

Implementation of Right to Fair Compensation
and Transparency in LA,R&R Act
in
Scheduled/ Tribal Areas

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Objectives

- ▶ To ensure in consultation with institutions of Local Self Government & Gram Sabha
 - ▶ A humane
 - ▶ Participative
 - ▶ Informed and
 - ▶ Transparent process for land acquisition
 - ▶ With least disturbance to owners of land & other affected families
- ▶ Provide just & fair compensation to affected families
- ▶ Make adequate provision for R & R and
- ▶ **ensure that cumulative outcome of compulsory acquisition leads to improvement in their social & economic status.**

Background

- ▶ 1/4th of world's poor people live in India
- ▶ About 15 million rural households are poor & land less
- ▶ About 45 million families own less than 0.10 acre.
- ▶ Millions of families are without secured legal land rights
- ▶ The average size of operational holdings in India has diminished progressively from 2.28 ha in 1970-71 to 1.55 ha in 1990-91 to 1.23 ha in 2005-06
- ▶ 340 million people in India are dependent largely on agricultural wage labour

Background

- ▶ 85% of the farmers are Small & Marginal (NABARD Jan-Feb 2014)
- ▶ Small & Marginal holdings constitute about 44% of the operational land holdings.
- ▶ About 65% of the agriculture land is rain fed & dependent on vagaries of monsoon.
- ▶ Share agriculture in GDP had decreased from 30% (1990-91) to 14.5% (2010-11)
- ▶ 52% of the total work force is still employed in Agriculture

Background

- ▶ 1947-2000, about 60 million persons were displaced (Fernandes 2007)
- ▶ 60% of the displaced are STs & SC families
- ▶ Though constituting only 9% of the population, tribals have contributed more than 40% of the total land acquired so far.
- ▶ 85 lakhs STs were displaced till 1990 due to development projects (Ministry of Tribal Affairs)

Background

- ▶ Areas inhabited by STs are rich in all kinds of natural resources however, these are also pockets of poverty.
- ▶ Dependence of STs on land and forest resources for livelihood support and other day to day requirements.
- ▶ Problem of large scale land alienation in tribal areas particularly in Scheduled V areas.
- ▶ STs are the biggest victims of displacement due to development projects

Projects Vs Displaced Tribals

Project	State	Displaced Population	% age of Tribals
Karjan	Gujarat	11600	100
Maheswar	MP	20000	60
Sardar Sarovar	Gujarat	200000	57.6
Bhodhghat	MP	12700	73.91
Icha	Bihar	30800	80
Chandil	Bihar	37600	87.92
Koel Karo	Bihar	66000	88
Mahi Bajaj Sajar	Rajasthan	38400	76.28
Upper Indravati	Orissa	18500	89.2
Pong	HP	80000	56.25
Tultuti	Maharashtra	13600	51.61
Daman Ganga	Gujarat	8700	48.70
Bhakra	Punjab	36000	34.76
Masan Reservoir	Bihar	3700	31
Ukai Reservoir	Gujarat	52000	18.92

Issues

- Nature of Land Ownership
- Tribal beliefs and culture
- Customary & Traditional Tribal Laws
- Constitutional safeguards for STs in Schedule V & VI areas.
- Special Laws/Legislations applicable to Tribal Areas

Issues

- Tribal community claim absolute authority over the land they own/occupy
- They have their own system of land holding based on customary & traditional laws
- Concept of private ownership & legal titles is alien to tribal society
- Understand land in the traditional framework of community ownership & individual use
- Community decides about individual ownership

Issues

- Concept of village territory is very strong
- Forests within the village territory is considered by tribals as “Village Common property Resource”
- In scheduled areas, Govt. alone has the right to acquire land for public purpose
- Protective land laws, Forest laws & Court orders

Nature of Land Ownership

- Entire village Tribal Community (communal land system based on “Jhum”)
- Chief land with right to cultivation for individual members
- Clan based land tenure system /ownership
- Individual ownership
- Non tribal land ownership
- Govt. ownership

Legislations Specific to Scheduled V Areas

● Constitutional Safeguards

- Fifth Schedule, **Article 244 (1)**: Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes in any state other than Assam, Meghalaya, Tripura & Mizoram

- Sub-section(2) of section (5): The Governor 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.

Legislations Specific to Scheduled VI Areas

- ▶ **Schedule VI Areas, Article 244 (20) & 275 (1):** Provisions as to the Administration of Tribal Areas in States of Assam, Meghalaya, Tripura & Mizoram i.e. autonomous districts & autonomous regions
- ▶ **Constitution of District Councils & Regional Councils**
 - ▶ Power to make laws with respect to
 - ▶ (a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town.

Legislations Specific to Scheduled VI Areas

- ▶ Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes [by the Government of the State concerned] in accordance with the law for the time being in force authorising such acquisition;
- ▶ Constitution provides protection to STs from alienation of their land and natural resources to non-STs & other constitutional entitlements

Legislations Specific to Tribal Areas

▶ Other Acts/Legislations

- ▶ Land Transfer Regulation Act / Rules
- ▶ The Panchayats (Extension to Scheduled Areas) Act 1996 or PESA Act, 1996
- ▶ The Scheduled Tribes and Other Traditional Forests Dwellers (Recognition of Forests Rights) Act, 2006

Legislations to Protect Land Alienation

State	Legislations in Force	Main Features
Jharkhand	Chhota Nagpur Tenancy Act, 1908 Sec 46 Sec 49	Restricts transfer of land to non tribals Allows transfer of ST land to STs with permission of DC Allows transfer of ST land to non-STs with permission of Revenue Dept for industries & agriculture purpose

Legislations to Protect Land Alienation

State	Legislation in force	Main Features
Jharkhand	Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949	Prohibits transfer of ST land to non-ST and restoration of alienated land from unauthorized occupants.
	Bihar Scheduled Areas Regulation Act, 1969	Setting up Scheduled Area Regulation Courts
	Jharkhand Right to fair Compensation & Transparency in LA, R & R Rules, 2015	Consent of GS/Panchayat as per PESA, Quorum shall be at least 1/3 rd to consider the consent valid

Legislations to Protect Land Alienation

State	Legislation in Force	Main Features
Orissa	The Orissa Scheduled Areas Transfer of Immovable Property (By STs) Regulation 2 of 1956	Sec 3 (1) Prohibits transfer of ST land in Scheduled Area: any transfer of immovable property by a member of a ST, except by way of mortgage executed in favour of any public financial institution for securing a loan granted by such institution for any Agricultural purpose, shall be absolutely null and void and of no force or effect whatsoever, unless such transfer is made in favour of another member of a Scheduled Tribe.

Legislations to Protect Land Alienation

State	Legislation in force	Main Features
Orissa	The Orissa Scheduled Areas Transfer of Immovable Property (By STs) Regulation 2 of 1956 (amended in 2002)	Sec 3(1) (iii) A member of ST shall not transfer any land if his total land holding after transfer is reduced to 2 acres in case of irrigated & 5 acres of un-irrigated land. However, it is not clear if this would be applicable in case of LA by Govt.
	The Orissa Land Reforms Act, 1960	Sec 22: Prohibits transfer of land belonging to SCs / STs to non SC/STs

Legislations to Protect Land Alienation

State	Legislation in force	Main Features
Orissa	<p>The Orissa Land Reforms Act, 1960 as amended</p> <p>Orissa Right to fair Compensation & Transparency in LA, R & R Rule 2015 Clause(13)</p> <p>Clause 41</p>	<p>Prohibits transfer of land of STs living out side the Scheduled Area.</p> <p>Consent of Gram Sabha in SA in accordance to the provisions in PESA Act 1996</p> <p>Prior consent of GS/Panchayat before publication of notification for LA in SA</p>

Legislations to Protect Land Alienation

State	Legislations in force	Main Features
Chhattisgarh	M.P. Land Revenue Code, 1959	Sec 165(6),168(1), 170, 170(a) & (b) prohibits alienation of land and contains remedy for restoration of land.
	Chhatisgarh Land Revenue Code	Requires approval of village level Gram Sabha for land acquisition or diversion of land for industrial purpose
	MP land Distribution Regulation Act 1964	Applicable in Scheduled Area

Legislations to Protect Land Alienation

State	Legislation in force	Main Features
UP	UP Land Law (amendment) Act 1982 (UP Act No 20 of 1982) Sec 157 B Sec 211	Restriction on transfer of land by way of sale, gift, mortgage or lease or otherwise to a person not belonging to ST Power to evict unauthorized occupants of land by the Asstt. Collector
Bihar	LARR Rule 2014, Sec20	Consent of Gram Sabha to be obtained by the Collector for LA in Scheduled Area

Legislations to Protect Land Alienation

State	Legislation in force	Main Features
UP	Right to fair Compensation & Transparency in LA, R & R (UP)Rules, May 2015	In case of a land situated in the Scheduled Area mentioned in the Fifth Schedule appended to the Constitution of India, the consent of the Gram Sabha shall be sought prior to the consent of the land owners. Development Plan as provided in Central Act for land belonging to SCs/STs

THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996

- ▶ Protective legislative framework to protect tribal land corpus
- ▶ Legally recognises the right of tribal communities to govern themselves through their own system of self governance
- ▶ Aimed to operationalize decentralization through transfer of power to the Gram Sabha or Village Assembly
- ▶ Restores community's command over natural resources
- ▶ Empowers the Gram Sabha to identify & restore alienated tribal land
- ▶ Protect tribal way of life

THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996

- ▶ S4 (a): a State legislation on the Panchayats shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;
- ▶ S4 (b): a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;
- ▶ S4 (c): every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;

THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996

S4.(h) (i) the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making 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 PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996

- ▶ S4. (k): The recommendations of the Gram Sabha or the Panchayats at appropriate level shall be made mandatory prior to the grant of prospecting licence or mining lease for minor minerals in Scheduled Areas
- ▶ S4. (l): The prior recommendation of the Gram Sabha or the Panchayats at appropriate level shall be made mandatory for grant of concession for exploitation of minor minerals by auction.
- ▶ S4(m) (iii): State Legislature to vest the power to Gram Sabha & Panchayats in Scheduled Areas to prevent alienation of land and to take appropriate action to restore unlawfully alienated land in Scheduled Area

RoFR Act, 2006

- ▶ Broadly provides **three kinds of forest rights** relating to:
 - ▶ (i) Tenurial security providing relief against the persistent physical and psychological threat of alienation from land to the Scheduled Tribes and Other Traditional Forest Dwellers (OTFDs);
 - ▶ (ii) Livelihood in terms of the agriculture on ‘as is where is basis’ and the ownership of MFP including rights to collect, trade and process the same; and
 - ▶ (iii) Traditional, customary and developmental rights.
- ▶ Completion of recognition of rights of occupants of forest land under FRA is mandatory before any relocation from the forests.

Provisions under RoFR Act 2006

- ▶ S4. (4) A right conferred under the Act shall be heritable but not alienable or transferable
- ▶ S4. (8) the forest rights recognised and vested under this Act shall include the right of land to the Forest Dwelling STs & other Traditional Forest Dwellers if they were **displaced from dwelling & cultivation without land compensation** and where **land has not been used for the purpose** for which it was acquired within five years.

References to RoFR Act in RCFTLARR Act

► **S3 (c) “affected family” includes**

(iii) the STs and other traditional forest dwellers who have lost any of their forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 due to acquisition of land.”

(iv) family whose primary source of livelihood for three years prior to the acquisition of land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatman and such livelihood is affected due to acquisition of land

References to RoFR Act in RCFTLARR Act

➤ **S3 (r) “land owner” includes any person, -**

(ii) any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 or under any other law for the time being in force.”

➤ **S3 (x) “Person interested” means -**

(ii) the Scheduled Tribes and other traditional forest dwellers, who have lost any forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.”

Relevance of provisions under RoFR Act

- FRA provides rights over Forest land but does not give ownership of the land.
- Legal status of land remains as forest land.
- However, by virtue of these sections the rights given over the forest land also makes the right holder an “**affected family**”, “**land owner**” and “**person interested**”
- Legal status of such family is at par with other land owners.
- Right holders of forest land will be entitled for all the benefits envisaged under the [RCFTLARR Act](#).

Status of implementation of RoFR

- ▶ As in February 2014, individual & community rights on 22 lakh ha of forest land have been vested by way of issuing 13,98,831 titles to STs & other forest dwellers.
- ▶ Constitutes 2.8% of the forest area of the country.
- ▶ Besides, there is an estimated 14-20 lakh hectare of forest land under encroachment.

SAMATHA JUDGMENT

- ▶ SAMATHA (NGO) filed case in local courts & in High Court of Andhra Pradesh in 1993 for leasing of land in Scheduled V areas to private individuals & private mining companies which was dismissed.
- ▶ Transfer of any land in Scheduled Area to a non-tribal is void under section 3 of AP Scheduled Area Land Transfer Regulation (II) of 1970.
- ▶ Filed SLP in SC in 1993, Appeal (Civil) 4601-02 of 1997, SAMATHA Vs. State of Andhra Pradesh & Others, 11th July 1997

SAMATHA JUDGMENT

- ▶ that 'person' would include both natural persons as well as juristic person and constitutional government
- ▶ all lands leased by the Government or its agencies to private mining companies apart from its instrumentalities in the scheduled areas are null and void.
- ▶ it also held that transfer of land to the government or its instrumentalities is entrustment of public property as the aim of public corporations is in public interest and hence such transfers stand upheld.

Highlights of SAMATHA Judgment

- ▶ ‘every Gram Sabha shall be competent to safeguard & prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawful alienation of land of a scheduled tribe.’
- ▶ Minerals to be exploited by tribals themselves, either individually or through cooperative societies with the financial assistance of the state.
- ▶ In the absence of total prohibition, the court laid down certain duties and obligations to the lessee, as part of the project expenditure: at least 20% of net profits as permanent fund for development needs, apart from reforestation and maintenance of ecology.

Highlights of SAMATHA Judgment

- ▶ Transfer of land in Scheduled Areas by way of lease to non-tribals, corporation aggregate, etc stands prohibited to prevent their exploitation in any form.
- ▶ Transfer of mining lease to non-tribals, company, corporation aggregate or partnership firm, etc is unconstitutional, void and inoperative.
- ▶ State instrumentalities like APMDC stand excluded from prohibition.
- ▶ Renewal of lease is a fresh grant of lease and therefore, any such renewal stands prohibited.

Provisions in LA Act for Scheduled Area

- S2.(2b): No land shall be transferred by way of acquisition, in scheduled areas in contravention of any law relating to land transfer in scheduled area.
- S11(2):Immediately after issuance of the notification under sub-section (1), the concerned Gram Sabha or Sabhas at the village level municipalities in case of municipal areas and the Autonomous Councils in case of the areas referred to in the Sixth Schedule to the Constitution, shall be informed of the contents of the notification issued under the said sub-section in all cases of land acquisition at a meeting called especially for this purpose.

Provisions in LA Act for Scheduled Area

- S17.(5): consultation with the Gram Sabha in Scheduled areas shall be in accordance with the provisions of the Panchayats (Extension to the Scheduled Areas) Act,1996
- S41. (1): As far as possible, no acquisition of land shall be made in Scheduled Areas
- S41.(2): Where such acquisition does take place it shall be done only as a demonstrable last resort.

Provisions in LA Act for Scheduled Area

- ▶ S41.(3): **prior consent of concerned Gram Sabha or Panchayat or Autonomous District Councils** at the appropriate levels in Scheduled Areas shall be obtained in all cases of land acquisition or alienation **including acquisition under urgency clause**, before issue of notification under this Act or any other central Act or a State Act in force.
- ▶ Consent of Panchayats or the Autonomous Districts Councils shall be obtained in cases where Gram Sabha does not exist or has not been constituted

Provisions in LA Act for STs & SCs

- S41 (4): for projects involving involuntary displacement of STs or SCs, a **Development Plan** shall be prepared, in such form as may be prescribed, laying down details of procedure for settling of land rights due, but not settled & restoring titles of STs as well as SCs on alienated land by undertaking a special drive together with land acquisition.

Provisions in LA Act for STs & SCs

- S41 (5): The Development Plan shall also contain a programme for development of alternate fuel, fodder and, NTFPs on non-forest land within a period of 5 years, sufficient to meet the requirement of Tribal communities as well as SCs.
- S41 (6): in case of STs or SCs at least $1/3^{\text{rd}}$ of compensation amount due shall be paid to affected families initially as first instalment & the rest shall be paid after taking possession of the land.
- S41 (7): affected ST families shall be resettled preferably in the same Scheduled Area in a compact block to retain their ethnic, linguistic & cultural identity.

Provisions in LA Act for STs & SCs

- ▶ S41 (8): the resettlement area predominantly inhabited by SCs and the STs shall get land, to such an extent as may be decided by the appropriate Govt. free of cost for community & social gatherings.
- ▶ S41. (9): Any alienation of tribal land or land belonging to SCs in disregard of the laws & regulations for the time being in force shall be treated as null & void, and in the case of acquisition of such land, the R & R benefits shall be made available to the original tribal land owners or land owners belonging to SCs.

Provisions in LA Act for STs & SCs

- ▶ S41 (10): Affected STs, other traditional forest dwellers and the SCs having fishing rights in a river or pond or a dam in the affected area shall be given fishing rights in the reservoir area of irrigation or hydel projects
- ▶ S41. (11): where the affected families belonging to SCS or the STs are relocated outside of the district, they shall be paid an additional 25%, R & R benefits to which they are entitled along with one-time entitlement of Rs.50,000/
- ▶ S42 (1) All benefits including reservation benefits available to the STs and the SCs in the affected area shall continue in the resettlement area.

Provisions in LA Act for Scheduled Areas

- ▶ S42. (2) When affected families belonging to STs residing in Schedule V or VI areas are relocated outside those areas, than all the statutory safeguards, entitlements & benefits being enjoyed by them shall be extended to the area to which they are resettled.
- ▶ S42 (3): Where the community rights have been settled under the provisions of RoFR Act 2006 Act, the same shall be quantified into monetary amount & be paid to the individual concerned who has been displaced due to LA in proportion to his/ her share in such community rights.

Way Forward...

- Transparency & simplification of Land Administration
- Adoption/recognition of Community land ownership principle
- Prior informed consent of the community
- Consent and approval of village community / traditional local institutions concerned
- Dissemination of information & transparency in land acquisition principle, process & payment of compensation

Way Forward...

- Settlement of rights as provided in Forest Rights Act, 2006
- Recognise & respect their cultural & traditional rights, customs & values.
- The Extension of Panchayat in Scheduled Areas (PESA), 1996 must be honoured in any acquisition in scheduled areas and constitutionally entitled Gram Sabhas need to be taken into confidence to make the process more transparent.

Way Forward...

- An opportunity to promote cultural facilities, educational & social infrastructure etc. and win support.
- Liberal implementation of R & R, as an opportunity to provide enhance socio-economic status
- Institutional mechanism for redressal of grievances in a transparent manner
- Minimize acquisition of land
- Land owners to be made as partners/stakeholders in the development

Questions /Suggestions?

Thanks.