

# The Forest Rights Act: A Comparative Study of Mizoram and Odisha

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## I. INTRODUCTION

This research paper is the result of a comparative study between Mizoram and Odisha in terms of how Forest Rights Act are implemented in these two states. In Mizoram, the pilot districts of Kolasib and Mamit are chosen as bases of research and in Odisha, Kandhamal district (G. Udayagiri, Tindikamba village) are chosen as the bases of this research.

The scheduled tribes and other traditional forest dwellers (recognition of forest rights) act, 2006, popularly known as the forest rights act (FRA), is an act of parliament that was passed on 18<sup>th</sup> December, 2006 (Ministry of Tribal Affairs 2014) to give the tribal communities and the traditional forest dwellers, rights over their forest lands. Forest lands may include unclassified forests, un-demarcated forests, deemed forests, protected forests, reserved forests, sanctuaries, national parks and lands used for cultivation. This act primarily aims to address the historical injustice that has been inflicted upon the tribal communities, the pastoral communities and forest dwellers, whereby their forest lands have largely been taken up for state development interventions leading to illegal evictions, forceful displacements or destruction of their forest lands, their primary source of livelihood. Therefore, this act proposes to give certain autonomy to these communities, to have a central role in forest management, to have rights over their forests and its produce. The rationale behind this is largely due to the fact that tribal communities have historically been able to preserve their forests through generations while forestry in general seemed to be rapidly dwindling under neo-liberal capitalistic economic systems. The act thus, provides for the right to hold and live in the forest land under individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of said communities. This means that the communities now have the right of ownership, access to collect, use and dispose of minor forest produce, which includes other such entitlements such as fishing and other products of water bodies, grazing and access to seasonal resources. To sum up and to emphasize, the forest rights act has highlighted two very important points:

- I. The transfer of forest rights to the individuals and communities, and
- II. The model of decentralized self-governance.

Traditionally, many of these tribal and pastoral communities have inhabited their forest lands from the pre-agricultural times where their mode of sustenance largely comprises of hunting and gathering. However, with the passage of time, these communities have also advanced with the adoption of agricultural techniques within their forest lands. Minor forest-produce therefore constitute a very important part of these communities' livelihoods. These minor forest produce includes such items like bamboo, turmeric, brush wood, stumps, cane, *tussar*, cocoons, honey, wax, lac, *tendu/kendu* leaves, medicinal plants, herbs, roots, tubers, *mahua* etc.

The census data (2011) confirmed the tribal population in India at 84,326,240 which amounts to merely 8.2 per cent of the total population of India, cementing them as minority communities. It is not uncommon that minorities are often regarded as the *other*, not because they are drastically different, but because the mechanics of democracy suggests that the majority should rule and occupy *center-space*. What is remarkable about the question of the tribal communities in India is that, they have quietly been present in all of the country's history, yet, never seemed to be recognized in what we may, in a Marxian fashion, call, *the important epochs of Indian history*. This may be because of the fact that the numbers of tribal communities are insignificantly small to make a dent in Indian history, compared to other communities and civilizations in India. Therefore, this historical exclusion of the tribal communities in the Indian scenario as a result, seems to usher in the need for what is now known as the tribal politics of assertion. Tribal communities are mostly concentrated in central India, south India, north-east and western Himalayas. Around 91.7 per cent (Census 2011) of scheduled tribes live in rural areas, mostly in and around forests.

Different Indian states have progressed in varying degrees in implementation of the scheduled tribes and other traditional forest dwellers (recognition of forest right act) 2006. While states like Andhra Pradesh, Chhattisgarh, Gujarat, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tripura etc., having established the prescribed structures and procedures, have received large number of claims and have started distributing the titles; other states, because of various reasons, are still to catch up.

### **Forest Rights Act**

Under the forest rights act, as per the information collected till 31<sup>st</sup> December, 2018, 42,24,666 claims (40,79,278 individual and 1,48,388 community claims) have been filed and 19,03,134 titles (18,27,256 individual and 75,878 community claims) have been distributed across India and a total of 38,41,607 (90.87 per cent) claims have also been disposed of (Forest Survey of India 2019). Under article 371(G) of the constitution of India, the forest rights act has to be approved by the state legislative assembly.

In line with this, the state of Odisha has also passed the forest rights act. Odisha, with a history spanning over 5000 years, has been the home of a large number of tribal communities of 62 different scheduled tribal groups out of which 12 communities are considered as primitive tribal group (PTG) for special treatment; majority of these tribal communities are concentrated in the western and southern part of the region. Majority of the tribal communities in Odisha are of proto-austroloid and mongoloid racial category and belong largely to linguistic divisions of Austric and Dravidian languages. Many of these tribal communities are still at the primitive stage of economy and heavily rely on hunting, gathering and shifting cultivation for their survival and sustenance. The hills of Odisha in particular are also the abode of a tribal community called the Kondh. The word *Kondh* may mean different things depending on different languages. In Odia/Oriya, it may mean an arrow or a sword, while in Telugu it may mean a Hill. In Sanskrit, it may mean shoulder, as the Kondh are known to carry loads of wood on their shoulders. Another feature worth mentioning is that the Kondh are not a unitary tribe, instead are a conglomeration of different sub-tribes, each having their distinct or subtle difference from the other. All in all, the Kondh community provide an important part of Odisha's history and culture largely due to their ethnic, primordial lifestyle and their assimilation towards mainstream religion like the Hinduism and Christianity. The Kondh tribes in particular are the most populous tribes in Odisha numbering 989,342 and the seventh largest in the India, numbering around 10,32,729 (Census 2011) as the entire Kondh population is distributed across the states of Odisha, Andhra Pradesh, Madhya Pradesh, Maharashtra, Bihar and West Bengal. Today, Odisha has been the forefront of forest rights act in terms of distribution of titles. In Odisha alone, 6,26,429 claims have been received up to 30<sup>th</sup> December, 2018.

The state of Mizoram had also passed the forest rights act on 31<sup>st</sup> December, 2009 and notified it on 3<sup>rd</sup> March, 2010, where it is being implemented in all districts except Aizawl and Lunglei districts. Meanwhile, the implementation of the forest rights act seemed to have failed in Mizoram in terms of no claims for land titles received till 31<sup>st</sup> December, 2018. It has been notified by the state government that the first wave of documenting the forest-dwellers in Mizoram has been initiated, using Kolasib and Mamit as pilot districts. Mizoram seemed to lag behind other states in the enforcement of forest rights and therefore, it becomes crucial to examine how the forest rights act will be applied and enforced in the case of Mizoram when states like Odisha seemed to have effectively implemented the Act. This further posits the question of the dynamics of differences between the north eastern hill tribes and mainland tribes in assertion of their identities in the region, within the larger framework of tribal development.

Central to this act of seeking to do away with the historical injustice that have been done to the tribal communities and other forest dwellers, was also extended to Mizoram, giving the people, rights over forests like cultivation and grazing etc. While moving the resolution, social welfare minister, P.C. Lalthaniana had mentioned that the act would benefit the tribal people and forest dwellers as a whole and also help in protection of environment. The step was necessitated as per provisions under article 371(G) of the constitution which stipulates that no act of parliament on ownership and transfer of land would be applicable to Mizoram unless the state legislature decided to do so by adopting a resolution.

The tribal communities and other forest dwellers in the state will now have access and freedom to use and dispose of minor forest produce. They will not face the threat of eviction or removal from forest land under their occupation and will be entitled to benefits of various government schemes. The act provides for recognition of forest rights of other traditional forest dwellers provided they, for at least three generations, prior to 13<sup>th</sup> December 2005 have primarily resided in and have depended on the forest or forest land for *bona fide* livelihood needs. It also provides for conferring rights for those who have primarily resided in national parks and sanctuaries.

It should however be noted that the forest rights act is not implemented and not use in many other states of India where it is not applicable. In Mizoram, this Act is implemented since Mizoram has very wide forest reserves and more so since Mizoram is mainly composed of tribal communities. However, the general standard of claim for this Forest Rights Act in other Indian states is that, a person or family must have lived inside a forest reserve area for many generations and by the rules of government, they must have lived at least

75 years inside the forest reserve areas. Only then, can they claim this act. In states like Odisha, within the Kandhamal district, the Kondh tribes had occupied their land, inheriting from their forefathers, spanning generations upon generations. However, in Mizoram, it is verified from the undertaken records and census taken from the pilot districts of Mamit and Kolasib that there are no traditional forest dwellers inside Mizoram. The problem for the state government therefore lies in the difficulty in implementation of the act. Following the difficulty of implementing this act as intended, the Mizoram state assembly, in its winter session on 19<sup>th</sup> November, 2019 resolved that the forest rights act may be revoked in Mizoram, citing impracticality of the act in Mizoram as the main rationale.

Subsequently, what seemed to be manifesting in many Indian states are conflicts between the state governments and tribal communities in implementation of the act. These problems greatly vary from development-induced-displacement issues to conflicts between different communities in claims for titles to proactive assertions of rights by the tribal communities where the state governments are unable to fulfill the demands for all the claims for titles for forest lands whether by individual or by the whole communities. However, in Mizoram, from the government records and census, till date, there have been no records of traditional forest dwellers who can claim this act and because of this, there seemed to be no glaring conflicts between governments and communities. Thus, the argument here is that, since there are no traditional forest dwellers, there are no qualified individuals or communities to claim this act in Mizoram. Outside of the problem of conflicts, this seemed to create another problem of non-implementation of the act in Mizoram. In addition, village/local councils were initially not given any authority by the state government to enforce the Act. In Mizoram, implementation of the forest rights act was under the Environment, Forests & Climate Change department, government of Mizoram, however at present, implementation of the Act is under the Directorate of Social Welfare, government of Mizoram.

As we have mentioned, initially, the state of Mizoram adopted this act because it had vast forest reserve areas. According to the Environment, Forests & Climate Change annual administrative report 2017–2018, 88.48 per cent of the geographical area of the state is under forest and tree cover (Forest Survey of India 2019). In spite of comprising 0.64 per cent geographical area of the country, Mizoram contributes 2.33 per cent of the total forest and tree cover of the country. The per capita availability of forest and tree cover is 1.71 *ha*, which is quite high as compared to other states of the country. In pursuance of the forest rights act, Mamit and Kolasib were chosen as pilot districts to survey the practicability of the act. In other states of India like Odisha, since there have been active claims for titles, many tribal communities have benefited from the act. In Mizoram, especially within the Mamit and Kolasib districts, there have been cases of individuals who had claimed for titles for forest lands, but by dint of them not being traditional forest dwellers and in other cases not tribal communities, their claims have been rejected by the government officials. In such cases, we may broadly assume that there might have been mild cases of conflicts between governments and individuals over claims for titles in Mizoram.

The state government of Mizoram has exerted utmost effort for the implementation of the act at various levels:

1. The secretary, Social Welfare department, govt. of Mizoram has been declared by the government of India as the nodal agency for implementation of the provisions of the scheduled tribes and other traditional forest dwellers (recognition of forest rights) act 2006 and corresponding rules.
2. All the village councils in Mizoram have been assigned by the state government, the role of gram sabha for the purpose of implementation of the act and rules.
3. Notifications under constituting sub-divisional level committees (SDLC), district level committees (DLC) that are required under the act have been issued.
4. Co-ordination committee for the implementation has been constituted comprising of representatives of all line departments.
5. Translation of the act and the rules in the local language has been completed and distributed widely.

India is one of the few nation-states of the world to have elaborate preferential arrangements for the hundreds of ethnic minorities in general and tribal communities in particular. While understanding the historical reasons for the backwardness of such tribal groups, the country has made constitutional provisions, several special plans and programmes for specific purposes in the national and state budgets. Provisions for special protective measures for the development of tribal communities was felt necessary since late 19<sup>th</sup> century and were reflected at different points of time in the form of the scheduled district acts of 1874, the Indian education commission of 1882, government of India Act of 1919 and 1935, paying attention for special treatment of certain backward communities. Understanding the backward features of both the tribal areas and of tribal population, the state of Odisha over the time has also taken many legislative measures for tribal welfare both during pre-independent and post-independent era. Apart and control of scheduled areas and scheduled tribes, several constitutional provisions are also in operation in state of Odisha. In the post-independence era, the constitution of India exemplifies on the fate of the forest and forest dwellers in its schedule V and VI respectively. While the special provisions for selected areas in north-eastern states are laid down in the schedule VI, schedule V enlists the special provisions for other pockets of tribal dominance in rest of the country. The establishment of autonomous district councils in schedule VI provides the local people with the greater

autonomy over their issues. The forest rights act therefore was a landmark legislation for the tribal communities since it promised autonomy over their lands.

### **General Observations**

Forest rights communities are mostly formed in villages and not at the hamlet level. Even in states like Arunachal Pradesh, Rajasthan, West Bengal and Madhya Pradesh, forest rights communities have been formed at the panchayat level. In Mizoram, mandatory functions of the sub-divisional level committees and district level committees such as, meeting at intervals of time, proper scrutiny of the applications, field level verifications of the sites, proper co-ordination at various levels between the departments are not taking place. The most important part of this study is looking into the functioning of different structures, nature and extent of rights given to the people since the act came into force. The study also found out the problems people faced, gaps in implementation of this act, the role of the government and other actors like non-governmental organizations (NGOs) and panchayati raj institutions and the functioning mechanism for appeal and grievance redressal.

In the state of Odisha, the state government seemed to be quite pro-active in implementation of the act. Kondh communities found in such villages like Tindikamba, Dengi Maha etc. have all claimed that the autonomous nature that that forest rights act has given them greatly alleviated them from their economic hardships. Kondh communities were able to sell such produce like fruits, berries, turmeric, leaves, incense, rice, tamarind to name a few. Conflicts regarding land have usually been able to be settled with the interventions of the sarpanch/gram sabhas and also settled between the contending communities or individuals. However, other Kondh communities have also claimed that the government is not fully committed to developing their communities through the act. There are many other cases where a bulk of their forest produce fell short of their expected trade profits. This may also be because of the fact that forest-based economy is still largely a seasonal economy, in addition to intervening elements like drought, flood, wild animals or in many cases, petty theft. Other problems include pending forest claims files, claims being ignored by the government as certain lands have been reserved for neo-liberal developmental purposes etc. Others include problems inherent within the very nature of the communities themselves, for example, the Kuttia Kondhs, who are nomadic tribal communities by nature and therefore do not have permanent land settlements.

In India, there are several communities who solely depend upon forests for their life and livelihood. These include the traditional forest dwellers, some scheduled tribes and some villages across different states. But with the advent of neo-liberal economic and industrial development, there have been conflicts between the rights of indigenous people over the forests and neo-liberal economic development policies of the states, in their need to utilize the forest areas for development. Today, it seemed like the issue is more tilted towards the latter which has at times resulted in the exploitation of the former. As a result of this, several of the community forest rights are lost. The systematic denial of the rights over the forest to the indigenous communities began during the British rule, when their interference into the lives of the people belonging to these communities in the forest lands were encroached upon, either for their own industrial development or for growing of cash crops to suit the needs of their industries. They sought to consolidate the state forests for the purpose of administration, causing the traditional communities to be ousted from these areas.

When the exploitation continued in an unhindered manner, the need arose for legislation that would recognize and vest forest related rights on the scheduled tribes and the traditional forest dwelling communities. In response to this need the scheduled tribes and other traditional forest dwellers (recognition of forest rights) act, 2006 was enacted. It gives legal recognition to the rights of ownership to the tribal communities and forest dwellers over the land that they have been cultivating for generations. They have been given the rights to use minor forest produce, the grazing areas, the pastoralist routes etc. These indigenous communities have been given the rights to protect forest and wildlife which they have been using for generations. They have also rights against illegal eviction or against forced displacement and rights for basic amenities that they get from the forest. In order to be qualified for the enforcement of the rights of this act, a community must *primarily reside in forest and depend* on the forests and forest lands for their livelihood.

The act empowered the gram sabha to pass a resolution containing the recommendation as to whose rights and to which resources should be recognized. The verification is then made by the sub-division and then the district level. A screening committee is formed which comprises of three government officials from the forest revenue and tribal welfare departments and three elected members from the local body. The ministry of tribal affairs which has been entrusted with the implementation of the provisions of the act also has issues of understaffing and lack of other resources. They have to bear the burden of all responsibilities other than the implementation of the act. So, there is a natural shifting of priorities towards other more important issues. A similar situation is with the budget of the ministry. The state level agencies suffer from the same problem. Most of the staffs do not have the adequate training for implementation of the act and there is also a lack of resources with them. Similar situations also exist in the state level monitoring committee which do not function as per the statutory provision, like irregular meetings. In cases like Kolasib and Mamit districts, there have been numerous instances where many of the district forest officers themselves were unaware of the forest rights act. In such

cases, it proved very difficult to educate and aware the tribal common masses of their forest rights and privileges.

## II. CONCLUSION

When the united progressive alliance (UPA) came to power in the Indian general elections of May 2004, it published a common minimum programme (CMP) in which it promised to end the eviction of tribal and other forest-dwelling people from forest lands. In March 2005, the ministry of tribal affairs presented the first draft of the forest rights act that guaranteed the right of tribal and other forest-dweller to continue to cultivate forest land that they had cultivated in the past. The draft bill was tabled in parliament on 13<sup>th</sup> December, 2005 and passed a year later after much contentious debate that was widely reported in the media. The government of India issued rules under the act in January 2008.

We have discussed what we consider are key concerns with respect to forest rights act and its implementation. In the case of Mizoram, based on the limited research on the pilot districts of Kolasib and Mamit districts, the predominant concern we have with forest rights act and discussions around it is that there has hardly been a focus on the lives of tribal communities, forest dwellers, their contemporary situation as well as the diverse possibilities this holds in addressing the issue of non-implementation of the act. Initially, forest rights act 2006 is the act of the parliament of India, where it has been passed *in order to preserve traditional forest dwellers* mainly in West Bengal. When the act has been passed by the parliament, the government of India introduced it to all her states where it is applicable. However, the authority and its utilization solely depend upon the state government.

The forest rights act seeks to do away with injustice done to tribal communities and other forest dwellers. The scheduled tribes and other traditional forest dwellers (recognition of forest rights) act, 2006, became applicable from 31<sup>st</sup> December, 2009, with the state assembly adopting an official resolution in this regard. While moving the resolution, social welfare minister, P.C. Lalthanliana stated that the act would be beneficial to the tribal people and forest dwellers as a whole and also help in protection of environment. As per provisions under article 371G of the constitution, no act of parliament on ownership and transfer of land would be applicable to Mizoram unless the state legislature decided to do so by adopting a resolution. In Mizoram the state government is also authorized to practice this act. However, according to the government reports, the state has no qualified traditional forest dwellers. In order to be a qualified member of a community has to have resided in a wildlife sanctuary/ intensive reserved/ a protected forest reserve area for at least 75 years. For those community or forest dwellers obliged by the act, the state department or the state government had to ensure their inter social, cultural and economic sustainability. But in Mizoram, as per reports, there are no records of forest dwellers, dwelling in the forest reserves but many people might have leased land or owned land within these forest areas. However, according to the government, since *dwelling within the forest areas* is absent in the Mizoram situation, implementation of the act may not be applicable even though it has been enacted by the Indian parliament in 2006 and also passed by the Mizoram state legislative in 2009, hence its revocation in November 2019.

Nevertheless, the opportunity here is that, even if Mizoram do not have records of traditional forest dwellers, the forest rights act rules and guidelines clearly stated that the forest rights act are for those communities who *depend on the forests and forest lands for bona fide livelihood needs*. Therefore, taking this into the account, the Mizo communities, especially those who live in the rural areas are in fact eligible for forest rights since they predominantly depend on forests and forest lands. Therefore, even if they are not traditional forest dwellers by nature and definition, them being primarily depending on forests alone should be the rationale for granting access to forest rights. In addition, since the parliament has given the state governments, freedom over the forest rights act, the Mizoram government could tailor a somewhat modified version of the forest rights act to better suit the conditions and needs of the Mizo tribal communities.

When compared to other tribal areas, the state of Mizoram, having one of the largest concentrations of tribal communities and also having one of the largest forest-cover in relation to the size of the state, have not successfully implemented one of the most important landmark legislation for tribal rights and privileges. Accordingly, from the comparative study between the Mizo communities (no claims till date) and the Kondh tribes of Odisha (where there have been numerous claims for titles), we could see that the dynamics of differences is quite huge between the north eastern hill tribes and the plain tribes in India, in terms of asserting one's own identity and one's own rights in one's own land. However, what is worth noting regarding the Kondh is that, they too have been victims of modernity where westernization and mainstream religion outside of their animistic beliefs are presently enveloping their communities. Many have opted to settle within the vicinity of modernity and technology, leaving their traditions behind and searching for new identities and livelihoods within the district capitals and even outside of Odisha. Those who chose to stay unchanged are rapidly decreasing in numbers and the mechanism of forest rights act is one of the last resorts that is preserving them. Even then, forest rights act has its own set of problems like conflicts between communities, the act being

unreliable for stable trading or for economic sustenance etc. These set of problems seemed to discourage a large number of the Kondh community, especially the younger generations who now opt to study, work and live outside and abroad in hopes for new and better opportunities for livelihoods.

In conclusion, what we can take away from this study is that, the forest rights act, however brightly lit it was during its inception, seemed to have lost its luster along the years. Today, the glaring issue we find is that there clearly is an absence of perspective on forest rights act. If forest rights act is only about restoring forest land to tribes, then there is a need to tone down the public opinion that project the act as a legislation with radical possibilities. But if it has a larger vision of redressing the antagonism built over centuries against forest dwellers, it should also recognize and remedy the colonial attitudes and ideas that dominate institutional processes and practices in relation to forest dwellers. In addition, new bills for new Indian forest laws have emerged that seemed to threaten the validity of the present forest rights act. The forest rights act has primarily focused on past deeds and has failed to demonstrate a vision about the future of governance in forest areas or about forest dwellers, on how old ways of association could be refurbished by reforming institutional process and practices that have alienated them in the past. Circumventing or even challenging the configuration of interests, both of the officials and the tribal communities that now dominate the forest areas could serve as a beginning in the right and promising direction.

### **Annexure**

List of states/union territories in India without claims and list of claims where titles have not been distributed:

**(A) List of states/union territories without claims:**

1. Andaman and Nicobar Islands
2. Arunachal Pradesh
3. Dadra and Nagar Haveli
4. Daman and Diu
5. Mizoram
6. Manipur
7. Meghalaya
8. Sikkim
9. Nagaland

**(B) List of states/ union territories where titles have not been distributed:**

1. Arunachal Pradesh
2. Manipur
3. Meghalaya
4. Mizoram
5. Nagaland
6. Sikkim
7. Uttarakhand
8. Tamil Nadu
9. Punjab
10. Haryana
11. Andaman and Nicobar Island
12. Daman and Diu
13. Dadra and Nagar Haveli
14. Puducherry
15. Lakshadweep
16. Delhi
17. Chandigarh

### **Notes**

- I. All forest rights-based figures are taken from the Forest Rights Act 2006 Act, Rules and Guidelines, Ministry of Tribal Affairs, 2014.
- II. All forest rights-claims figures are taken from the Forest Survey of India, 2019, Ministry of Environment Forest and Climate Change.
- III. All population figures are taken from the Census Data 2011, Ministry of Home Affairs, Government of India, 2011.

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