

Land and Forest Issues in Scheduled Areas of Andhra Pradesh and Telangana

By

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Some Basic Statistics - All India

(Source: Census of India and MoTA, GOI)

- Total Scheduled Tribe Population (2011Census)- 10.43 Crores
- Percentage to total Population - 8.60
- More than 50% in Fifth Scheduled Area states namely:
Rajasthan , Gujarat, Maharashtra, Madhya Pradesh,
Chhattisgarh, Andhra Pradesh, Telangana, Orissa, Jharkhand
and Himachal Pradesh
- 705 Scheduled Tribes with many tribes living in more than one state
- 75 Particularly Vulnerable Tribal Groups

Why land and forests are so important to tribals?

- Land and forests are the only sources of livelihood for more than 90% of tribal population even today
- Concept of village territory (Haddu or Sivaru) still very strong
- Forests within this village territory are still considered by tribals as Village Common Property Resource
- Ritual association- belief that their gods and goddesses live in forests (sacred groves) and on hillocks
- Economic Association- livelihood
- Tribal traditional political organization is still strong to ensure equal access to all members and to protect individual rights over land and MFP

Conflicts in Pre and Post Independence Era

- ❖ There were several revolts in tribal areas around land and forest issues for over 200 years
- ❖ Most centered around forest and land issues
- ❖ Started from middle of 18th century . A few examples from A.P. are:
 - Rampa Rebellion - 1813
 - Khond Rebellion - 1920
 - Gond Rebellion - 1940
 - Tribal Fitures in EG and Vsp Agency- 1922
 - LWE supported Movements - 1964 onwards
- * Sri V. Raghavaih (Tribal Revolts : Adimjati Sevak Sangh, 1971) enumerated more than 200 revolts by tribals all over India.

Special Regulations in Pre-Independence Era

- ❖ Policy of Exclusion was followed in British Ruled areas
 - Ganjam and Vizagapatnam Districts Act - 1839
 - Scheduled Districts Act - 1874
 - Areas Of Modified Regulation - 1919
 - Excluded and Partially Excluded areas
(as part of Government of India Act) - 1935
 - Andhra Pradesh- Agency Tracts Interests
and Land Transfer Regulation - 1917
- ❖ Hyderabad State also had similar law –
Hyderabad Tribal Areas Regulation - 1949

Ganjam and Vizagapatnam Act, 1839 (Act No. XXIV) Of 1839

- Zamindaries and Hill Zamindaries (Tracts) of Ganjam and Vizagapatnam District covered by this Act were mentioned in the Act.
- Administration of Civil and Criminal justice (Superintendence of Police), Collection and the Superintendence of revenue vested with the District Collector as Agent for the State Government.
- Scheduled areas under the administration of Agent are being known as Agency areas since then
- State Government is competent to prescribe Rules for Agents and has powers to alter limits of tracts.

The Scheduled Districts Act 1874

(Act XIV Of 1874)

- Extended to Scheduled Districts mentioned in the first Schedule
- Local Government may from time to time may declare
 - a) What enactments are actually in force or not actually in force
 - b) Correct any mistake of fact in any notification issued under this section
- Local Governments may from time to time appoint officers to administer Civil and Criminal justice,.....to conduct the administration within Scheduled Districts.
- Under Agency Rules issued, Agent to state government vested with same powers as are vested in district and revenue courts and Agency Divisional officers with the same powers as are vested in the subordinate and revenue courts.
- Agent empowered to appoint any of his subordinates as Agency Munsif.

Agency Tracts Interest and Land Transfer Act, 1917 (Act I of 1917)

- H. E. Sullivan, First member Board of Revenue, Madras enquired in to disturbances in Rampa Country in 1880.
- Manasabdari of tenure of Rampa held by Rampa Bhupathi Deva were cancelled absolutely and forever.
- Muttas were settled for hill Zamindars
- Act I of 1917 to Regulate the Rate of Interest and Transfer of Land in the Ganjam, Vizagapatnam and Godavari Agency tracts promulgated .
- Agency tracts, Agent, Hill tribe , Immovable Property, Prescribed and Transfer were defined.
- Transfer of immovable property by a member of a Hill Tribe shall be absolutely null and void unless made in favour of another member of a Hill Tribe or with the previous consent in writing of the Agent or of any other prescribed officer.

Government of India Act. 1935

Chapter V – Excluded and Partially Excluded Areas.

- Present day Fifth Schedule Areas broadly correspond to Partially Excluded Areas and sixth Scheduled areas to Excluded areas
- No Act of the federal legislature or of the provincial legislature shall applied to excluded or partially excluded areas unless Governor by public notification, so directs for its application totally or to any specified part
- Governor may make Regulations for the peace and good Government in excluded or partially excluded area.

The Hyderabad Tribal Areas Regulation, (Regulation No. III of 1359F)

- Agent and Assistant Agent appointed by Government.
- Government may by notification in the official gazette direct that any Act, Regulation or rule time being in force shall not apply to any notified tribal areas or shall apply with omissions and modifications as may be so specified.
- Government may, by notification in the official gazette make such rules as appear to them to be necessary or expedient for the better administration of any notified tribal area in respect of tribals and of their relations with non tribals.
 - Barring jurisdiction of courts of law.
 - To transfer to Agent of all suits or proceedings pending before any court of law or revenue authority for the eviction of any tribal from lands or house site in notified area.

The Hyderabad Tribal Areas Regulation, (Regulation No. III of 1359F) Contd....

- Vesting in the Agent or Assistant Agent of all Civil and Revenue Jurisdiction in all cases involving the rights of any tribal in any land, house or house site situated in any notified tribal area.
- To try any criminal offence in which a tribal is involved as a party
- Prohibiting the grant of Patta right over any land in any notified tribal area to a non tribal and empowering the Agent to cancel or revise any title.
- Authorizing the Agent to recommend to government for revision or cancellation of any forest settlement made under Hyderabad Forest Act 1355F.
- To exclude land from a reserve forest, up to limited extent with concurrence of DFO.

The Hyderabad Tribal Areas Regulation, (Regulation No. III of 1359F) Contd....

- To dismiss official of any government department who is guilty of abusing his position.
- To extern from a notified tribal area any non tribal who is presence in notified area is likely to be detrimental to the interests of tribals.
- To abolish Patel and Patwari Watans.
- To control money lending.

Post Independence- Tribal Panchsheel of Nehruji

1. People should develop along the lines of their own genius
2. Tribal rights in land and forests should be respected
3. Train and buildup a team of their own people to do the work of administration and development
4. Should not over administer these areas
5. Judge results not by statistics but by quality of human character that is evolved

Fifth Schedule - A Constitution within a Constitution

Fifth Schedule of Constitution

- Fifth Schedule is referred to as Constitution with in Constitution
- Fifth Scheduled areas declared by President of India
- Governor has special powers to
 - ❖ amend existing laws made by Parliament or State legislature
 - ❖ make Regulation to protect tribal interest on land and money lending
- Tribes Advisory Council to be constituted by governor is referred to as mini assembly to advise government on all matters relating to tribals
- Governor should send annual report on admn. of sch. areas to President

Declaration of Scheduled Areas

Part C 6 - Scheduled Areas

1. In this Constitution, the expression “Scheduled Areas” means such areas as the President may by order declare to be Scheduled Areas .

2. The President may at any time order : -
 - (a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;
 - (b) alter, but only by way of rectification of boundaries, any Scheduled Area;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of a Scheduled Area; and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub paragraph (1) of this paragraph shall not be varied by any subsequent order.

The criteria for declaring any area as a “Scheduled Area” under the Fifth Schedule are:

- Preponderance of tribal population,
- Compactness and reasonable size of the area,
- A viable administrative entity such as a district, block or taluk, and
- Economic backwardness of the area as compared to neighbouring areas.

Declaration of Schedule Tribes

- Art. 342 (1) The President may after consultation with the Governor or Rajpramukh of a State, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State.

- 342 (2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

The criteria followed for specification of a community as a Scheduled Tribe are

- a. Indications of primitive traits,
- b. Distinctive culture,
- c. Geographical isolation,
- d. Shyness of contact with the community at large, and
- e. Backwardness.

Governor's Powers

5. Law applicable to Scheduled Areas

1. Notwithstanding anything in this Constitution, the Governor or Rajpramukh, as the case may be, may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect

Governor's Powers

2. The Governor or Rajpramukh, as the case may be may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power such regulations may : -

- (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;
- (b) regulate the allotment of land to members of the Scheduled Tribes in such area;
- (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

Governor's Powers

3. In making any such regulation as is referred to in subparagraph (2) of this paragraph, the Governor or Rajpramukh may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.
4. All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.
5. No Regulation shall be made under this paragraph unless the Governor or the Rajpramukh making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

Report by the Governor or Rajpramukh to the President regarding the administration of Scheduled Areas

The Governor or Rajpramukh of each State having Scheduled Areas therein shall annually or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said area.

Tribes Advisory Council

- 1 There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State.
- 2 Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representative and the remaining seats shall be filled by other members of those tribes.

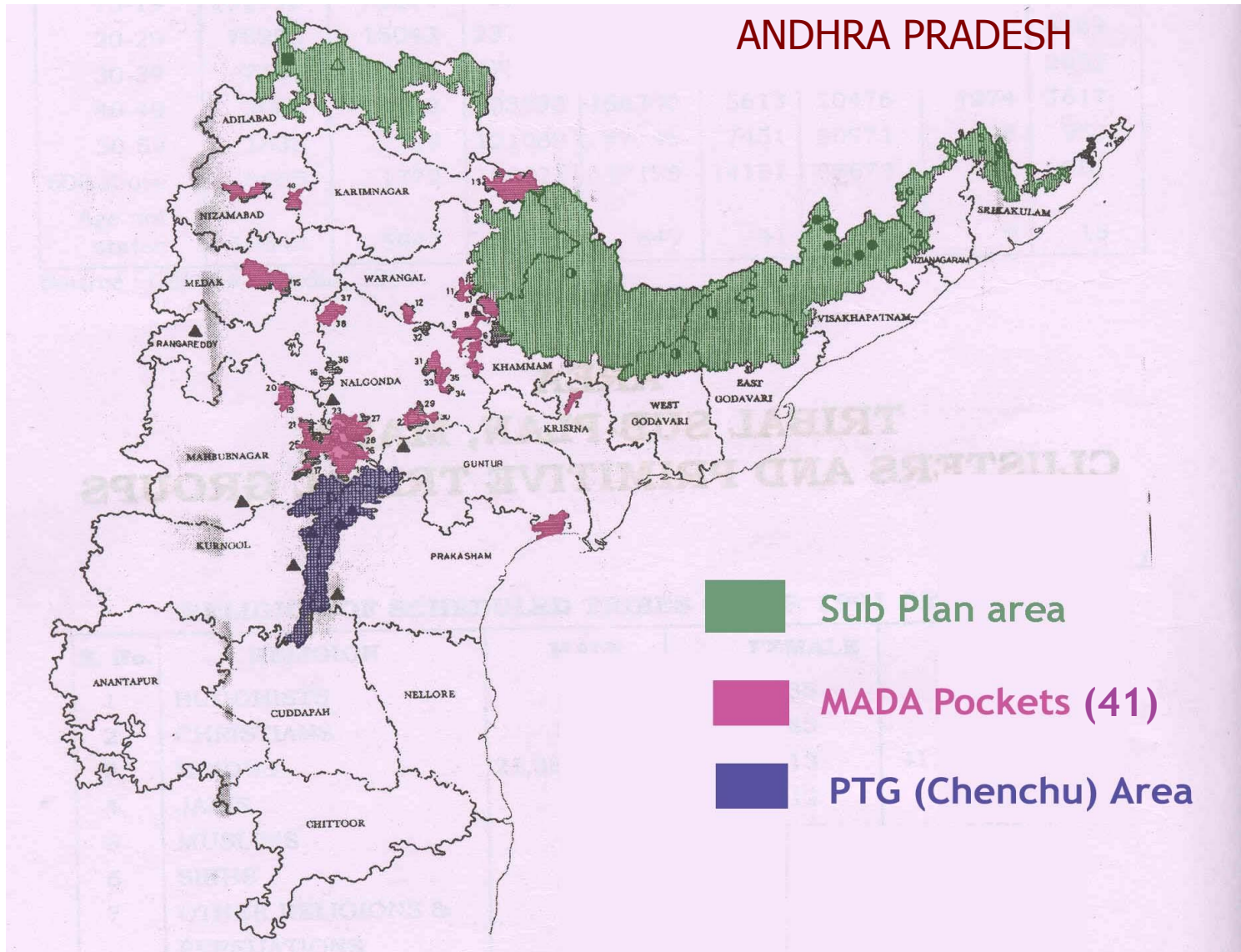
Tribes Advisory Council

3. It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor or Rajpramukh, as the case may be.
4. The Governor or Rajpramukh may make rules prescribing or regulating as the case may be :
 - (a) The number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof;
 - (b) The conduct of its meetings and its procedure in general; and
 - (c) All other incidental matters

Amendment of the Fifth Schedule

- 1 Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended any reference to this Schedule in this Constitution shall be constructed as a reference to such Schedule as so amended.
- 2 No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

TRIBES OF A.P. AND AREAS OF THEIR HABITATION



Scheduled Tribe Population

Total :35 Scheduled Tribes

-31 of them living mostly in Scheduled Areas

(In Lakhs, as per 2011 Census)

Sl. NO.	Name of the State	Total Population	ST Pop.	% of S.T Population
1	A.P	493.9	26.31	5.32
2	T.G.	351.9	32.88	9.34

S.T Population in Scheduled Areas and Outside

Sl. NO.	Name of the State	Total S. T. Population	S.T. Pop in Scheduled District	S.T Pop. in non Scheduled Districts
1	A.P	26.31	13.43	12.88
2	T.G.	32.88	21.57*	11.31

*In some Scheduled districts of Telengana like Warangal and Mahboobnagar, large proportion of S.T. population live outside Scheduled areas

Special laws to Protect Tribal land in Scheduled areas

- Scheduled Areas Land Transfer Regulation,1959
- Agency Settlement Regulation,1970
- Panchayats Extension to Scheduled Areas Act ,1998
- Land Acquisition, Rehabilitation & Resettlement Act,2013

AP Scheduled Areas Land Transfer Regulation, 1959

➤ Notwithstanding any thing contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe of a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.

A.P. Scheduled Areas Land Transfer Regulation, 1959

- Transfer means mortgage with or without possession lease, sale, gift, exchange or any other dealing with immovable property not being testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing.

A.P. Scheduled Areas Land Transfer Regulation, 1959. (as amended in 1970, 1971 and 1978)

- Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Scheduled Tribes, shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe. (1 of 1970)
- Transfer of land between non tribal and non tribal is prohibited. (1 of 1970)
- Mortgage without possession to any co-operative society or to a bank permitted (1 of 1971)
- Offences under Regulation to be cognizable (as amended in 1978).

A.P. Scheduled Areas Money Lenders Regulation ,1960

- Money Lender to obtain license annually.
- Money Lenders to exhibit their names over shops in the chief language of locality with the word “Money Lender”.
- Interest and charges allow to money lender are also defined.
- Rules framed in 1961.

A.P. Scheduled Tribes Debt Relief Regulation 1960.

- All interest outstanding as on 1st January 1957 shall be deemed to be discharged.
- Where the sum paid including interest is twice the amount of principal, the principal deemed to have been wholly discharged.
- Rules issued in 1960 and 1972.

The Andhra Pradesh Muttas (Abolition And Conversion into Ryotwari) Regulation 1969

- Muttas in certain Scheduled Areas have been abolished and converted into Ryotwari lands.
- All rights and interests of Muttadars stand transferred and vest with government.
- Director of Settlements to carry out survey and settlement operations in Muttas and introduce Ryotwari settlements.
- Ryots or tenants in the Mutta be entitled to a Ryotwari patta provided such possession is not against the provisions of LTR.
- Muttadar is also entitled to a Ryotwari patta in respect of Agricultural lands lawfully held by him.
- Rules issued in 1970.

The Andhra Pradesh Mahals (Abolition and Conversion In to Ryotwari) Regulation, 1969

- Mahals in the Scheduled Areas of Nugur, Alabaka and Charla in Khammam district abolish for conversion into Ryotwari lands.
- Entire Mahal (including all communal lands, poram bokes, waste lands, pasture lands, lanka lands, forest, mines and minerals, quarries, rivers and streams, tanks, irrigation works, ferries and buildings) shall stand transferred and vest in the government free from all encumbrances.
- Relationship between proprietor and tenant shall be extinguished.
- Director of Settlements shall carry out survey and settlement operations.
- Tenant is entitled to Ryotwari patta if the possession or occupation is not against the provisions of LTR. Rules issued in 1970.

A. P. Scheduled Areas Ryotwari Settlement Regulation 1970 (Regulation 2 Of 1970)

- A Regulation to provide for the Ryotwari settlement of certain lands in the Scheduled Areas in the Andhra Area of the State of Andhra Pradesh in respect of which no settlement has been effected.
- Director settlements to carry out the survey and settlement operations in the scheduled areas.
- Government shall appoint one or more settlement officers who shall be subordinate to the Director.
- Ryot is entitled to Ryotwari Patta if the possession or occupation is not against the provisions of LTR.
- Rules issued in 1971.

The Andhra Pradesh Assigned Lands (Prohibition Of Transfers) Act, 1977. (Act No. 9 Of 1977)

- Assigned land means lands assigned by the Government to the landless poor people.
- Transfer of Assigned lands (any sale, gift, exchange, mortgage with or without possession, lease or any other transaction with assigned lands, not being a testamentary disposition and includes a charge on such property or a contract relating to assigned lands in respect of such sale, gift, exchange, mortgage, lease or other transaction) is prohibited.
- Assignment of lands should not be against provisions of LTR

The Andhra Pradesh Assigned Lands (Prohibition Of Transfers) Act, 1977. (Act No. 9 Of 1977) - Contd

- Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house-site on the date of such commencement.
- Registration of Assigned lands prohibited. Rules issued in 1978.LTR applies to assigned lands also

LTR-Implementation Issues

- More than 50% of cases (land also) decided in favour of non-tribals in SDC court
- It was noticed that tribals were not given rightful opportunity to contest their case and cases were decided in favour of non tribals by default
- No legal support to tribals at any stage
- SDCs were mostly posted while on the verge of retirement or as a punishment or on promotion only to leave the place at the earliest or to work on deputation elsewhere
- Large appeals pending in government /high court; files lost in high court
- 367 fictitious orders of high court covering 2937.60 acres were found by CID in West Godavari district in 2004.MROs connived with non tribals.
- General attitude among officials from 1980 onwards to avoid implementation of LTR and “play safe”

Survey and settlement issues- Implementation issues

- Pattas were given in more than a lakh acres under Muttas, Mahals Abolition and Agency Settlement Regulations against the provisions of LTR
- For thousands of acres assigned, Pattas were issued without physically handing over the land
- Where government lands were under cultivation by the tribals, Pattas were not issued
- For lands held by tribals for generations, the Pattas were still in the names of grand parents
- Survey not completed in many parts of Chintapalli agency and records of earlier survey were reported to have been lost

Laws to Providing Rights to Forest Dwellers

1. Andhra Pradesh Forest Act, 1967
and A.P. State Forest Policy ,1993
1. Wildlife Protection Act, 1972 (GoI Act)
2. The Scheduled Tribes and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Act, 2006 (GoI Act)
3. Andhra Pradesh Panchayat Raj (Amendment Act), 1998 -
4. The Andhra Pradesh Scheduled Areas Minor Forest Produce
(Regulation of Trade)-GCC
5. Andhra Pradesh Minor Forest Produce (Regulation of Trade)
Act, 1971

Settlement of Rights under A. P. Forest Act,1967

- As per Sec (4) of Andhra Pradesh Forest Act any land can be declared as Forest land. However, certain procedures are prescribed
- Forest Settlement Officer has to be appointed who would enquire in to the rights of people and settle them before recommending for final notification under Sec 15 of the Act.
- Completion of enquiry pending in 30 lakh acres
- FSOs post is vacant for most of the time
- Disputes in boundary for hundreds of Kms is resulting in cleavage between Forest officials and tribals

Wild life Protection Act, 1972

- Collector 's proclamation: (a) specifying, as nearly as possible, the situation and the limits of the sanctuary; and (b) requiring any person, claiming any right
- Collector shall, after service of the prescribed notice up on the claimant, expeditiously inquire into the existence of any right .
- Thus the Wild life Protection Act,1972 provides for clear demarcation of the boundaries , proclamation by state government ,enquiry and settlement of rights by District Collector.
- However, in several WL Sanctuaries, the rights detemination was not complete. Eg: Many Chenchu enclosures in Tiger reserve in Srisailam are still not revenue villages . Similar problems in other sanctuary areas

Forest Rights Act, 2006

- FRA is the short form of *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006* enacted by parliament.
- This is an “Act extends to the whole of India except the state of Jammu and Kashmir”.
- The Scheduled Tribes and the other Traditional Forest Dwellers have been residing in the forests for generations and have been integral to the very survival and sustainability of the forest eco system.
- Their rights were not recorded during colonial period and after independence also.

FRA, 2006

- As there was no formal recognition to what were their traditionally recognised rights, the Scheduled Tribes and other Forest Dwellers are facing lot of problems in accessing the forest resources for their livelihood besides being criminalised.
- This is termed in the preamble of the Act as ‘historical injustice’.
- The objective of this Act is to “recognize and vest the forest rights and occupations in the forest land of these forest dwelling populations”.
- It was published in the Gazette of India on January, 2, 2007. The Rules for its implementation were issued on January, 1, 2008.

Who are eligible for rights under this Act?

- The forest dwelling Scheduled Tribes in states or area where they are declared as Scheduled Tribes and
- The Traditional Forest Dwellers are ‘ 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 forest land for bonafide livelihood needs’. Generation means twenty five years.
- The most important protection given is that “ Till the recognition and verification procedure is completed, the Scheduled Tribe and Traditional Forest dwellers shall not be or removed from the land under his occupation”.

Rights are heritable but not alienable or transferable

- The rights conferred under this Act are heritable but not alienable or transferable.
- They have to be registered jointly in the name of both spouses in case of married persons and in the name of single head in the case of a house hold headed by a single person.
- In case of heritable right, the direct heir or in the absence of such heir, it shall be passed on to the next-of-kin.
- The rights shall be restricted to actual area under occupation but not exceeding four hectares in each case.
- The rights also includes right of land to forest dwelling for those Scheduled Tribes and Other Traditional Forest Dwellers displaced from their dwelling and cultivation with out land compensation and where land has not been used for the purpose for which it was acquired within five years of the said acquisition.

Eligibility date

- The Scheduled Tribes or tribal communities or other traditional forest dwellers, who had occupied forest lands before 13th, December, 2005 are eligible for the rights.
- There are no deadlines for completion of work.

What are the rights?

- The forest rights are individual or community tenure or both.
- They are 14 categories of Rights:
- Right to hold and live in the reserve forestland under the individual or common occupation for habitation or for self cultivation for livelihood.
- Community rights such as 'nistar', by whatever name called, including those used in erstwhile Princely States, Zamindari, or such intermediary regimes.
- Right of ownership, access to collect, use and dispose of minor forest produce which has been traditionally collected within or outside village boundaries. Etc

Diversion of Forest land for providing facilities by government up to one hectare

- Schools;
- Dispensary or hospital;
- Anganwadi,
- Fair price shop;
- Electric and telecommunication lines;
- Tanks and other minor water bodies;
- drinking water supply and water pipelines;

- Water and rainwater harvesting structures;
- Minor irrigation canals;
- Non-conventional sources of energy;
- Skill up gradation or Vocational Training Centres;
- Roads and
- community centres

Nodal Agency

- Ministry of Tribal Affairs, Government of India or any officer or authority authorized by the Ministry shall be the Nodal agency for implementation of the Act.
- At state government level, the Tribal Welfare Development Departments act as Nodal agencies for implementation of the Act.

STATE WISE STATUS ON IMPLEMENTATION OF FOREST RIGHTS ACT AS ON 31-10-2013

Sl.No	State	Individual Claims- Phase – I & II							
		Received	Extent	Distributed	Extent	Rejected	Extent	Pending	Extent
1	2	3	4	5	6	7	8	9	10
1	Andhra Pradesh	166441	352592	72807	170423 (48%)	69127	132724	24507	49443
2	Telangana	230968	832914	94295	305979 (37%)	92700	348810	43973	178125

Implementation issues -FRA

- Gram Sabhas were conducted mostly in main villages, thus denying opportunities for tribals living in hamlets situated near or inside forests
- Where Gram Sabhas were conducted, more than 50% claims for rights were rejected- misleading role of Forests guards suspected
- Community rights were vested with VSS instead of with Gram Sabha – against FRA
- Where titles were issued as per FRA, there were several mistakes in names, extent and even photographs
- GoI(PR)instructed to conduct Gram Sabhas again in places where there is large scale rejection and conduct in hamlets where they were not conducted - yet to be implemented

PESA for Self Governance

- 73rd Amendment to Constitution aims at transferring the governance to grass roots level,
- GoI Act 40 of 1996 and Act 7 of 1998 in A.P. extend P.R Act to Scheduled areas
- PESA tries to empower the Gram Sabhas in Fifth Scheduled areas with some more powers of self governance as per tribal tradition.
- Some of these powers include judicial powers also.
- All the functions to be performed by PRIs under PESA are already being performed by the executive at one level or other ;Therefore , problem in handing over these powers to people
- Rules issued in P R & R D (MDL.I) Dept, G.O.Ms.No. 66 Dated:24.03.2011, GoAP

PESA provisions relating to Land

- “Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution”.
- “The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level”
- “the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe”.

Implementation Issues - PESA

- PESA in A.P passed in 1998 and Rules issued in 2011 (13 years)
- Elections were held for Panchayats in 2013
- Training programmes to be taken up on large scale on PRI elected representatives to enable them to exercise their powers
- Implementation of Gram Sabha's rights over MFP, LTR , Excise policy and supervision of development institutions, officials and programmes are real challenges
- Care to be taken to see that non tribals and officials do not usurp tribal rights

MFP Trade- Contradiction in laws over Ownership Rights

- MFP defined in FRA- includes Beedi leaves also
- As per PESA, Gram Sabha is the owner of all MFP but it is weak and could not fight for its rights
- Trade of Beedi leaves monopolized by government- Forest dept organizes collection and disposal
- Girijan Cooperative Corporation was declared as Agent to government and vested with monopoly rights to procure 25 MFP items
- VSS was conferred rights over Community Resources- against FRA

Issues relating to Resettlement & Rehabilitation of Tribal Communities

Development Projects and Displacement

- Irrigation Projects – Eg. Polavaram
- Mining –Eg. Bauxite mining
- Industry- Eg. Industries in Khammam district
- Wild life Sanctuaries –Eg. Tiger Sanctuary Project in Nallamala forest
- Tourism Projects – Eg. Tourism in Araku valley

Procedure for Acquisition of land in the Scheduled Areas As per G.O.66

(1) When the Government considers land acquisition under any Act, the Government or the concerned authority will submit to the Mandal Praja Parishad the following written information along with the proposal:-

- (i) The complete outline of the proposed project including the possible impact of the project.
- (ii) Proposed land acquisition.
- (iii) New people likely to settle in the village and possible impact on the area and society, and
- (iv) The proposed participation amount of compensation, job opportunities, for the people of the village.

Procedure for Acquisition of land in the Scheduled Areas As per G.O.66

(2) After getting complete information the concerned Mandal Praja Parishad will be competent to summon the representatives of the concerned authorities and the Government to examine them either individually or collectively. It will be mandatory for all such persons summoned to furnish point-wise clear and correct information.

(3) The Mandal Praja Parishad after considering all the facts shall make a recommendation regarding the proposed land acquisition and rehabilitation plan of persons displaced.

(4) The recommendation of the Mandal Praja Parishad shall be considered by the Land Acquisition Officer.

Procedure for Acquisition of land in the Scheduled Areas (As per G.O.66)

- (5) In case the Land Acquisition Officer is not in agreement with the recommendations of the Mandal Praja Parishad, he will send the case again to the Mandal Praja Parishad for consideration.
- (6) If after a second consultation, the Land Acquisition Officer passes an order against the recommendations of the Mandal Praja Parishad, he shall record the reasons for doing so in writing.
- (7) In case of industrial projects, all the Mandal Praja Parishad that are influenced by such projects shall be consulted.

Procedure for Acquisition of land in the Scheduled Areas As per G.O.66

(8) The progress of rehabilitation plan should be placed before the Mandal Praja Parishad after every 3 months from the date of notification for land acquisition.

(9) If in the opinion of the Mandal Praja Parishad, suggested measures are not followed, the Mandal Praja Parishad may inform the State Government in writing regarding the same, and it will be mandatory for the State Government to take appropriate action.

R&R Package in PESA Areas As per G.O.66

(10) RR Package shall have necessary features as shown below:

- (a) Each project affected family of ST category shall be given preference in allotment of land in the ayacut.
- (b) Each tribal PAF shall get additional financial assistance equivalent to 500 days of minimum agriculture wage for loss of customary rights/usages of forest produce.

R&R Package in PESA Areas As per G.O.66

(c) Tribal PAFs will be re-settled close to their natural habitat of their choice, to the extent possible, in a compact block so that they can retain their ethnic, linguistic and cultural identity.

(d) The tribal families residing in the Project Affected Areas having fishing rights in the river/pond/dam shall be given fishing rights in the reservoir area.

(e) The tribal PAFs shall be resettled and rehabilitated within the Scheduled areas.

THE RIGHT TO FAIR COMPENSATION
AND TRANSPARENCY IN
LAND ACQUISITION, REHABILITATION AND
RESETTLEMENT ACT, 2013
No. 30 of 2013

- An Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution,
- a humane, participative, informed and transparent process
- for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation
- with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and
- make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons
- become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.

Special Provisions for SCs and STs

41. (1) As far as possible, no acquisition of land shall be made in the Scheduled Areas.

(2) Where such acquisition does take place it shall be done only as a demonstrable last resort.

(3) In case of acquisition or alienation of any land in the Scheduled Areas.

-the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained.

- in all cases of land acquisition in such areas, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central Act or a State Act for the time being in force:

Provided that the consent of the Panchayats or the Autonomous Districts Councils shall be obtained in cases where the Gram Sabha does not exist or has not been constituted.

(J) in case of a project involving land acquisition on behalf of a Requiring Body which involves involuntary displacement of the Scheduled Castes or the Scheduled Tribes families, a Development Plan shall be prepared. in such form as may be prescribed. laying down the details of procedure for settling land rights due, but not settled and restoring titles of the Scheduled Tribes as well as the Scheduled Castes on the alienated land by undertaking a special drive together with land acquisition.

(5) The Development Plan shall also contain a programme for development of alternate fuel, fodder and non-timber forest produce resources on non-forest lands within a period of live year, sufficient to meet the requirements of tribal communities as well as the Scheduled Castes.

(6) in case of land being acquired from members of the Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families initially as first instalment and the rest shall be paid after taking over of the possession of the land.

(7) The affected families o f the Scheduled Tribes shall be resettled preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity.

(8) The resettlement areas predominantly inhabited by the Scheduled Castes and the Scheduled Tribes shall get land, to such extent as may be decided by the appropriate Government free of cost for community and social gatherings.

(9) Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of the laws and regulations for the time being in force shall be treated as null and void. and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be made available to the original tribal land owners or land owners belonging to the Scheduled Castes.

(10) The affected Scheduled Tribes and Other traditional forest dwellers and the Scheduled Castes having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects.

(11) Where the affected families belonging to the Scheduled Castes and the Scheduled Tribes are relocated outside of the district. then. they shall be paid an additional twenty-five per cent. rehabilitation and resettlement benefits to which they are entitled in monetary terms along with a one-time entitlement of fifty thousand rupees.

(42) 1. All benefits, including the reservation benefits available to the Scheduled Tribes and the Scheduled Castes in the affected areas shall continue in the resettlement area.

2) Whenever the affected families belonging to the Scheduled Tribes who are residing in the Scheduled Areas referred to in the Fifth Schedule or the tribal areas referred to in the Sixth Schedule to the Constitution are relocated outside those areas, then, all the statutory safeguards, entitlements and benefits being enjoyed by them under the said Act shall be extended to the area to which they are resettled regardless of whether the resettlement area is a scheduled area referred to in the said Fifth Schedule or a tribal area referred to in the said Sixth Schedule or not.

(3) Where the community rights have been settled under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the same shall be quantified in monetary amount and be paid to the individual concerned who has been displaced due to the acquisition of land in proportion with his share in such community rights.

Implementation Issues- L.A.& R&R

- Ensuring implementation of PESA, FRA and LTR
- Conducting genuine Social Impact Assessment
- Conducting genuine consultation and taking consent of Gram Sabha
- Minimizing displacement
- Evolving R&R package in consultation with PAPs
- Ensuring continuity in implementation of R&R packages
- Including scope for mid term review and for making mid course corrections in R&R package

Unrest in Fifth Scheduled Areas

- The tribal's command over land and forest resources in these areas is slowly getting eroded.
- The growing unrest among tribals is an outcome of the continuing deprivation of tribal people due to exploitation from all sides and unemployment
- Manifested in the form of Left Wing Extremist movement.
- Of 76 Extremist Affected Districts, 32 are Fifth Scheduled area districts.
- Of 34 Most Extremist Affected Districts, 19 are are Fifth Scheduled area districts. (Source: Secretary, MoPR, Gol Lr. Dt. 21st May, 2010 addressed to the Chief Secretaries of PESA states)



N A M A S T E