

Forest Rights Act, 2006

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Abstract: *The Scheduled Tribes and other Traditional Forest Dweller (Recognition of Forest Rights) Act, 2006, is the key piece of forest legislation passed on 18th December, 2006. It has also been called the Forest Rights Act, the Tribal Rights Act, the Tribal Bill, and the Tribal Land Act. The act basically does two things: Grants legal recognition to the rights of traditional forest dwelling communities, partially correcting the injustice caused by the forest laws. Makes a beginning towards giving communities and the public a voice in forest and wildlife conservation. This act provides all information about forest right act, 2006 and their recent amendments.*

Keywords: forest, dwelling, reservation, recognition

1. Introduction

The Scheduled Tribes and other Traditional Forest Dweller (Recognition of Forest Rights) Act, 2006, is the key piece of forest legislation passed on 18th December, 2006. It has also been called the Forest Rights Act, the Tribal Rights Act, the Tribal Bill, and the Tribal Land Act. The act basically does two things:

- Grants legal recognition to the rights of traditional forest dwelling communities, partially correcting the injustice caused by the forest laws.
- Makes a beginning towards giving communities and the public a voice in forest and wildlife conservation.

Salient Features of Forest Rights Act:¹

Following are the salient features of FRA for proper understanding of the act.

- The act is in fact a means to recognise the rights of these tribals and gives rights to forests dwellers scheduled tribes and related forest dwellers. These rights have been recognised in sec.3 of the act that includes right to forest land in terms of living, holding, occupying the forest land. Rights to use the forest produce to collect and use it and any other rights that had been held by the forest dwellers traditionally. However, a certain number of rights were reserved with the government and were a subject to agreements of the Gram Sabha in order to divert land use for certain purposes.
- The FRA is basically of a right vesting nature and provides for consolidation and recognition of pre existing rights which meant that the rights were already in existence even before the FRA was formulated. It recognises that there has been a failure in recognition of rights of the forest dwellers and tribal people. These people had been living in the forests and their rights had been constantly been ignored and which had resulted in discrimination against these people.
- The act also talks about the rights and duties that the forest dwellers hold in terms of protecting the wild life and diversity of the forests and other ecological areas to promote sustainability in these areas. Chapter IV covers these areas and generally covers the procedures for

enforcement of these rights. One of the most important areas is the authority of the Gram Sabha. A Gram Sabha can be defined as a village assemble that consists of all the people residing in a village that are a part of the electoral procedure of the Indian Constitution. This is an important aspect related to decentralisation of power and under the act the Gram Sabha holds the final verdict in terms of decision on diverting the forest land to any other purposes, it would also be responsible for deciding upon the community rights and that of the individuals in the areas that has been marked as forest areas.

2. Definitions

On 12:12:1996 in,

T. N. Godavarman Thirumulpad Vs Union of India²

The Supreme Court of India defined forests as all areas that are forests in the dictionary meaning of the term irrespective of the nature of ownership and classification thereof shall be under the control of the forest department.

Sec 2(a) of this act defines “community forest resource” as customary common forest land within the traditional or customary boundaries of the village or seasonal use landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as sanctuaries and national parks to which the community had traditional access.

Sec 2(c) defines “forest dwelling scheduled tribes” as the members or community of the scheduled tribes who primarily resides in and who depend on the forests or forest lands for bonafide livelihood needs and includes the scheduled tripe pastoralist communities.

Sec 2(d) defines “forest land” as land of any description falling within any forest area and includes unclassified forests, undermarked forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks.

X X X vs In Re:- The Union of India & ors³

² Writ Petition (civil) No.202 of 1995.

³ PIL(suo motu) 66/2012, 67/2012, and WP(C) 648/2013 and 4860/2013.

¹ Anjoo B. Sharma, “The Indian Forest Rights Act(2006): A Gender Perspective” p.14.

The High Court of Gauhati in this case held that the definition of “forest land” under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 includes the Sanctuaries and National Parks.

Sec 2(f) defines “forest villages” means the settlements which have been established inside the forests by the forest department of any state Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of tanga settlements, by whatever name called, for such villages and includes lands for cultivation and their use permitted by the Government.

Sec 2(g) defines “Gram Sabha” as a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, Pads, Tolas and their traditional village institutions and elected village committees, with full and unrestricted prescription of women.

Sec 2(h) defines “habitat” as the area comprising the customary habitat and such other habitats in reserved first and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling scheduled tribes.

Sec 2(i) defines “minor forest produce” includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, hussar, cocoons, honey, wax, lac, tendu or kind leaves, medicinal plants and herbs, roots, tubers and the like.

Sec 2(o) defines “other traditional forest dweller” 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 bonafide livelihood needs.

Vedanta Case - Orissa Mining Corporation Ltd vs Ministry of Environment & Forest & others (MOEF)⁴

The court held that Scheduled Tribe, as such, is not defined in the Forest Rights Act, but the word “Traditional Forest Dweller” has been defined under section 2(o) as any member 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 bonafide livelihood needs. Article 366(25) of the Constitution states that Scheduled Tribes means such tribes or tribal communities or parts or groups within such tribes or tribal communities as are defined under Article 342 to be the Scheduled Tribes.

Explanation - for the purpose of this clause, “generation” means a period comprising of twenty-five years.

Sec 2(p) of this act defines “village”

“village” means-

- 1) A village referred to in clause (b) of sec 4 of the provision of Panchayats (Extension to the Scheduled Areas) Act, 1996: or
- 2) Any area referred to as a village in any State law relating to Panchayats other than the scheduled areas: or
- 3) Forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not: or
- 4) In the case of States where there are no Panchayats, the traditional village, by whatever name called;

Forest Rights

Sec 3 of this act includes the forest rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-

- a) Right to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood.
- b) Community rights such as nester, including those used in Princely States, Zamindari regime.
- c) Right to ownership, access to collect, use and dispose of minor forest produce.
- d) Other community rights of uses or entitlements such as fish and other products of water bodies.
- e) Rights including community tenures of the habitat and habitation for primitive tribal groups and agricultural communities;
- f) Rights in or over disputes lands under any nomenclature in any state where claims are disputed:
- g) Rights for the conversion of pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;

Salem Mavatta Ezhpulli Malaivazh vs The State of Tamil Nadu⁵

In this case the court held that it would be evident that the forest dwellers, Scheduled Tribes and other traditional forest dwellers have right of conversion of pattas or leases or grants issued by any local authority or any State Government on the forest lands to titles.

- h) Rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in the forests, whether recorded, notified or not into revenue villages;
- i) Rights to protect, regenerate or conserve or manage any community forest resources;

Kathud Ravidashbhai Dharmabhai & ors vs State of Gujarat⁶

The court directed the respondents to expedite the process of recognition of community rights over forest resources including right to protect, conserve, regenerate forests for sustainable use and cover all villages in the same and also to expedite the process of conservation of forest settlement villages into revenue villages.

⁵ Writ Appeal No. 376 of 2008 decided on, 20 October 2009.

⁶ C/SCA/11559/2017.

⁴ (2008) 2 SCC 222, (2008) 9 SCC 711.

- j) Rights which are recognised under any state law or laws of any autonomous district council or autonomous regional council;
- k) Right to access to biodiversity and cultural diversity and community rights to intellectual property;
- l) Any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or their traditional forest dwellers which are not mentioned in clauses (a) to (k) excluding the traditional rights of hunting, trapping, etc;
- m) Right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes or 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.

The Central Government shall diversify the forest land for following purposes which involve felling of less than seventy-five trees per hectare, namely:

- a) Schools;
- b) Dispensary or 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-up gradation or vocational training centres;
- l) Roads; and
- m) Community centres;

Such diversion shall be allowed only if it is for the purposes mentioned in this subsection for less than one hectare and the projects shall be subject to the condition recommended by the Gram Sabha.

Recognition, Restoration and Vesting of Forest Rights

Sec 4 of this act deals with the recognition, restoration and vesting of forest rights.

- 1) The Central Government shall recognise and vest forest rights in respect of all forest rights mentioned in section 3.
- 2)
 - a) The process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;
 - b) It has been established by the concerned agencies of the state Government, in exercise of their powers under the Wildlife (protection) Act, 1974(53 of 1972) that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;
 - c) The state government has concluded that other reasonable options, such as, co-existence are not available;
 - d) A resettlement or alternatives package has been prepared and communicated that provides a secure

- livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws the policy of the Central Government;
- e) The free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;
- f) No settlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package;
- 3) These rights shall not be subsequently diverted by the State Government or the Central Government or any other entity for other use.
- 4) A right conferred by sub-section (1) shall be heritable but not alienable or transferrable.
- 5) No member of a forest dwelling shall be evicted or removed till the recognition and verification procedure is complete.
- 6) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980 (69 of 1980).
- 7) The forest rights recognised and vested under this Act shall include 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 said acquisition.

Duties of Holders of Forest Rights

Sec 5 of this Act includes the duties of holders of forest rights:

- a) Protect the wild life, forest and biodiversity;
- b) Ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected;
- c) Ensure that the habitat is preserved from any form of destructive practices affecting their cultural and natural heritage;
- d) Ensure that the decision 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 biodiversity are complied with.

Authorities and Procedures for Vesting of Forest Rights

- 1) The Gram Sabha shall be the authority to initiate the process and to pass a resolution thereafter to forward a copy of the same to the Sub-Divisional Level Committee.

Arjun Ratansingh Jadhav vs The State of Maharashtra⁷

The High Court of Bombay in this case held that as per section 6, the Gram Sabha is the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to forest dwelling scheduled tribes and other traditional forest dwellers within the local limits of its jurisdiction. Petitioner has not shown document to show purchase from any such scheduled tribes as traditional forest dwellers.

⁷ Cri.W.P.No.681/2013.

- 2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee within sixty days from the passing of the resolution by the Gram Sabha.
- 3) The State Government shall constitute a Sub-Divisional Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.
- 4) Any person aggrieved by the decision of Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of passing of such decision of Sub-Divisional Level Committee.
- 5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.
- 6) The decision of the District Level Committee on the record of forest right shall be final and binding.
- 7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights.
- 8) All Three Committees shall consist of officers of the department of revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions at the appropriate level, appointed by the respective Panchayati Raj Institutions, of whom two shall be the Scheduled Tribe members and at least one shall be a woman, as may be prescribed.

X X X vs In Re:- The Union of India & ors

The court held that the Act contemplates constitution of Gram Sabhas and forest rights committees. The said Gram Sabhas and forest rights committees have to scrutinise and record the rights of forest dwellers and Scheduled Tribes living in the forest. In the present case, no gram sabhas or forest committees are constituted. The petitioners are all residents of the forest area since the 1950s and pattas have been granted in their favour in the year 1962. The summary eviction of the petitioners cannot be done without inquiry and without ascertaining their rights over the land in question.

Offences and Penalties

Section 7

Authority or committee contravenes any provision shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees; If the offence was committed without his knowledge he should prove that the offence was committed without his knowledge.

Section 8

No court shall take cognizance of any offence under section 7 unless the dispute is relating to a resolution of Gram Sabha.

Miscellaneous

Sec 9 to 14 of this Act includes some miscellaneous areas;

- 1) Any officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant

- within the meaning of section 21 of the Indian Penal Code.
- 2) No suit, prosecution or other legal proceeding shall lie against any officer or any authority or any employees of the State Government or the Central Government for anything which is in good faith done or intended to be done by or under this Act.
- 3) The Ministry of Central Government dealing with Tribal Affairs shall be the nodal agency for the implementation of this Act.
- 4) The Central government may time to time give in writing the general or special directions to the authorities.
- 5) This Act not in derogation of the provisions of any other law for the time being in force.
- 6) The Central Government may by notification make rules for carrying out the provisions of this Act.
- 7) Such rules may provide for all any of the following matters, namely:-
 - a) Procedural details for implementation of the procedure specified in section 6;
 - b) The procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of Forest Rights and the manner of preferring a petition to the Sub-Divisional Committee.
 - c) The level of officers of the departments of revenue, Forest and Tribal Affairs of the State government to be appointed as members of all the committees under this Act.
 - d) The composition and functions of all the committees and the procedure to be followed by them in discharge of their functions.
 - e) Any other matter which is required to be, or may be, prescribed.

Amendment-2012:

I. Main Features Of The Amendment Proposed:⁸

A National meeting on Forest Rights Act was held by the MoTA with the sole objective of discussing the recommendations made for the regional consultations. The amendments made after the discussions are concerned with:

- It was decided in this meeting that the number of quorum of the Gram Sabha shall be reduced from 2/3rd to 1/2 of the members so that the number of claimants to the forest rights shall be at least fifty percent of the claimants. The resolution to pass any claims shall be held in the presence of these claimants so there was a majority present between those voting for these rights.
- The decisions for rejection or modification shall be communicated to the claimants and reasonable time shall be given to the claimant in case he decided to file a petition against the decision.
- A procedure shall be laid down for the identification of the village forest and similar laws shall be made for bringing them into the main stream.
- The claims that shall fall under the category of non rejection shall be accompanied by two forms of evidence

⁸ Amisha Jain and Dr.Rama Sharma, "The Indian Forest Rights Act, 2006: Salient Features, Scope and 2012 Amendment Rules" P.105.

as specified in rule 13, the reasons for rejection shall be given in writing and technology such as satellite imagery shall be used in the treatment of the same.

- The Schedule Tribes in the Forest Rights Committee shall be represented by two third rather than one third as was presently being represented.
- The transit permits shall be modified in case of transportation of the minor forest produce and shall be done only by Committee constituted by Gram Sabha or a person authorised by the Gram Sabha. The royalties and other minor forest produce related revenue shall be collected by these Committees.

II. Some Features of Forest Rights Act 2012 Amendment Rules:⁹

- Forest dwellers can transport minor forest produce by any appropriate means of transport.
- Transit passes for transporting minor forest produce will be issued by a committee constituted by the Gram Sabha.
- The committee constituted under Gram Sabha will prepare conservation and management plan for community forest resources after forest dwellers rights on such resources are recognised.
- The Gram Sabha committee can integrate its management plans with the forest departments working plans if it considers this necessary.
- The Gram Sabha will approve all decisions of the committee pertaining to issue of transit permits, use of income from sale of forest produce or modification of management plans.
- Forests right related to protection, regeneration and management of community forest resources by forest dwellers for sustainable use should be recognised in all the villages; incase this is not done in a village the reason should be recorded by the District Level Committee formed to look into the Forest Rights Act claims.
- To ensure that right claims are not rejected illegitimately by the authorities, the new rules put addition conditions for rejection than those which were there in the draft rules. The authorities will now not be able to reject the claims for being absent from the field verification process.
- No committee or individual official at the Panchayat, Block or Forest range level except the Forest Rights Committee shall be eligible to receive, decide or reject the forest rights claim.
- The State Level monitoring committee shall report the progress on the implementation of the act and shall provide details to the committees that are involved.

3. Conclusion

It looks quite promising that Forest Rights Act shall be soon fully and completely implemented without facing its usual obstructions. The first step is already taken to access damage. Now appropriate measures to be taken to control damages and to take appropriate measures. Most of the problem will automatically be resolved when contradictions/

overlapping of Forest Rights Act related laws will be eradicated. However, the spirit of Forest Rights Act should always be kept in mind while applying Forest Rights Act and when positive approach is taken then only Forest Rights Act will be successful in eradicating historical injustice from the lives of the forest dwellers.

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