

Akhil Bharatiya Vanvasi Kalyan Ashram

Resolution passed in Kendriya Karyakari Mandal Meeting
30th September 2015-Nagpur.

Resolution No. 9. Governments Should Stop Deceiving the Forest Rights Act to Assure Implementation of laws in Inclusive Spirit.

Almost a decade ago, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) was passed. Janjatis and other traditional forest dwellers are dependent on forest at large scale. The work of settlement-recognition of these traditional rights related with livelihood means are being perpetually neglected since the colonial time which continued till sixty years of independence. To remove historical injustice, as accepted even in the Preamble of the Act itself, this Act was enacted.

This Act was result of long struggle of Janjatis, became target of deceiving since its inception and the Act enacted in early 2006 was made applicable in January 2007. This lengthy gap of a year was used in establishing 34 Projects of Tiger Reserves to defeat provisions of the already enacted FRA. Later, the spirit of the Act was missing in the Rules notified under the Act which are still being amended. The state governments started implementation of this Act in an arbitrary way following which the Ministry of Tribal Affairs, the designated Nodal Agency for its implementation has been compelled to issue continuing guidelines-interventions. The sequence of accusing this Act as an obstacle in the way of development which commenced in the tenure of UPA 2 is still continued till now.

The interface which was between the Janjatis and the forest department against and due to this historic injustice prior to the enactment of this Act, has now been changed between the forest ministry and the Ministry of Tribal Affairs (MoTA)-being designated Nodal Agency. News in media of this effect has become a common thing.

The PESA Act, 1996 is applicable only in 10 states having Scheduled Areas while the FRA is equally applicable in whole of the country. These both laws are supplementary to each other.

The debate of development versus Janjatis Rights-forest rights has reached a new height with the cases of POSCO and the Vedanta; and the deceiving Janjatis, their rights and step-motherly treating them and the MoTA by the governments have become more sharpen. Few such instances are being given as under:

1. Attempts to give ownership rights and control over minor forest produces (MFPs) and management; which are enjoyed by the Gram-Sabhas as of now, to the forest department in Maharashtra by summoning special Gram Sabhas (GSs) on 15th August last year,
2. Such attempts were observed in CG state in similar way by summoning Spl Gram-Sabhas on 15th August this year and directions to obtain ***No Forest Rights (FRs) Claims pending certificates from them*** in spite of the fact that no work of recognizing FR has taken place in 4 out of 18 districts. Moreover, the status of awarding Community Forest Right (CFR) is NIL in 16 out of 18 in the state.

Same is the story of Jharkhand where they have fixed a deadline of 2nd October of this year for this work.

3. The agenda of the GSs was dictated by the two states referred above which is solely the power and privilege of GSs, governments can simply suggest. Attempts of obtaining ***No FRs Claims pending certificates*** are ultra virus as there is no provision as such in the FRA. It is matter of relief that both states withdrew the impugned GOs due to immense public protests, timely intervention by the MoTA and Vanvasi Kalyan Ashram.
4. Notifications of Village Forest Rules, 2014 under the Indian Forest Act (IF), 1927 in MH and MP are also in similar line and clearly violation of the FRA 2006 and the PESA Act 1996. The Parliament has passed legislations like Forest (Conservation) Act, 1980, Biodiversity Act, 2002, Wildlife Protection Act, 1972, PESA Act 1996 and the FRA 2006 after independence. These legislations have reduced both utility and relevancy of the colonial law of IF 1927. Until and unless a new legislation of IF taking into consideration all the five enactments referred above is enacted to replace the IF of 1927, notifying rules and regulations under the IF 1927 contravening provisions of the 5 laws referred above, will be ultra virus and termed disregard to the authority of the Parliament.

The forest department wants to recapture functions of forest settlement and management- Nistar, marketing of MFPs and dividends in profits through the Joint Forest Management Committees (JFMs); and into its own hands and control through the JFMs. All such functions and powers have now been vested into the GSs and the Communities under the PESA Act and the FRA.

5. Government of India is moving towards not to go to Gram Sabhas for its consent in cases of diversion of forest lands for any project proposal if those are outside of Schedule Five or Six areas; and are subject to public hearing for Environment Impact Assessment (EIA). Whether the Public Hearing for EIA may be alternative of Gram Sabhas' consent? So many issues are related to livelihood means of Janjatis- their generations to come, their life-culture, grazing area and cremation ground etc on such forest land. Such forest land may be given subject to some conditions, given or not, all such issues are quite different with issues of EIA. Attempts to obtain consent from Village, Block or District Panchayats instead from GS are another area of concern. Higher level Panchayats are always under constant pressure of the government and the administration, very distantly represented of the project affected persons and this reduces their negotiating powers as well.

Both the above steps are being taken simply through executive orders, without obtaining nod of the legislature which is unfair and ultra virus.

6. The Ministry of Environment and Forest (MoEF) has urged all the states in a recent circular asking them to lease 40% of their barren-forest lands to private sector for developing forests on it and the produce of such developed forest would be utilized by them for their industries. Private Sector was trying hard for this venture since last two decades.

Though this is a new initiative; but the Janjatis have been restricted to avail just 10-15% of produce of such developed forest which is clearly a violation of the FRA.

7. The MoEF has hired services of two private institutes to suggest amendments in the environment laws and framework to implement recommendations of the T.S.R. Subramanian Committee. This

Committee was constituted by the MoEF in August last year. Earnest and Young (E&Y) Mumbai; and Amarchand Mangaldas and Suresh A. Shroff & Co; these two Attorney Firms are to be paid Rs 1.33 crores for this contract.

The fact that E&Y is engaged in profession of providing facilitation services in obtaining EIA Reports to the Private Players.

The said Subramanian Committee has been in controversy since its constitution due to its way of working, absence of any expert member and making recommendations going beyond the mandate given to it. One of such recommendations is to suggest amendment in the consent clause of the Gram Sabha under the FRA which (FRA), even doesn't include in the list of Six Acts given to the Committee by the MoEF for review. The Committee accomplished its task within three months!

The departmental Standing Committee of the Parliament rejected the Report of the Subramanian Committee in July this year considering all the points mentioned above. The Standing Committee recommended that the Government should consider of constituting a fresh Committee for review of environmental laws.

The Kendriya Karyakari Mandal (KKM) of Vanvasi Kalyan Ashram (VKA) deeply considered all the facts mentioned above. This is also a fact that the work of implementing the FRA moved very slowly even after passing a decade of its applicability; specially in implementing the Community Forest Rights; the progress of which is as dim as not even 10% of the desired work done so far.

The Hon PM directed the concerning authorities at centre to pace this work and complete it in a time bound manner. This was a welcome step on part of the PM, though might be intended to remove restraints and delays in clearance of the Projects proposed on forest lands. But the over enthusiastic system in states and at center tried to implement it in a haste and impractical way, violating the provisions of the FRA; as is clear by examples of CG and JH mentioned in para 2 above.

VKA is of firm opinion that the Janjatis too dream for fast development, want to see the country developed very soon and wish even to be a part in it. But for this, all stake holders in development (including Pvt Companies) should deal them with the spirit of honesty, transparency and equality. Janjati Society is simple, great hearted and a patriotic one. The deceiving and diplomatically treating them since last six decades should be stopped. We will be able in creating development friendly environment and thereby gearing up development tools faster if they too are made partners in development of the country.

KKM of VKA demands the central and all the state governments with this spirit that:

1. The implementation of the FRA should be trained done in a time bound manner and special campaign across the country, specially the work of recognizing the CFRs under Sec 3(1) (i) of the Act. The time frame of the campaign should be framed adequately practical, the machinery responsible for its implementation should be trained and their transfers should be avoided during the campaign,
2. Assure implementation of the FRA equally in 7 states of the NE and in the Protected Areas across the country. Many communities-Villages have ownership over forestland in many of the NE states. The provisions of compensatory afforestation (double of the land diverted for any project/non-forestry purpose has to be given in addition for plantation in such cases) as

provided in the Forest (Conservation) Act (FCA) 1980 and directions of the Apex Court in this regard should be reviewed.

3. FRA 2006, PESA 1996, FCA 1980, Wildlife Protection Act 1972 and such many enactments have been made since independence due to which the utility and relevancy of the Indian Forest Act, 1927 is mingled down. Hence enactment of new Indian Forest Act has become need of the new era, simply amendments in the IF 1927 will not serve the purpose. Unill such a new law is enacted, Village Forest Rules, 2014 under the Indian Forest Act (IF), 1927 in MH and MP should be scraped and no other state should enact any new law till then which may defeat provisions of the FRA and the PESA.
4. Center and the State governments should restrain in diversion of forestland through executive orders bypassing the provisions of the FRA and the PESA and should not tinker with the twos. Janjatis should be taken into confidence, made part of development; and address their due concerns arising due to projects by EIA and SIA, nation can be moved fast on the path of development, inclusive growth and everlasting sustainable development; which will be in the longer interest of the country,
5. Issue of handing over forests into private sector should be reviewed in all respects, specially giving due regards to the policies and laws like FRA and the PESA concerning livelihood means of Janjatis. Gram Sabhas should be consulted and consent obtained so that their interests related to MFPs and CFRs are protected in any way.

VKA calls upon all its workers, socio-political leaders of Janjatis and all Voluntary Organisations working among them to play their active role in all above works.

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