

Induction Training Programme of Panchayat Executive Officers

Forest Dwellers' Rights and Law



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Introduction

- ▶ **Various social groups** exist on margins of society
- ▶ Important to **integrate** them in mainstream
- ▶ **Holistic dev** only when participation of all segments of society
- ▶ No longer a problem of choice: **Diversity is the buzzword** in today's world
- ▶ **Constitution has spl provisions** for disadvantaged groups: Spl laws enacted for benefit of these groups
- ▶ **Forest Rights Act recognises & vests forest rights & occupation in forest land in forest dwelling STs & other traditional forest dwellers** who have resided in these forests for generations but whose rights have not been recorded
- ▶ **Aims to create framework for recording forest rights so vested & nature of evidence reqd for such recognition & vesting in respect of forest land**

Geographical & Historical Background

- ▶ Previously, forest was a subject of State List: 42nd Amendment made it a **Concurrent List subject**
- ▶ Princely state of Tripura merged with UOI on July 1, 1949
- ▶ **19 different tribal communities:** Tripuri, Reang, Chakma, Garao, Uchai, Jamatia, Noatia, Mog, Lushai, Halam, Lepcha, etc
- ▶ More than **60% of the area is classified as forest area**; only about 27% available for cultivation
- ▶ 8 Districts, 23 sub-divisions, 58 blocks & 1 Tribal Areas Autonomous District Council (TTAADC)
- ▶ TADC administers Tiprasa-dominated areas: constituted in 1982 under 7th Schedule; brought under 6th Schedule in 1985
- ▶ **Total area of TADC is 68%** of total area of the state; roughly one third of the state's population
- ▶ Rights of forests dwellers extremely **IMP** in a state like Tripura

Purpose of ST & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

- ▶ Gol views MFP rights as means to **curb Naxalism**: states affected by Naxalism home to max people dependent on forest produce
- ▶ This Act looks to right the wrongs of govt policies in both colonial & independent India towards forest-dwelling communities, whose claims over their resources were taken away during 1850s
- ▶ Aims to sustainably protect forest through traditional ways alongwith providing tribes means of livelihood: expands mandate of **Fifth & Sixth Schedules** of Constitution that protect claims of indigenous communities over tracts of land/forests they inhabit
- ▶ Recognition of CFR rights would **shift forest governance in India towards a community conservation regime** which is more food security & livelihood oriented
- ▶ CFR effectively gives **local people control over forest resources** which remains a significant portion of forest revenue making **states wary of vesting forest rights to Gram Sabha**

Purpose of Forest Dwellers Act, 2006 (contd.)

- ▶ **Rights of forest dwelling ST & traditional forest dwellers incl responsibilities & authority for sustainable use, conservation of biodiversity & maintenance of ecological balance**
- ▶ **Strengthening conservation forests while ensuring livelihood & food security for forest dwelling ST & traditional dwellers**
- ▶ **Forest rights on ancestral lands & habitat not adequately recognised in the consolidation of State forests during colonial period as well as in independent India resulting in historical injustice to forest dwelling ST & traditional dwellers**
- ▶ **These persons are integral to the very survival & sustainability of the forest ecosystem: necessary to address their long-standing insecurity of tenurial & access rights**
- ▶ **Many such persons were forced to relocate their dwelling due to developmental interventions of the State**

Basic Concepts under the Act

- ▶ **Forest dwelling ST:** members or community of ST who primarily reside in & who depend on forest/forest land for bonafide livelihood needs & includes pastoralist ST communities
- ▶ **Other traditional forest dweller:** any member/community who has for at least **three generations** prior to Dec 13, 2005 primarily resided in & depends on forest/forests land for bonafide livelihood needs (Generation: 25 yrs)
- ▶ **Community forest resource:** customary common forest land within traditional or customary boundaries of **village** or seasonal use of landscape in case of pastoral communities, incl reserved forests, protected forests & **protected areas** (National Parks & Sanctuaries) to which community had traditional access
- ▶ **Critical wildlife habitat:** such parts of protected areas where it is specifically & clearly established, case by case, that such areas need to be kept as inviolate for purpose of wildlife conservation as & notified by Central Govt after consultation with experts

Basic Concepts under the Act (contd.)

- ▶ **Forest land:** land falling within any forest area incl unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries & National Parks
- ▶ **Forest villages:** settlements estd inside forests by forest deptt of State Govt for forestry operations or which were converted into forest villages through forest reservation process
- ▶ **Gram Sabha:** village assembly which consist of all adult members of a village & in States having no Panchayats, Padas, Tolas and other traditional village institutions & elected village committees, with full & unrestricted participation of women
- ▶ **Habitat:** area comprising customary habitat & such other habitats in reserved forests & protected forests of primitive tribal groups & pre-agricultural communities and other forest STs
- ▶ **Minor forest produce:** all **non-timber** forest produce of plant origin incl bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu leaves, medicinal plants, herbs, roots, etc

Concept of Village under the Act

- ▶ Village defined u/s 4(b) of Panchayats (Extension to the Scheduled Areas) Act, 1996 (Act 40 of 1996); or
- ▶ Any area referred to as a village in any State law relating to Panchayats other than the Scheduled Areas; or
- ▶ Forest villages, old habitation or settlements & unsurveyed villages, whether notified as village or not; or
- ▶ In the case of States where there are no Panchayats, the traditional village, by whatever name called

Rights of Forest Dwelling ST & other traditional dwellers

- ▶ **Right to hold & live in the forest land under individual/common occupation for habitation or for self-cultivation for livelihood by member(s) of forest dwelling ST or other traditional dwellers**
- ▶ **Community rights such as nistar (by whatever name), incl those used in erstwhile Princely States, Zamindari/intermediary regimes;**
- ▶ **Right of ownership, access to collect, use, & dispose of minor forest produce traditionally collected in/outside village boundaries**
- ▶ **Other community rights of uses such as fish & other products of water bodies, grazing (both settled or transhumant) & traditional seasonal resource access of nomadic/pastoral communities**
- ▶ **Rights incl community tenures of habitat & habitation for primitive tribal groups & pre-agricultural communities**
- ▶ **Rights in or over disputed lands under any nomenclature in any State where claims are disputed**
- ▶ **Rights for conversion of pattas or leases or grants issued by any local authority or any State Govt on forest lands to titles**

Rights of Forest Dwelling ST & other dwellers (contd.)

- ▶ **Rights of settlement & conversion of all forest villages, old habitation, unsurveyed villages & other villages in forests, whether recorded, notified or not into revenue villages**
- ▶ **Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting & conserving for sustainable use**
- ▶ **Rights which are recognised under any State law or laws of any Autonomous District/Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State**
- ▶ **Right of access to biodiversity & community right to IP & TK related to biodiversity & cultural diversity**
- ▶ **Any other traditional right customarily enjoyed by forest dwelling ST/traditional dwellers, excl traditional right of hunting or trapping or extracting a part of the body of any species of wild animal**
- ▶ **In situ rehabilitation: alternative land in case of illegal eviction/displacement**

Vesting of Rights in Forest Dwelling ST & other dwellers

- ▶ To resettle/affect rights of forest rights holders, following conditions to be satisfied:
 - ❖ **Process of recognition & vesting of rights specified u/s 6 to be complete in all areas under consideration**
 - ❖ **State Govt must confirm that activities or impact of presence of holders of rights upon wild animals is sufficient to cause irreversible damage & threaten existence of species/habitat**
 - ❖ **State Govt has concluded that other reasonable options like co-existence are not available**
 - ❖ **Resettlement/alternatives package with secure livelihood to affected individuals prepared & communicated**
 - ❖ **free informed written consent of Gram Sabhas in areas concerned**
 - ❖ **no resettlement until facilities & land allocation at resettlement location are complete as per promised package**
 - ❖ **Areas from where traditional dwellers have been relocated cannot be used for any other purpose thereafter**

Duties of Holders of Forest Rights: S.5

- ▶ The holders of any forest right, Gram Sabha & village level institutions in areas where there are holders of any forest right under this Act **enjoy certain powers** under the Act
- ▶ Protect wildlife, forest & biodiversity
- ▶ Ensure that **adjoining catchments area, water sources & other ecological sensitive areas** are adequately protected
- ▶ Ensure that the **habitat of forest dwelling STs & other traditional forest dwellers** is preserved from any form of destructive practices which affects their cultural & natural heritage
- ▶ Ensure that **decisions taken in the Gram Sabha** to regulate access to community forest resources & stop any activity which adversely affects the wild animals, forest & biodiversity are **effectively complied with**

Procedure for vesting rights in Forest ST: S. 6

- ▶ **Gram Sabha is the authority to initiate process** for determining nature & extent of individual/community forest rights to be given to forest dwelling ST & other traditional dwellers within local limits of its jurisdiction
- ▶ **Receives claims, consolidates & verifies them & then prepares a map** delineating area of each recommended claim in such manner as may be prescribed for exercise of such rights
- ▶ Gram Sabha then passes resolution to that effect & forwards it to **Sub-Divisional Level Committee**: aggrieved person can petition this Committee within 60 days & (s)he has right to be heard
- ▶ Sub-divisional Committee prepares record of forest rights & forwards it to **District Level Committee** through SDO: aggrieved person may petition District Level Committee within 60 days from the date of decision of Sub-Divisional Level Committee
- ▶ **Decision of District Level Committee final and binding**

Authorities & procedure for vesting rights (contd.)

- ▶ State Govt reqd to constitute a **State Level Monitoring Committee to monitor process of recognition & vesting of forest rights** & submit to nodal agency, such returns & reports as may be called for by that agency
- ▶ Sub-divisional Level Committee, District Level Committee & State Level Monitoring Committee shall consist of officers of depts of Revenue, Forest and Tribal Affairs of the State Government & three members of Panchayati Raj Institutions at the appropriate level, appointed by respective Panchayati Raj Institutions, of whom two shall be ST & at least one shall be a woman, as may be prescribed
- ▶ The composition & functions of the Sub-divisional Level Committee, District Level Committee & State Level Monitoring Committee & procedure to be followed by them in discharge of their functions shall be such as may be prescribed, from time to time

Offences by officers of authorities & committees

- ▶ S. 7: Where any authority/Committee/officer/member of such authority or Committee contravenes any provision of this Act/any rule made thereunder concerning recognition of forest rights: guilty of offence: liable for punishment of upto **one thousand rupees**
- ▶ **No punishment** if (s)he proves that offence was committed without his/her knowledge or that (s)he **exercised all due diligence** to prevent the commission of such offence
- ▶ No court shall take cognizance of any offence u/s 7 unless any forest dwelling ST in case of a dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority **gives a notice of not less than 60 days to the State Level Monitoring Committee, & State Level Monitoring Committee has not proceeded against such authority**
- ▶ Every member of the authorities referred to above, & every other officer exercising any powers conferred by or under this Act deemed to be a **public servant** within meaning of S. 21 IPC [S. 2(28) of BNS]

Power to make Rules: S.14

- ▶ Central Govt may by notification, make rules for carrying out provisions of this Act
- ▶ Procedural details to implement procedure specified u/s 6
- ▶ **Procedure to receive claims, consolidate & verify them & prepare map delineating area of each recommended claim for exercise of forest rights u/s 6(1) & manner of preferring a petition to the Sub-Divisional Committee u/s 6(2)**
- ▶ **Level of officers** of depts of Revenue, Forest & Tribal Affairs of State Govt to be appointed as members of Sub-Divisional, District & State Level Monitoring Committee u/s 6(8)
- ▶ **Composition/functions** of Sub-Divisional, District & State Level Monitoring Committee & procedure to be followed by them in discharge of their functions u/s 6(9)
- ▶ Any other matter which is required to be, or may be, prescribed

The Road Ahead

- ▶ **Large-scale awareness & information dissemination campaigns** reqd at local level informing both tribal & lower level officials about rights available under this Act
- ▶ IMP to develop detailed **strategy of trg & capacity building** of people responsible for implementing FRA: Panchayats, Gram Sabha, village level Forest Rights committee, etc
- ▶ **Relevant maps & documents should be made available to Forest Rights Committees & claimants:** simplify task of Gram Sabha in identifying & filing claims for individual & community rights
- ▶ **Clarity on time limit for settling claims needed:** Act does not specify time limit: officials & beneficiaries unaware of this
- ▶ Certain sections of environmentalists feel that **FRA bends more in favour of individual rights;** lesser scope for community rights

Questions and Answers

Thank You

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