rights have been granted. The government has begun promoting coffee plantations on people's lands in Vishakhapatnam District, rubber in East Godavari District and biodiesel in several districts.

In the Gudem area of Vishakhapatnam district, the forest department was not permitting the filing of any claims on the grounds that no survey of forest land had been done under the AP Forest Act, 1967 and for which no final notifications have been issued to date. However, the villagers have rejected this premise saying that there is no link between notification of the land and people's right to file claims under the FRA. Similarly, claims were not being entertained for the land to be submerged by the Polavaram dam or allocated for other development purposes.

Due to the lack of organisation among the Chenchus in Srisailem Tiger Reserve, efforts are continuing to illegally relocate them. The wildlife wing now appears to have decided to permit the Chenchus living in the core of the tiger reserve to stay on as it feels it can use them for tiger conservation.

In August 2008, the AP High Court followed the lead of the Madras High Court and issued an interim order barring grant of final titles for rights. In May 2009, the High Court in turn vacated this order and granted permission to issue titles (see here for more information). The earlier interim order of the High Court had led to a general apathy among government officials (who widely interpreted the order as a stay order, when it was not one).

As per official data of August 2009, 1,79,643 individual titles have been issued for a total area of 4,86,780 acres. This is against a total of 3,27,715 individual claims being filed with gram sabhas for a total area of 9,47,788 acres. Thus the approved claims

and approved area is roughly 50% of what was claimed. No reason has been provided for the rejection of such a large number of claims or reducing the area claimed, thereby depriving the people the right to appeal. People are now seeking such information under RTI to challenge arbitrary rejections and reductions in area claimed. The average area of approved title is just over one hectare, a far cry from the permitted maximum of 4 ha and the fear expressed by conservationists that the FRA will result in the 'distribution of 4 ha to every tribal family resulting in the decimation of the country's forests'.

On the surface, Andhra has also issued an impressive 2276 'community certificates of titles' (presumably meaning titles for community rights) for a total area of 7,84,949 acres. Information obtained under RTI about the details of these community claims, however, has revealed an attempted 'coup' of community forest rights by the forest department. The majority of community forest rights which have been approved are claims filed by JFM committees (VSSs in AP) which have no right to file claims under the Act. If the forest department created committees continue, the gram sabhas empowered to protect, conserve and manage their CFRs for sustainable use will be illegally deprived of their statutory right under the Act while the FD will retain control over JFMCs as before. In contrast, many of the community claims filed by villagers have either been rejected or approved for a much smaller area than that claimed. The Adivasi Aikya Vedike organized a protest against this abuse of the FRA in Adilabad and the villagers are planning to file fresh claims for CFR rights. Herding and grazier communities have been struggling to file claims for seasonal grazing rights which continue being ignored [13].

By the recent amendment of the Act it has made applicable to municipal areas too. Accordingly, the Directorate Scheduled Tribes Welfare, Government of Karnataka, has directed officers to take note of the Union government's clarification and take action on constituting Forest Rights' Committees in municipal areas too on the lines of the Village Forest Rights Committees (Gram Aranya Samithis).

Deputy Commissioner B S Shekarappa, in a circular dated January 6, has directed the Divisional Commissioners and the chief officers of the Town Municipal Councils and Town Panchayats to act on the basis of the amendments made to the Act in 2008 to be implemented in 2012.

Shekarappa, when asked about the clarification on the extension of the utility of the Act to the municipal areas, told Express that some taluk headquarters are situated in the middle of the forest

region in districts like Chikmagalur, Kodagu, Mysore, Hassan, Uttara Kannada, Udupi, Dakshina Kannada, Belgaum etc and the tribal people living there can lay claim to their right to the land under the Act. In Chikmagalur district, for example, Chikmagalur, Mudigere, Tarikere, Sringeri, Koppa, N R Pura taluks fall in the forest region. The same parameters apply to the constitution of Municipal Forest Committees as in the Gram Aranya Samithis, he added.

In a committee of minimum 10 and maximum 15 members, there should be 2/3 ST members, 1/3 other members and 1/3 women members. The committee president and the secretary will be decided by the committee.

However, Krishik Budakattu Welfare Committee President KN Vittal has questioned the necessity of new committees when the Gram Aranya Samithis have not been completely constituted in many areas of the district. The rights of the tribal and forest dwellers on the land have not been recognised completely as of now, he added [14].

#### *Demand for Effective Implementation of the Act*

There were protests across India against NDA Government's attack on Forest Rights. Between November 18<sup>th</sup> and November 24<sup>th</sup>, mass protests attended by tens of thousands of people are taking place in seven States across India. The demands of the protesters are simple: stop illegally encouraging government officials and private business to engage in scams, and start respecting democracy, transparency and accountability under the law. The specific demands are below.

Today the Central and State governments are moving very fast to make it easier for the Forest Department and big companies to take over forests and violate people's rights. The Forest Rights Act of 2006 has barely been implemented properly. Even though the law says that every village with forest dwellers should have rights recorded over their community forest resources, this has not even happened in 1% of the villages. In the places where this has happened, such as in Gadchiroli or parts of Maharashtra, the Forest Department is trying to take control back into its own hands.

The new Central government - continuing the work of the Environment Ministry of the last government - is trying to destroy the Act through the back door. Some of the steps taken since May:

Orders have been issued that control over minor forest produce should be given to JFM committees,

not the gram sabha (this is completely illegal).

On July 31<sup>st</sup>, the Prime Minister's Office held a meeting where they asked the Environment Ministry to issue orders saying that projects can be given forest land without gram sabha consent. This is illegal and in violation of the Supreme Court's orders. Meanwhile, even though this change has not been made, the government has cleared projects without taking the consent of gram sabhas.

On October 28<sup>th</sup>, the Environment Ministry issued an illegal notification giving District Collectors the power to decide, in certain areas, if the Forest Rights Act needs to be implemented prior to forest land diversion. This is an incitement to criminal actions and violations of the law.

We condemn these steps and call upon the government to respect democracy in the forest and stop trying to illegally sabotage the power of the gram sabha. We demand:

1. Respect the power of the gram sabha to manage, use and protect forests and forest lands.
2. Stop rejecting claims and recognise all individual and community rights. Stop interfering with role of the gram sabha in deciding rights.
3. Reject any project which gram sabhas have not consented to. Punish officials and companies who have taken over forest land without gram sabha consent.
4. Respect gram sabha's power to manage and non-timber forest produce, and to take the full revenue from it [15].

#### *Mines and Minerals (Development and Regulation) Amendment Bill 2015 (Mmdra) and Rights of Tribals*

The Mines and Minerals Amendment Bill 2015 contains no provisions for consent from tribals for mining operations, but strengthens the rights of private sector mining companies.

Even as countrywide protests against the land ordinance gain momentum, Adivasi communities living in mineral-rich areas are apprehensive of what awaits them as the Mines and Minerals (Development and Regulation) Amendment Bill 2015(MMDRA) has received presidential assent and the government has drafted Rules for some clauses of the Act.

The principal Act of 1957 is as draconian a law for Adivasis as was the Land Acquisition Act of 1894 for all farmers. The main flaw in the Act is that it does not address the critical issue of the rights of those (mostly from Adivasi communities) who own or occupy the surface land beneath which minerals



lie. The Act has no provision for consent or even consultation with gram sabhas which would be affected by mining operations. Adivasis are described in the law as "occupiers of the surface of the land." As "occupiers", they have the right to compensation, but as enunciated in the Rules, if they do not agree to the mining plan or to the amount of compensation, the "State Government shall order the occupier to allow the licensee to enter upon the said land and carry out such operations as may be necessary."

It is under this provision that lakhs of Adivasi families have been displaced, turned into migrants or, at best, into daily contract labourers in mines that have destroyed their forests, lands and water. Adivasi movements have been demanding amendments to ensure that before such leases are given, their informed consent is taken and they have a share in profits from mineral wealth. Governments have refused to heed this democratic demand. In India, the state has all rights over minerals, but over the years it has acted as a front to hand over mineral resources for private profit. There have been substantial amendments to the Act since 1957, but they have been to strengthen the rights of mining companies further, not to strengthen the rights of Adivasis. This despite the Supreme Court Samatha judgment of 1997, which upheld Adivasi rights to informed consent and to a share in mineral wealth. The judgement ruled that under the Fifth Schedule (administration and control of scheduled areas and scheduled tribes in these areas) and laws in different States, since Adivasi lands can neither be transferred nor leased to non-Adivasis, mining activities in tribal-dominated areas should involve the tribals themselves. Since 1997, other laws such as the Panchayat Extension to Scheduled Areas Act (1996), the Forest Rights Act (2006), and the Wildlife (Protection) Amendment Act (2006) have helped establish the rights of Adivasis and gram sabhas. The more recent Vedanta judgment by the Supreme Court struck down the agreement reached between the company and the State government because it did not have the consent of Scheduled Tribes whose "traditional rights" were affected.

There is no dispute that a country's mineral wealth should be mined and used for development. However the predominant understanding of 'development' by ruling governments at the Centre have privileged profit, in this case of mining companies, over the more sustainable and equitable use of minerals in partnership with local communities. This would also require a sane assessment of the amount of minerals required during a specific period of time with consideration being given to intergenerational equity instead of reckless loot in the name of development.

In 2010, in partial recognition of the Adivasi demand for a stake in mineral wealth, the United Progressive Alliance government had moved an amendment to the 1957 Land Acquisition Act. The Act stated, "any person or persons holding occupation or usufruct or traditional rights over the surface of the land will be allotted free shares equal to 26 per cent through company's quota, or an annuity equal to 26 per cent of the profit (after tax paid)...". It mandated "annual compensation as may be mutually agreed." It also made other provisions towards the welfare of Adivasi communities.

However, the UPA government soon succumbed to opposition from mining companies and replaced the amendment with a much more diluted version in the 2011 MMDRA Bill.

Even these diluted provisions have been scrapped by the Narendra Modi government. The government has brought 22 substantial amendments, each one to strengthen the rights of private sector mining companies in the name of attracting investment. For instance, in the 2011 Bill, it was incumbent on State governments to obtain all necessary permissions from the owners and occupiers of land for major minerals, and consult with gram sabhas in Fifth and Sixth Schedule areas for minor minerals. The Bill also mandated that all environment and forest clearances under the Forest (Conservation) Act, Wildlife (Protection) Act or any other law in force be taken before a lease was given. It made tribal cooperatives eligible for the grant of leases for minor minerals in Fifth and Sixth Schedule areas. The 2015 Bill neither mentions tribal cooperatives nor contains provisions for consent, consultation or clearances. This is an attempt to bypass gram sabhas and environmental norms in the name of "speedy clearances" and "ease of doing business" [16].

## Conclusion

The tribal families rehabilitated elsewhere face regularly the problems of land alienation and inability to obtain land title deeds. The phenomenon of land alienation is referred to the practice of purchasing or forcefully acquiring the agriculture land of the tribes by the main land people. The mainland people give loans and advances to the tribes and give alcohol and good feasts to the tribes to influence them to sell their land at nominal prices. Such events should have been reported by the national SC and ST commission reports from the states of Bihar, Madhya Pradesh and Orissa including Karnataka and Andhra Pradesh where

mining projects and other industrial as well as major and medium irrigation projects are implemented. Further in many states where tribal rehabilitation and resettlement projects are implemented all tribal families have not been given land title deeds. Sometimes for want of land some of the late comers into tribal rehabilitation centre are not given land or small plots of agricultural land (less than one hectare) has been allotted on oral instruction of the project officer by encroaching the already allotted agriculture land to the early settlers in the tribal rehabilitation centers. Thus the shifted/ displaced and rehabilitated tribal families face the problems of uneconomic land holdings as well as insecurity and fear of evacuation from the land on account of the absence of suitable land title deeds.

Still the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is not implemented properly and fully to uphold the rights of forest dwellers and Adivasis, the Mines and Minerals (Development and Regulation) Amendment Act (MMDRA), 2015 has turned a draconian law to disturb and disentitle the rights of the Adivasis.

## References

1. The World Commission on Environment and Development (WCED) Report entitled "Our Common Future", known as Brundtland Commission defined sustainable development as "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs". 1987; p.43.
2. The Gazette of India, Part II, Section 3(ii), December 31, 2007.
3. [http://tribal.nic.in/Content/Forest Right Act Other Links.aspx](http://tribal.nic.in/Content/Forest%20Right%20Act%20Other%20Links.aspx) visited on 25.01.2014.
4. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Gazette of India, Part II, Section I, January 2, 2007.
5. Section 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 defines the meaning of 'other traditional forest' dwellers as "means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs". Further explanation clarifies that: For the purpose of this clause, "generation" means a period comprising of twenty-five years.
6. produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like".
7. Section 3(1)(c) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
8. Section 3(1)(d) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
9. Section 3(2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
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15. Protests Across India Against NDA Government's Attack on Forest Rights, <http://www.forestrightsact.com/statements-and-news/143-protests-across-india-against-nda-governments-attack-on-forest-rights>.
16. <http://www.thehindu.com/opinion/op-ed/a-glass-half-empty-for-adivasis/article7162260.ece>.