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Resolution Passed in Kendriya KaryaKari Mandal Baithak

16th September, 2011-Guwahati,

Resolution No. 5. Old and New Forest Laws and their Implementation.

1. Indian Forest Act, 1927

Indian Forest Act, 1927 was enacted by the British. It is commonly assumed that the purpose of the Indian Forest Act was to protect the Forest. But this was not the case. It was passed by the British with the intention of making it easier for them to access the country's timber resources for their use in England.

It is little known fact that forest covers roughly a fifth of our country's land area; in which a different legal system operates. In some of these places, if you are caught with certain items of forest produce including bones of the dead animals, it is up to you to prove that you are innocent of a crime - and whether you go to jail depends on whether a forest officer kept proper records earlier. If you are using some tools or a cart or cultivating some land-whereas in most parts of the country this is a civil dispute, in forest areas, you can be evicted, fined or jailed for it. And if you are arrested for the second time; you cannot get bail and not only your property but that of your family can be confiscated if you "benefited" from an alleged crime.

The draconian powers of the Forest authorities - to arrest, to search without warrant, to confiscate property is primarily to preventing "unauthorised" access to forest produce. A forest bureaucracy came into existence with powers over vast areas of land and resources, but with hardly any accountability. In practice, the rights of tribals and forest dwellers were almost never recorded at the time of declaration of either reserved or protected Forest, with the result that their livelihoods and their very existence were criminalized.

The passage of the Forest Rights Act, 2006 was intended to democratize forest management and give back the right to forest dwellers to collect forest produce, cultivate their traditional land holdings and to control their community forest. But as with any bureaucracy, the forest bureaucracy does not like to give up its power; and forest dwellers continue to have cases filed against them for doing things that are now their legal rights.

Recently, the Central government has approved an amendment to the Indian Forest Act in the name of reducing false cases on tribals and forest dwellers. The amendment makes it possible for a forest official to "compound" an offense-essentially to release a person upon payment of a fine -for any offense valued upto Rs 10,000. This will supposedly make it possible for tribals and forest dwellers to be let off for their offences. But this 'benefit' ignores the fact that this amendment actually adds to the powers of forest officials-who now can impose

finances as well as threaten tribal people with arrest, jail and confiscation of property. If anything, this will lead to more cases not less.

2. Forest Rights Act, 2006-

A. Bamboo.

The Forest Rights Act, 2006 has defined bamboo as a minor forest produce, but state forest officers who hold a monopoly control over the Rs 10,000 crore annual bamboo business with the paper and pulp industry as the biggest benefactor for getting the raw material at dirt cheap prices, have refused to deal with it accordingly, as the Indian Forest Act, 1927 empowered the Forest Department to control it—from taking it out of the Forest to transporting or selling it.

B. Sale of MFPs.

Forest Rights Act, 2006 provide that the tribals can cut and extract bamboo, mahua, tendu and tamarind from the Forest for sale but rules lay down that they take out for sale only that much which they can carry on their heads or hand-pushed carts or bicycle. Such rules under the Forest Rights Act ensure that the Rs 50,000 crore trade in forest produce remains practically out of the hands of the tribals despite the law requiring otherwise. **K. K. Mandal welcomes the proposal of the MoTA to review such rules and change them to bring them in tune with the spirit of the law.**

C. Minor Forest Produce or Non-Timber Forest Produce (MFP or NTFP).

Dependence of a tribal family on minor forest produce (MFP) or what is otherwise known as non-timber forest produce (NTFP) varies from region to region and has been estimated by different agencies up to 80%. It is also related to proximity of the family to a NTFP-bearing forest. It is estimated that about 40 crores people living in and around forest depend on it to a smaller or a higher degree. But for majority of tribals it is a source of food, medicine, shelter and economy. Tribals have been keeping some of the items of MFP for domestic-use and some for supplementation of their income through sale.

The provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) was passed by Parliament in pursuance of Article 243 M (4) (b) of the Constitution. The PESA Act relates to Panchayats in Scheduled Areas in nine states. It calls upon state legislatures to endow Panchayats and the Gram Sabhas specifically with inter-alia, ownership of MFP. Some of the state governments have made laws for Sch Areas incorporating this provision. But many state governments have balked at the idea of transplanting in letter and spirit the desiderata of the PESA Act into their own legislations, as mandated in the Act. Practically all the concerned states have manifestly stated that it would undertake legislation conferring ownership rights of the MFP on Gaon Sabhas, hedging it with conditions like these rights will be supervised by the Forest Department or that only those items of MFP would be transferred to the Panchayats as are not being

collected or disposed of departmentally, contrary to the essence of the provisions contained in the PESA Act.

The KKM deplors that due diligence has not been exercised at the national and state levels for protection of ST interests.

D. Minimum Support Price for MFPs.

Honey, amla, gums, resins, tubers and tamarind and many more come from forest and find their way into our lives. But the tribals who pluck, dig and extract them get a pittance. The government had decided to provide a minimum support price (MSP) for some selected forest produce on the lines of wheat and paddy.

A committee was set up by the Panchayat Raj Ministry under the Chairmanship of T. Haque with representative from MoTA, MoEF, Rural Development, Home and Planning to recommend MSP for NTF produce. The Committee recommended setting up a central agency to fix the MSP for produce like honey, tamarind and amla that are collected from Forest. The MoEF has supported the move to provide the MSP for 12 key forest products. The Planning Commission has appointed two committees that are reviewing the recommendations of the Haque Committee in consultation with the panchayati raj, tribal affairs and environment ministries.

KKM urges that a final view must be taken by MoTA before the onset of monsoon next year and MSP should be introduced for some selected MFPs to combat the sudden drop in the sale price of some items of MFP.

3. A.) Somersault by MoEF in the implementation of Forest Rights Act.

In August, 2009 MoEF issued a directive to Forest Advisory Committee (FAC) to ensure that it had certificates from the affected Gram Sabhas confirming that their rights have been settled under FRA, and they were agreeable to the project for which lands were proposed to be diverted. This was done to make the clearance process under the Forest (Conservation) Act, 1980 in compliance with the FRA, 2006. POSCO, a South Korean, MNC has proposed to set up Rs 54,000 crore integrated steel plant at Paradip in Orissa. The MoEF has overruled the majority findings of a Committee appointed by the Ministry itself that POSCO and state government had not adhered to regulations while processing the environmental impact assessment report, the coastal zone regulations and whether the rights of the forest dwellers at the project site had been identified and settled before moving ahead with land acquisition. The Ministry under the pressure of Prime Minister's office gave their clearance simply on the assurance of the state government that no rights of the people existed on the land under FRA.

K. K. Mandal deplors that just as the state government ignored the orders, so did the MoEF which had issued the directive in August 2009. This deviation from the prescribed rules will embolden other states to usurp the rights of the tribals.

B.) Land Rights and Community Forests - Collection of Statistics Under FRA

Under FRA, 2006, every Scheduled Tribe living in the forest and traditionally forest dweller has to submit two prescribed applications, one for allotment and demarcation of forest land for cultivation and the other for community forest traditionally, used by the villagers to the Forest Rights committee appointed at the Gram Sabha levels which recommends their claims to sub-divisional level committee and SDLC in turn recommends the claims to district level committee which is the final authority. The claims for land and community forest can be rejected at every level.

The MoTA had prescribed proformas for collection of statistics about distribution of individual and community titles. The information compiled for the period ending 30th June, 2011 reveals that in respect of 9 states, 50% of claims filed were rejected. The highest rejection was in UP (76%), Bihar (74%), Maharashtra (65%), W. Bengal (58%), M. P. (58%), Chhattisgarh (55%), Andhra Pradesh (43%), Jharkhand (37%) and Orissa (28%). This indicates that a large number of cases were rejected. In fact, a study team appointed by the MoEF found that in Chhattisgarh a large number of cases were rejected due to impending elections to the state legislature and in some areas of the state the FRA was not implemented at all.

Community forest plays a very important role in the life of the tribals and no tribal or forest dwelling community can sustain itself without access to the traditional forest areas. Unfortunately, MoTA has failed to collect necessary data. We have information about 9 states where 28,467 applications were filed for demarcation of community forests but only in 3499 cases, the right of access to community forest was accepted, which means that in only 12% of cases for titles to community forests were granted. The lowest acceptance was in Karnataka (0.03%), followed by West Bengal (1.3%), Rajasthan (13.6%), Assam (14%), Chhattisgarh (16.10%), Tripura (20%), Maharashtra (21%), Orissa (31.8%) and UP (58.21%).

4. Setting up an Autonomous Environmental Protector of India (EPI)

KKM feels that the moot point is; Is our existing institutional architecture capable of addressing tomorrow's environmental challenges?

The role of central bureaucracy has waxed and waned depending on the personality of the Minister. The ministry at its dynamic peak, is incapable of doing much to lift the quality of environmental governance on the ground. Our nation will face in the coming decades daunting challenges: balancing claims over our natural resources with ecological considerations at all levels of decision makings, our population will climb to over 1.4 billion, large cities will come up, water stress will grow, shift in rainfall due to climate change, retreat of the Himalayan glaciers, air quality, disposal of waste, preserving our Forest and bio-diversity, protecting wild life and promoting the welfare of our tribals. Despite, four decades of national legislation to control pollution, we have failed to build a single credible pollution

institution. Not a single control board (SPCB) has the capacity or institutional integrity to implement effective programme or police industry which has played havoc with the life of tribals and environment in their habitats.

KKM of ABVKA after serious deliberations on the issues referred above, demands the central government that:

- 1. The amendment in the IFA as referred in para above 1 should have de-criminalised people's right and reduced official powers. It is time we scrap the Indian Forest Act 1927 and replace it with one that befits a democracy.**
- 2. Central government should muster the political will to rework the Indian Forest Act in consonance with the PESA Act, 1996 and Forest Rights Act, 2006 to ensure that the rights of the tribals guaranteed under these legislations to control MFPs which under the FRA clearly includes Bamboo and Tendu Leaves and other forest resources are not violated.**
- 3. KKM demands that the MoTA should ask the National Commission for Scheduled Tribes to get a rapid and detailed survey conducted in selected areas out of 194 Integrated Tribal Development Projects (ITDPs/ITDAs) in various States/UTs to indicate why there was such a large rejection of claims of land titles and community forests as mentioned in 3 B) above and whether the tribals were able to file their claims for grant of these rights in all states/UTs.**
- 4. There is an urgent need to create a new autonomous Environment Protector of India (EPI) to lay institutional foundation for our environmental security and protect the tribals from the looming disaster. The EPI would be constitutional custodian of our forests, rivers and other natural resources. The agency would report to Parliament and develop into an institution the people and tribals trust-a role being discharged by the Supreme Court in respect of our forest, at present.**