

Problem assessment and Suggestions for effective implementation of the title allotment process to the genuine Claimants under the Tribal Rights Act.2006 [TRA] and future sustainable management of such areas.

A.K.Mukerji [Former D.G.Forests –MOEF]

I] Problem assessment:-

A] Historical injustice with the tribal population could have been rectified after independence during the period from 1947 to 1980 and Prior to the enactment of the Forest Conservation Act of 1980 by the visionary late Prime Minister Smt Indra Gandhi, which saved the counties forests from total destruction. During this period nearly 4.5 million ha of forest land was transferred and diverted by the district collectors, without consulting the forest department and without conferring ownership to the tribals who were mostly living in and around forests for generations. The main thrust of such diversions of vast tracts of land, received by the revenue departments in all states from merger of princely states, abolition of “ Jamindaris”, land ceiling acts and forest land, was meant primarily for land to landless, industrial use, urban spread, irrigation projects etc. However, due to lack of proper land reforms in most states no one thought of regularizing the land holdings and homesteads of the tribals mainly in the presently disturbed Districts. At that time the Forest Department had little say in the matter and the revenue department staff did not assist the helpless tribals with proper entry in the land records.

In 1992 the MOEF issued a detail guideline for states to initiate the process of regularizing the forest land occupied by tribals prior to F.C.Act of 1980. The process suggested was for setting up of a special team by the collectors/DMs consisting of a tehsildar, Ranger and local Panchayat Pradhan etc to visit each tribal village and verify the claims. There were only few genuine claimants at that time and the job could have been completed in a year's time, but none of the states, inspite of repeated reminders, showed any interest in formation of teams for such an important work in the tribal Districts leading to growing anger against the Govt.

B] The TRA of 2006 is a very good step to rectify the old mistakes, if properly implemented. However, there is need for an in-depth examination of the steps initiated for issue of: a] land title for individuals [land under agriculture and homestead] and b] title for the community over nonwood forest products provided under the TRA and rules made under, for the title holders both individuals and the community, to avoid any legal and financial complications at a later stage. The basic provisions the FRA and Rules made there under are analyzed as under :-

C] Provisions under the FRA 2006 and Rules of 01/01/08

i] The opening two paras of the Act Recognized the right and responsibility of the Tribal and forest dwelling communities for sustainable use ,conservation of biodiversity and maintenance of ecological balance and there by strengthening the conservation regime of the forests while ensuring livelihood and food security. Keeping this in view the following main provisions were made in the Act and Rules.

ii] Rule 3 provides for formation of a 10 member FR committee by the gram sabha [for recommending cases to SDM] provided that no member should be a claimant for individual rights. However, this needs case-wise verification at the SDM level as it is learnt that most of the committee members were also proxy claimant in name of wives, sons, etc. It is the main reason why less than 2% areas have been recommended for community rights and 98% for individual rights in uncultivated existing forest areas. Actually in view of the tribal tradition of community management of natural resources the % should have been reversed. This approach will deprive the poor, landless, and pastoral people the right over such government forests areas till recently used as community livelihood support areas.

iii] land right of occupation –under sec 3 [1]a –“Hold and live in the forest land under individual/common occupancy for habitation or self cultivation for livelihood”

The preamble of the Act [Tribal Development Ministry web site-Perera-P8] clarifies that no Tribal or forest dweller can claim user rights over forest land that he or she was not cultivating before 13/12/2005 and 1930 [75 years] respectively and is not cultivating the same area at present.

The rules 01/01/08 also provides an application forms Annex I [Form –A-Right to forest land] which provides for mentioning of details of claims under item 1-regarding the extent of forest land occupied under a] for habitation and b] for self cultivation [Sec [1] [a] of the Act. There is Patta form at Annex II of the rules for such grants of land occupation – Title for forest land under occupation.

iv] Community Rights :- The Form B [Annex I] is provided for filing claims by the community for title for Community Rights rule 11[1][a] and [4] – Mainly over the minor forest produce [sec [3][b&c] and several other rights for sustainable use of the improved and enriched natural resources and biodiversity wealth for livelihood support. There is a patta form for this at Annex III of the rules- Title for community forest rights for granting such rights by the state governments.

V] Moreover, the preamble clarifies that the forest dwellers can not fell trees for sale but can take fuel wood, fodder, NTFPS etc on a sustainable basis mostly for household use as per Nistar rights. This position had also been clarified by the Tribal Development ministry in their letter of 6th May 2011 to Tripura Govt. not approving planting of rubber and commercial activities in the areas given under TFR Obviously forest areas are only to be developed to give sustainable livelihood from forests areas for which the title had been given under the FRA

D] The figures of some states of the progress made in titles allocation under the FRA dated 30th of June [website - Ministry of Tribal Development] of 6 states [Chhattisgarh, Rajasthan, U.P., West Bengal, Maharashtra, and Tripura] indicate grant of 4,32,493 titles [covering 4,49,749ha] out of which 4,31,980 were to individuals and only 513 to community. Similarly in another batch of 5 states [Andhra, Karnataka, Kerala, M.P. and Odisha] 442,657 titles had been distributed [No figures of individual and community allocation given though the pattern will be the same] covering 843,113 ha. The total allocation in these 11 states comes to 852,159 in number and covers nearly 1.3 million ha. However, the latest total figures from 12 states as on 31/03/2011 indicate allocation of 11.59 lakhs titled had been allocated covering 1.42 Million ha of forestland.

The figures from other states in due course will enhance the figures of grants of titles to individuals considerably. It appears that most of the state governments had erroneously used the provisions of the FRA as a land grant opportunity to individuals even in presently forested areas which are not under cultivation since 2005. The community stakeholders were not properly guided to fill in the desired form for claiming community title over the traditional rights over large tract of forests. These forest areas are mostly under JFM management in nearly 10,000 forest fringe villages covering nearly 20 Million ha of forest area. It would have been much better if all such Gram-Sabhas were empowered and given title under the FRA for community benefit rather irregular grant to influential individuals.

This large scale unauthorized allocation of forestland, not under cultivation, to individuals with land title will create serious problems of deforestation and prevent collection of fuel, fodder, grazing, NTFPs by the members of the JFM committees, left out house holds in the same village, nomadic grazers and Panchayats under PESA. This has been done by the state administration in hurry without keeping in consideration the basic objective and provisions under the FRA-2006 and rules made there under it.

D] The most unusual aspect of this data given in C above [not split in to grants to tribals and non tribals] is that more than 95% claims are for individual allocations land title rights in forested areas whereas the tribals have the age old culture and practice of sharing and caring for their forest resources on community basis and individual demand from them is normally for small areas under their home-stead or cultivation prior to Dec. 2005. Apparently the individual claimants will be mostly of the "forest dependent non tribal types" and majority of them without the mandatory 3 generations [75 years] occupation specially those who occupied forest areas after independence. There are complaints of large scale rejections, due to opposition of the Forest department, while it actually happened at the level of the special Panchayat level committees formed under the TRA where Forest department was not involved. As such all allocations and rejections need to be addressed by spot checking with help of GIS/GPS technology for authentication of the claims and rejections on the lines of the process developed in Maharashtra [copy of some such areas enclosed]

E] Moreover, most of the state Govts have issued confusing orders for follow up action by the revenue or tribal department as if it is a land grant for use by the owners as they like e.g. clearing the area allotted and raising Rubber, Eucalyptus, Coconut, tea plantations and other commercial crops and even digging up for ponds for pisciculture etc. The basic objective of the TRA is of developing these forest lands as good forests [except land under cultivation or homestead of tribals prior to Dec. 2005] for sustainable yields of NTFPs [No right to trees and timber has been provide under the Act] for sustainable economic gains for the allottees while safeguarding the local ecology and environment.

2] SUGGESTIONS: - To safeguard the interest of all genuine tribal and other claimants, the MOEF may kindly consider the following suggestions, developed after wide ranging consultations with serving officers and local stakeholders. This can form the basis for issuing a general guideline for all concerned after due consultations with ministry of Law and Tribal welfare to prevent present confusions and interdepartmental conflicts presently prevalent at all levels.

At field level most of the state administrations, down to the district level, are treating the FRA-2006 as a land grant opportunity in not only regularizing lands cultivated since Dec. 2050, as provided in the Act, but also allotment of presently degraded forest land to large number of individuals, without GIS based verifications, who presently feel free to use it and fell trees as they like including growing commercial tree and other crops as land owners, which may result in large scale deforestation.

This may also bring in the land mafia for use of such lands for commercial purpose, by duping the tribals, leading to large scale land scam for which the foresters may be ultimately blamed. The present unverified individual title allotment approach adopted by many states is against the objective and provisions of the Act of helping the tribal community to improve their livelihood through ownership and sustainable harvesting of the NTFPs as per traditional rights by maintaining and improving the forest ecology.

I] In view of the prevailing situation all individual title allocations made in existing forest land, which is not under cultivation since 2006, may be identified through GIS mapping and cancelled. All forest land so cancelled be handed back to the local community through a title for ownership and use of all traditional rights as per provisions of the FRA. The MOEF, which has the mandate for conservation forests and biodiversity, will have to take a lead in this matter and fix up joint expert teams in each state in collaboration with the Tribal and the revenue departments to undertake this urgent screening job.

II] It is necessary to ensure that to start with all tribal claims for title over cultivated and community rights on forest land should be first settled and demarcated on ground and then only the individual claims of non-tribals be settled after rigorous field verification with GIS/GPS application as has been done in Maharashtra and also parts of M.P. ie 18 to 20 lakh families]

III] At the time of actual identification of the land on spot the Revenue/ Tribal Departments may do so, to first examine the present land use and the validity of the claim, in presence of the representatives of the FD, gram Panchayat and local JFM executives and the applicant to avoid future complications. Each such plot be given a new “ Kshara number” with area, land use and marked with lat-longs on a GIS based cadastral maps of 1:4000 scale with the help of GPS. Moreover, it will ensure allocations to genuine claimant and as provisions of the Act.

IV] Once the land, mainly for the community or few individual's, grant of title under the FRA had been identified on the ground it should be demarcated by pillars and marked on the revenue and forest map as suggested above. It will ensure protection for the title holders and prevent any shifting or encroachments in future. The Tribal Dept should provide necessary funds for production of high resolution [1:4000 scale] mapping for each plot and provision for pillars on it with the financial help of the Tribal department.

v] The Tribal Development Ministry or MOEF after mutual consultations may issue comprehensive and mandatory guidelines for proper use of such forest lands by patta holders with in the spirit and the basic objectives of the Act and without involving felling of standing trees. It would be useful if these groups are advised to form cooperatives or join the local JFM group for ensuring protection and scientific management of the NTFP resources for sustainable economic gains while preserving the local ecology and biological diversity.

VI] The state govt. may set up local organizations involving the stakeholders and NGOs to run training centers in each Panchayat to train NTFP owners regarding issues of a] best time for harvesting, b] non-destructive harvesting of plant parts, c] grading of good and average quality of each produce d] local treatment of drying, sorting etc for improving the shelf life, e] marketing support by contacting the local industry, Aruvadic units or bulk buyers etc.

Much before the advent of JFM guidelines of 1990, PESA and the Forest Rights Act-2006 the foresters, based on the experience of peoples cooperation in forest protection and development in Arabari in Bengal. Dhauladhar in HP, Community forests of Orissa etc, had initiated the formation of JFMs on the principle of sharing and caring of the forest wealth with the local stakeholders. On a sustainable basis. The more than 100, 00 JFMs managing around 20.Million ha of forest area are now regrouped as FDAs since 2002. The central funds are now, through the FDAs, directly put in a separate bank account of the JFM committees who decide their annual programme as per provisions of the approved micro-plan and spend the amounts on works with technical support of the foresters. This approach has achieved marked success in most of the JFM areas where adequate funds were provided. Thus JFM should form the basic technical and management unit for the Greening of India and NTFP management under PESA, FRA, Biodiversity Act etc.