



The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006: An Affirmative Action for Development Induced Displaced Forest Dweller Tribes

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ABSTRACT

The tribal who were protecting the natural resources for the centuries are now being deprived of these natural resources for the development projects. The tribal area is full of natural resources which contains bauxite, iron ore, coal etc. these are required for the manufacturing industries. Deprivation of these natural resources are making them more vulnerable marginalized group. They become not only socially and economically marginalized groups but also physiological and cultural marginalized groups. The State is required to take 'affirmative action' to stop the marginalization of the tribal group. Generally the 'affirmative action' means as reservation policies for the marginalized groups in jobs. It is not the whole truth meaning of 'affirmative action'. Any action of the State to minimize the difference between the advanced group of society and non-advanced group of the society is affirmative action. The Central Government has enacted a law titled as The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to reduce the pain caused to tribes by development induced displacement. This article will explore how The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is working as affirmative action for tribes. It will also enumerate the pain suffered by the tribes in the process of development projects.

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Introduction

When we start to think about the marginalized groups spontaneously the pictures which come in our mind it is about the socially and educationally excluded groups of the society. In this marginalized groups the tribes also take part as the marginalized groups. They are the most untouched and underdeveloped section of the society. They do not constitute the part of the mainstream society. The government is saying that through the procedure of economic development in the tribal region they can be inducted into mainstream society. For this the government is taking the land of the tribes from the forest and to set up the industry on it. The government takes their land with a promise that the setting up of the industry in the area of tribals will bring the opportunity of job, education, economic growth and enhance the standard of lifestyle. The promises made by the government look prima facie very lucrative in nature but the non-execution of the plan mounting a sense of resentment in the heart of the tribes. The delays in the execution of promises made by the government send a message of being cheated to them. The tribes who have left their forest and land for a better life find themselves as the victim of development induced displacement¹. The post independence period was required to establish the manufacturing industries in India for this the central government has adopted the fifth year

plan. In order to establish the manufacturing industries there was need for the raw materials for the industry. The raw materials are located in rich natural resources area mainly tribal area. The government took the land from the tribal area to establish the industries with the promise for better lifestyle to the tribal community. At the beginning the tribes gave their land with full pleasure for better life and in the interest of the nation. Later on the tribal found themselves being cheated because the government was making the money but the benefits were not coming to the tribal. They were compelled to live in more derogatory lifestyle rather than earlier. After the post globalization era the taking of the forest and tribal area get the rapidly growth. Now the governments were acquiring the land for the private companies also at very low rate of compensation amount. This causes the growth of resentment which helps the naxalites² to gain the momentum of their movement. The consequences of these resentment were in acute in nature to the India. The government adopted affirmative actions to stop the feeling of resentment among the tribes. The government enacted new laws and policies to better understand the grievances of tribes and give them a legal remedy.

¹ Development induced displacement means that people are being displaced due to the big development project. Big development projects are like big dam, hydro power project, big industries etc.

² former prime minister manmohan singh has described naxalism as the single biggest security challenge to the indian state". Also former minister for rural development jairam ramesh blamed forcible land acquisition by psus led to naxal problem.(giriya shivakumar, *jairam: forcible land acquisition by psus led to naxal problem* the hindu, september 9, 2013 at p. 7)

The Sufferings of Forest Dweller Tribes

The pains which they suffer are incalculable. In 1947, after years of bitter struggle, India finally became independent. In a voice charged with the emotion, Jawaharlal Nehru proudly proclaimed to the nation that India had kept her 'tryst with destiny'. For the leaders of the nationalist movement as well as for the general populace, it must have been an exhilarating moment to stand on threshold of a newly independent country and imagine all the possibilities for progress that lay ahead³.

In India, after independence, great stress has been laid on industrialization to achieve a balanced development. This had given the scope for the exploitation of vast natural resources like bauxite, coal, aluminium, manganese etc. and this process had led to the establishment of large industries in different parts of rural India. Since independence, a number of industries such as steel plants at Jamshedpur, Rourkela, Bhilai, Durgapur and Bokaro Heavy Engineering Corporation at Ranchi, Bharat Heavy Electricals Ltd. at Ramchandrapuram, Coal Mines at Dhanbad and Hazaribag, Cement factories at Jhinkpuri and Ranjanaguda, Fertilizer factory at Talcher have come up in backward tribal areas. All these industries have displaced people from their habitats and occupations. A conservative estimate indicates that about 20 lakh people were displaced due to the establishment of industries in the past and out of these only 6.50 lakh people are rehabilitated⁴. In most cases the uprooted people are usually tribals and other economically weaker section of the society⁵. These people are forced to sacrifice their interests and sentiments attached to their traditional villages, homes and land in the larger interest of the society and nation, but for the tribals it has proved to be disastrous and created several problems in the process of their readjustment in the new environment⁶. Development projects impact people's lives in different ways. Some are forced to leave their home and relocate. They are known as displaced persons. For example, the 3,525 families uprooted from their habitat by the Upper Indravati Dam in Orissa are displaced people⁷. Also in the same category are the 8,500 – 9000 families that were displaced by the Dumbur Hydro-electrical Dam in Tripura and the 110 families displaced by the Panchgram Paper Mill in the Hailakandi district of Assam.⁸ The land is the people's livelihood, projects treat it as a commodity. Most of those who sustain themselves on the CPR are tribals and persons belonging to the poorest among the other backward castes (OBCs) such as quarry and fish workers. Many do not own land according to the present law: they sustain themselves on what is acquired by rendering services to the village as agricultural labourers, merchant, barbers etc. this is their livelihood but they are not considered land losers because they do not have legal right over the land. This approach ignores

the fact that land in the rural set-up is not only a site for agriculture or construction, or only a commodity, but is the means of livelihood for its legal owners and for all other dependants.⁹ The impacts of the development projects on the life people are very much diversified in nature. The working group on the development of Scheduled Tribes during the VII plan estimated that almost every development projects in India invariably resulted in the displacement of tribes, and their proportions among the uprooted ranged from 52% to 100% from project to project.¹⁰ The tribes live in a cloistered life of his own, whether he is a subsistence cultivator, hunter or food-gatherer. The tribes who are hunters and food-gatherer have well recognized claims to certain territory which they jealously guard and within they live in a state of ecological balance, achieved over centuries and even millennia. It is not easy for them to eke out a living in a different kind of terrain unless they go through a long phase of adaptation and adjustment.¹¹ Like the physical world around him, the social world of the tribal is also narrow. His kith and kin live within a narrow radius from his home. Hence he does not possess the advantage of having his relatives and friends in distant places to help him to resettle by offering him material and moral support. A tribal lives as an integral part of cohesive social world which is small in dimensions. His relations and interactions with fellow human do not partake of purposive associations as in the case of an urban citizen.¹² The government rehabilitates the tribes in the new colony but these new colonies are not very much helpful to them. For example in the Parvatipuram Taluk of Srikakulam District¹³. With the laudable intention of weaving away the tribes from shifting cultivation the government brought down some tribal families from the interior region to a newly built colony where alternative means of livelihood in the form of settled cultivation was sought to be provided. One such colony was located at Jatapu Kotapadu¹⁴. It had 100 newly built houses. 300 acres were set apart for reclamation of which 100 acres were to be brought under irrigation from nearby stream. Draught animals were distributed as also some seed money. But of the 100 families that were gathered there, 49 families left the colony in the first few years itself. Since then no effort on the part of the official could stem the trend of desertions. The main reason for the failure of the colony was that the officers in charge of it never perceived the importance of community cohesive.¹⁵ The

³ amita baviskar, in the belly of the river, 19 (oxford university press 2nd ed. 2004)

⁴ j.c.das, walter fernandes and sam rao, *the extent and prospects of displacement*, social action (1988)

⁵ n.subba reddy, the key issue: development, displacement and resettlement, the uprooted: development, displacement and resettlement 17 (v.sudarsen and m.a. Kalam, gian publishing housing, 1990)

⁶ ibid.

⁷ lancy lobo & shashikant kumar, land acquisition, displacement and resettlement in gujrat: 1947-2004, 15 (1st ed. Sage publication, 2009)

⁸ ibid.

⁹ ibid. At p. 14.

¹⁰ n.subba reddy, the key issue: development, displacement and resettlement, the uprooted: development, displacement and resettlement 17 (v.sudarsen and m.a. Kalam, gian publishing housing, 1990)

¹¹ ibid. At p. 18.

¹² ibid. At p. 18.

¹³ located in orissa state.

¹⁴ located in orissa state.

¹⁵ ibid. At p. 19. The recruitment of members was done in haphazard way. In some cases, the settlers were persons who had quarrels in their families and hence chose to leave their homes. In some other cases they were persons who contracted unorthodox marriages inviting excommunication. On the whole, the members represented disparate elements assorted from different localities. They could not evolve a community life or forge a common leadership. There was no priest in the village nor a place of worship. The people had to go to their former places to conduct their rituals or to seek the help of a medicine man. The allotments of agricultural plots among different

greatest adverse impact is the displacement of tribes from their ancestral habitat and loss of traditional occupations like agriculture, forestry and associated activities.¹⁶ Although the government has paid compensation, it did not help in counterbalancing the social and psychological disturbances. It is also noticed that a new class of contactors has developed in the project area. There is sporadic increase in the incidence of crime and other illegal activities including forcing liquor and other vices on innocent people. The tribal societies which were once close and integrated are now becoming loose. The people have become more materialistic and individualistic.¹⁷

The establishment of large industries has brought certain environmental hazards, which will ultimately affect man, animal and plants. This environmental hazard causes ecological disbalance. The soil erosion, water logging, deforestation etc. emission of pollutants in the air, release of effluents in water and dumping of solid wastes in the open is bound to cause many a health hazard. The major environmental problems associated with the projects are: (1) disturbance of the land itself¹⁸; (2) soil erosion; (3) mine run off; (4) dislocation of water balance; (5) generation of dust, noise and fumes; (6) spread of diseases¹⁹ and disturbance of natural economic systems; (7) deforestation²⁰ and (8) disturbance caused by the creation of infrastructure^{21, 22}.

families could not proceed smoothly. There was not enough wet land to be distributed among all the families. Corporate decisions and collective actions were not possible in the kind of medley that the colony was. So it declined and disintegrated rapidly.

¹⁶ the eviction of tribes from their habitat is the most serious aspect of displacement. Forests and the natural surroundings play an important role in the social and cultural life of tribes. These natural surroundings are not provided for in the new settlements.

¹⁷ supra note 3 at p. 123.

¹⁸ In 1990, India had a land area of 328.7 million hectares (ha), 55.6 per cent of which considered arable. 45.68 ha or 25 per cent of arable land is irrigated. 22.4 per cent of India's land mass is designated as 'forest'. According to a pioneering study by B.B. Vohara who was the first estimate the extent the degradation of India's land only 42 per cent of the area designated as 'forest' is actually under adequate tree or grass cover; the rest is more or less completely devoid of vegetation.

¹⁹ The environmental pollution causes several chronic diseases like T.B., skin diseases etc. which are totally new for the tribal people. They do not know about the symptom of these diseases and the result of this the curable disease becomes an incurable disease. They are the poor people and it is very difficult for them to get the expensive treatment, which results into as they end up with the demise of the life of tribal people.

²⁰ According to the National Remote Sensing Agency, forest covered 55.5 million hectare (16.89 per cent of total land area) in 1972-5. During 1980-2, this area dropped to 46 million hectare (14.1 per cent of the total area). In the 1990s the forests cover a scant 32.8 million hectare or 10 percent of the total land area. Whereas four million hectares of forest area was 'lost' between 1951-76, over the last fifteen years 22.7 million hectares of forest have been cut down.

²¹ Deforestation, together with the emphasis on building embankments and dams, has led to steady increase in the incidence of floods in the fertile plains of north India. Annual flood damages increased nearly forty times from an average of Rs 60 crores a year during the 1980----- Ironically,

The tribal within the forest were never granted land, except for some partial rights of cultivation by the Forest Department. The state's 'eminent domain'²³ principle imposed the monopolistic rights of the state over forest by regulating the activities within them. The forest dwellers that used to survive on forest produce, hunting and fishing, were forced to practice settled agriculture²⁴. So if we look in totality, we find that the tribals have the grievances related to development induced displacement mainly are: (1) landlessness; (2) joblessness; (3) homelessness; (4) marginalization; (5) food insecurity; (6) increase in the health problem; (7) loss of access to common property; (8) social disarticulation; (9) loss of community services.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 As An Affirmative Action Affirmative actions mean those actions which are being taken to bring equality among the unequal. Popularly the affirmative actions are known as the actions related to employment in employment sector. If we take the meaning of the affirmative action with more liberal attitude we find that any action either it related to job or society to end up the inequalities can be categorized as the affirmative actions. Now in this section of the article the author will look what kind of affirmative measures have been taken to reduce the pains of tribal people in the development induced displacement process. In order to decrease the pain of forest dweller tribal people the Union Government has enacted a new Act named as The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006²⁵.

The purpose of this Act is 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 forest for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.²⁶

embankments and dams were constructed in order to control the damages caused by floods. Instead, they have prevented the nutrient-rich silt carried by rivers from being deposited in the soil, thereby depriving flood plains of a valuable source of fertilizer. The sediment now accumulates on the river bed, raising it so that river in spate overflows its side and devastates more land and property.

²² Ibid. at p.123-124.

²³ Doctrine of 'Eminent Domain' means that State can acquire the land for the public purpose on the payment of just compensation.

²⁴ Supra note 5 at p. 141. Settled agriculture with alien practices and implements resulted in starvation. Denied food sources in the forests, the tribes were pushed into the open hands of the money lender for their needs of food, implements, draught animals and seeds. Indebtedness among them was strikingly endemic, accepted as a fact of life, as natural as to have a wife and children.

²⁵ This Act received the assent of the President on 29th December, 2006. It extends to the whole of India except the State of Jammu and Kashmir. This Act has been divided into six chapters and contains 14 sections.

²⁶ This Act recognized the rights of forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance thereby

This Act defines about the “community forest resource²⁷” means customary forest land within the traditional or customary boundaries of the village or seasonal use of 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. The Act further defines “forest dwelling Scheduled Tribes²⁸” as the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Forest Rights Act) also defines few very important definitions like “Forest Land”²⁹, “Habitat”³⁰ etc. to give more rights to the Scheduled Tribes.

The Forest Rights Act 2006, confers certain rights on the Forest Dwelling Scheduled Tribes. These rights are (1) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood;³¹ (2) community rights;³² (3) right of ownership, access to collect, use, and dispose of minor forest produce;³³ (4) rights in over disputed lands under any nomenclature in any State where claims are disputed;³⁴ (5) rights for conversion of Pattas or leases or grants issued by local authority or any State Government on forest land to titles;³⁵ (6) rights of settlement of all forest villages³⁶, old habitation, unsurveyed villages and

strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers. This Act also say that forest rights on ancestral land and their habitat were not adequately recognized in the consolidation of States forest during the colonial period as well as in the independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.

²⁷ Section 2 (a) of the Forest Rights Act, 2006.

²⁸ Section 2 (c) of the Forest Rights Act, 2006.

²⁹ Section 2 (d) of the Forest Rights Act, 2006. “forest land” means land of any description falling within any forest area and includes unclassified forests, undemarcated forest, existing or deemed forests, protected, reserved forests, Sanctuaries and National Parks.

³⁰ Section 2 (h) of The Forest Rights Act, 2006. and Habitat includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes.

³¹ Section 3(1)(a) of Forest Rights Act, 2006.

³² Section 3(1)(b) of Forest Rights Act, 2006. Community rights such as nistar by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes. Also Section 3(1)(d) defines further about the 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.

³³ Section 3(1)(c) of Forest Rights Act, 2006.

³⁴ Section 3(1)(f) of Forest Rights Act, 2006.

³⁵ Section 3 (1)(g) of Forest Rights Act, 2006.

³⁶ Section 2(f) of Forest Rights Act, 2006. “forest villages” means the settlement which have been established inside the

other villages;³⁷ (7) right to protect, regenerate or reserve or conserve or manage any community forest resources;³⁸ (8) right of access to biodiversity and community right to intellectual property and traditional knowledge;³⁹ (9) right to any other traditional knowledge;⁴⁰ (10) right to rehabilitation.⁴¹

Besides these rights the government can acquire the forest land for the facilities managed by Government which involve felling of trees not exceeding seventy-five trees per hectare namely schools, dispensary or hospital, aganwadis, electrical and telecommunication lines, tanks and other minor water bodies, water or rain water harvesting structures, minor irrigation canals, non-conventional source of energy, skill upgradation or vocational training centers, roads, community centers.⁴² These projects will be cleared only when it is recommended by Gram Sabha. Section 4(2)(f) of the chapter III⁴³ of the Forest Rights Act, 2006 says that no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package. Further section 4(2)(e) says 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 is the first condition for the resettlement is the first condition.

The Forest Rights Act, 2006 also confers certain duties on Gram Sabha and village like institutions in areas where there are holders of any forest right under this Act are empowered to protect the wild life, forest and biodiversity, ensure that adjoining catchment area, water sources and other ecological sensitive area are adequately protected etc.⁴⁴ Section 6 of Chapter IV⁴⁵ says that Gram Sabha will be the primary institution to initiate the process for determining the nature and extent of individual or community forest rights or both that may

forests by 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 taungya settlements, by whatever name called, for such villages and includes land for cultivation and other use permitted by the Government.

³⁷ Section 3(1)(h) of Forest Rights Act, 2006.

³⁸ Section 3 (1)(i) of Forest Rights Act, 2006.

³⁹ Section 3 (1) (k) of Forest Rights Act, 2006.

⁴⁰ Section 3 (1) (l) of Forest Rights Act, 2006.

⁴¹ Section 3 (1) (m) of Forest Rights Act, 2006. 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 date of December, 2005.

⁴² Section 3 (2) of Forest Rights Act, 2006.

⁴³ The Chapter III titled as the Recognition, Restoration and Vesting of Forest Rights and Related Matters contains section 4 and 5.

⁴⁴ Section 5 of the Forest Rights Act, 2006. This section further imposes duties like ensure the habitat of forest dwellers is preserved from any form of destructive affecting their cultural and natural heritage; ensure that the decision taken in the Geam Sabha to regulate community forest and to stop activity which adversely affects the wild animals, forest and the biodiversity are complied with.

⁴⁵ The title of chapter IV of The Forest Rights Act, 2006 is Authorities and Procedure for Vesting of Forest Rights. It contains only one section i.e. section 6.

be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act. Any person aggrieved by the resolution of the Gram Sabha may appeal to Sub-Divisional Level Committee, District Level Committee and State Level Monitoring Committee. The petition should be resolved within sixty days of the acceptance of petition⁴⁶. No such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.⁴⁷

The offences and penalties⁴⁸ under the Forest Rights Act, 2006 is not very much encouraging because any authorities under this Act violates any provision will be liable only for the fine upto rupees of 1000. It can be easily paid by any authorities.

Conclusion

The Forest Rights Act, 2006 has tried to minimize the marginalization of tribal caused by development induced displacement of tribal in some way. It has tried to save the tribal's common natural resources for the future of tribal. The

Act has the provisions for the active consultation of Gram Sabha for the resettlement of the tribal. The Act has also the provision of alternative livelihood for the tribal. This Act has a good intention to reduce the pains but the execution of the Act will tell about the result. The provision for the penalty in contravention of the Act is not looking very much encouraging. The penalties should not be limited only to the fines but it should also cover the imprisonment. The amount of fine should be increased from 1000 rupees. This Act is required to take the special provision of the skill development for tribes; it will make them more economically empowered. This Act is a good attempt to conserve the common property resources of the tribes. Over all this piece of legislation is a good example of affirmative action for the forest dweller tribes. The India has witnessed the result of overlooking the interest of forest dweller tribes in the Niyamagiri district of Orissa. In the Niyamagiri district, the tribes were opposing the Vendanta project because it was hampering the livelihood, cultural interest of the tribes living in that area. The Vedanta project was also disturbing the ecological balance in the Niyamagiri. So the Vendeta project was having multiple adverse impact on the life of the tribes. The civil society and tribes fought against the project for long time. At last the central government realized the level of resentment of the tribes and decided to withdraw the project and return the land of the tribes. So in order not to repeat these incidents in future the government should act with full caution because the tribes are not anti-development. They want development but with full consultation and confidence.

⁴⁶ First proviso of Section 6 (2) of The Forest Rights Act, 2006 and Section 6(3) of The Forest Rights Act, 2006.

⁴⁷ Second Provisos of section 6 (2) and (4) of the Forest Rights Act, 2006.

⁴⁸ Section 7 and 8 of the Forest Rights Act, 2006 mention about the offences and penalties. Section 7(1)says Where any authority or Committee or officer or member of such authority or committee contravenes any provision of this Act or any rule made thereunder concerning recognition forest rights, it or they shall be deemed to be guilty of any offence under this Act shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees.