

वी. किशोर चन्द्र देव
V. KISHORE CHANDRA DEO

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मंत्री
जनजातीय कार्य एवं पंचायती राज,
भारत सरकार
शास्त्री भवन, नई दिल्ली-110001
MINISTER OF TRIBAL AFFAIRS
AND PANCHAYATI RAJ
GOVERNMENT OF INDIA
SHASTRI BHAWAN, NEW DELHI-110001

4 APR 2013

Dear Hon'ble Chief Minister,

I am writing this in the context of various issues pertaining to The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [Forest Rights Act] which is one of the flagship initiatives of the UPA Government. This watershed legislation has been enacted to undo the injustice done to scheduled tribes and other traditional forest dwellers from the days of yore by restoring and recognizing their pre-existing rights. This laudable social welfare legislation can have its meaningful application only when the rights of scheduled tribes and forest dwellers are handled and rightfully settled in all parts of the country. However, as the ground reality indicates these rights have yet to be settled in many regions owing to disturbances which have been arising from indiscriminate and rampant mining in Schedule V Areas. It is high time that the Forest Rights Act has to be effectively implemented with a view to safeguard the rights as envisaged in this legislation upon the scheduled tribes and forest dwellers. It also becomes imperative that the constitutional safeguards as envisaged in Schedule V to the Constitution and effective implementation of land laws of States are also secured.

2. The enactment of 2006 Forest Rights Act came as a ray of hope to the Scheduled Tribes and the other traditional forest dwellers. This watershed legislation as already mentioned by me sought to reverse the situation and correct the historic injustice by identifying and regularizing the pre-existing rights of these people.

3. Our thrust, therefore, should be implementation of Forest Rights Act and Rules made thereunder. Towards this end, after coming into force of revised Forest Rights Rules and guidelines in mid 2012, I had caused convening of national and regional consultations for emphasizing upon and finding out ways and means for effective implementation of FRA. It has been some time since the December 2012 national consultation held by my Ministry i.e. Ministry of Tribal Affairs on the implementation of the Forest Rights Act, I now wish to write to you in regard to some of the problems that continue to arise in implementation of this Act (and PESA too).

4. I would like to flag some of the oft felt problems which continue to fetter effective implementation of FRA:

- **Non-recognition of and non-respect for community rights and powers over forest management:** Notwithstanding the revised and updated changes in the FR Rules to make recognition of community forest resource rights mandatory for all forest dwellers' settlements, all the State governments have been unable to take up this matter. There has been no significant progress on this front. In addition, some of the specific problems that have arisen include:
 - ▶ *Governments using police and forest officials against people trying to protect their forests:* This has happened in particularly in North Bengal. There are also reports of similar developments with respect to the Baiga community in Dindori, Madhya Pradesh. In both cases, people who are trying to exercise their powers under section 5 of the FRA to protect forests from Forest Department felling (being done on the basis of FD working plans) are facing arrests, police cases and raids. In the Madhya Pradesh case this is happening despite an explicit recognition of these communities' community rights under the FRA. In this context I wish to emphasize that the powers of gram sabhas under section 5 of the Act should be respected. If people are unable to stop their forests from being destroyed by Forest Department felling, how can they exercise their community rights in those forests? This has the effect of making community rights meaningless.
 - *Continued equation of Joint Forest Management with community rights:* Several State governments continue to equate Joint Forest Management with recognition of community forest resource rights under the Act. Indeed, even in their official action plans, the governments of Gujarat, Jharkhand and Tripura have equated JFM committees/VSSs/or by such other names by which referred to with the committees that are to be elected by gram sabhas under the Act. What needs to be emphasized here is that these Committees which are constituted by Forest Departments by no stretch of imagination can be taken on par or equated with committees that elected by Gram Sabhas under the FRA. It has never been the legislative intent to vest upon such a status to JFMs or such like Committees. Some are even equating JFM with community forest resource rights and saying that, therefore, there is no need to recognize the latter. My Ministry had already issued revised guidelines on July 12, 2012 and suitably clarified position in revised FRA Rules which came into effect from September 7, 2012. There has been distortion in interpretation of these guidelines and rules.
- **Continued problems with respect to ownership and control over minor forest produce:** As a result on my initiative both Maharashtra (with respect to tendu patta) and Odisha (with respect to bamboo) have announced changes to their policies. However, I find that in both cases these changes are partial and do not meet the law's

requirements. In Maharashtra, the Forest Department is seeking to preserve its power by saying that the gram sabha will merely be recognized as a permitted "agent" for tendu patta - which equates the gram sabha with a contractor and leaves all the regulatory power with the Forest Department (contrary to the Rules and to your intervention on the issue of transit passes). In the case of Odisha, the change that has been announced is only for this year, leaving it open as to what policy will be adopted next year.

In the other States, there is still a complete vacuum on the ground, and so far no State government has fully modified its transit permit regime to match that required by the amended Rules. I would also be speeding up the steps towards operationalising a minimum support price.

- **Rejections of rights not being reviewed and land still being taken over without recognition of rights:** At several of the regional consultations and in the national one, the fact that illegal rejections of rights can be reopened and reviewed was repeatedly stated.

In connection with this, it is also disturbing that there are still gross violations of the rights recognition process. There are instances where the Forest Department has been systematically building high stone walls (ironically using MNREGA funds) around government forests. This is happening regardless of whether people's rights have been recognised under the FRA or not. As a result, people are being forced to walk for kilometers to access their lands and the forest produce in the forest. This is completely illegal, yet no action has been taken to stop it.

- **Continued lack of accountability for violations of the law:** In the above context, there is a strong need to demonstrate to officials - particularly, as one would expect, those from the Forest Department - that violations of the Forest Rights Act are punishable (not only under the Act itself but also under the IPC and the SC/ST Prevention of Atrocities Act, among others). The criminal offence provisions of the Act have gone completely unimplemented (in sharp contrast, of course, to supposed violations of the Indian Forest Act and the Wild Life Protection Act).
- **Non cognizance of viable alternative propositions:** There are certain propositions/proposals for amicable settlement of rights of tribals and forest dwellers, but it is disconcerting to note that there isn't even an iota of consideration of these even before implementation of Forest Rights Act - for instance in Andhra Pradesh in the context of Polavaram Projects there already were some alternative proposals for resolving issues arising therefrom. These proposals were not

considered worthy even a look although they offer viable solution which if opted for would entail least displacement of tribals; considerably less area under submersion of water; and related R&R options. This is nothing but a deliberate conscious apathy by our own State authorities for problem resolutions. This aspect calls for serious consideration.

5. I have through this letter sought to bring to your notice the problems that are yet to be resolved at ground level. It would require collective concerted endeavors of all of us to ensure effective implementation of the Forest Rights Act.

6. I also consider it quite relevant to refer to Preamble to our Constitution through which we have solemnly resolve to constitute India into a sovereign, socialist, secular, democratic republic and to secure to our citizens among other needs social economic and political justice and equity of status of the opportunity. By securing the aforementioned avowed resolutions we seek to promote fraternity among people, strengthening dignity and unity among them and above all integrity of the Nation.

7. You would also appreciate the fact the process of effecting inclusive growth can be achieved only when we address the problems and grievances of the most exploited and deprived sections of our society. This is what is meant by "inclusive growth" which has been time and again emphasized upon by our esteemed Prime Minister.

8. In the context of our resolve to ameliorate the most exploited and deprived sections of our society, I consider it appropriate to quote the following from the "**Book of Revelation**" (21:3-5).

"...And I heard a loud voice from the throne saying, 'Now the dwelling of God is with men, and he will live with them. They will be his people, and God himself will be with them and be their God. he will wipe every tear from their eyes. There will be no more death or mourning or crying or pain, for the old order of things has passed away...'"

This finds echo in one of the inspiring impressions recorded by **Mahatma Gandhi** in a note stated to have been recorded by Gandhiji in August 1947. I also find it appropriate to quote the same which is as follows:

"Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? In other words, will it lead to Swaraj for the hungry and spiritually starving millions? Then you will find your doubts and yourself melting away."

9. I would also like to cite the following extract from **Pt. Jawahar Lal Nehru's "Tryst with Destiny" speech:**

"...That future is not one of ease or resting but of incessant striving so that we may fulfill the pledges we have so often taken and the one we shall take today. The service of India means, the service of the millions who suffer. It means the ending of poverty and ignorance and poverty and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye..."

I trust that I would have your cooperation in this regard.

with best wishes

Yours sincerely,



(V. KISHORE CHANDRA DEO)

4.4.13

All CMs