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Habitat rights of Particular Vulnerable Tribal Communities and Pre-Agricultural Communities

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PREFACE

The Scheduled Tribes and Other Traditional Forest Dwelling Communities (Recognition of Forest Rights) Act 2006, generally known as the Forest Rights Act 2006, was passed by Parliament of India with the objective of resolving historical injustices done to the indigenous populations in India for the over many centuries. The Act ensures different types of forest rights to those populations, on forest land of any nature, in the form of individual, community and development rights.

The focus of the Government was initially on handing over rights for habitation and self-cultivation in respect of individual land holdings within forest land. The process of claiming *community* forest rights has been very confusing. In the absence of proper guidelines it has been erroneously carried out in different areas of many states across the country.

Guidelines introduced by the Ministry of Tribal Affairs in 2015 clarified the process of claiming these rights for those engaged in the facilitation of FRA implementation. Even then, claiming and gaining titles of the community Forest Resource Rights has remained a distant dream for most of the community *Grama Sabhas*. Similarly, the recognition of the habitat rights of PVTG and Pre-Agricultural Communities has been pending for years; the implementing agencies have no consensus regarding the provisions laid out in the Act,

The Forest Rights Act can in fact be seen as a continuation of many other forest laws that were passed in India during and since the colonial period. As mentioned, this historic piece of laws has come into force to resolve historical injustices, but also to ensure the conservation of biodiversity and the maintenance of ecological balance while guaranteeing the livelihood and food

security of the forest-dwelling scheduled tribes and other traditional forest dwellers. But community members, wherever we interacted with them, often complained that they have not received sufficient direction and assistance from the government agencies that are responsible for implementation and for imparting knowledge of the relevant provisions of the Act. We have learned that continuous support and capacity building are indispensable to enable these vulnerable societies to adopt the spirit of aims as envisaged by the Act.

Some tribal community groups have been identified as particularly vulnerable by the Government of India and they remain very backward due to various socio-cultural, economical, racial, political factors. A unique right has been assured to these communities under the Forest Rights Act. This right is generally called 'habitat rights'. This right is to be recognized upon the forest lands of their community ecosystem and traditional habitat areas.

This booklet attempts to explain habitat rights, how they can be claimed by a community, and the roles of implementing agencies of government in facilitating that. The booklet includes the provisions of the Forest Rights Act 2006 and contains the writings of expert practitioners who are pioneers in the field of FRA advocacy. Stories recounting three instances of habitat rights implementation have been included, as has a timeline of the forest laws passed in India since 1865, with brief descriptions, along with short descriptions of the ST and PVTG communities.

Hopefully this booklet will provide some basic and relevant information regarding different aspects of habitat rights to all readers, and in particular to practitioners of forest rights.

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Habitat rights of PVTG and Pre-Agricultural communities under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act

Chapter I

“... and whereas the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of state forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling scheduled tribes and other traditional forest dwellers who are integral to the very survival and sustainability of forest ecosystem... be it enacted ... as follows ..” –from the Preamble to the Forest Rights Act, 2006

The context of Forest Rights Act, 2006

The enactment by the Parliament of India of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006 (Forest Rights Act 2006) is an important legislative milestone in the history of tribal empowerment especially relating to security of tenure on forests and forest lands. The Forest Rights Act 2006 seeks to recognize and vest the forest rights and occupation in forest land in forest-dwelling scheduled tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights have not been and could not be recorded. The Act came into effect from 31 December 2007; the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules were first notified on 1 January 2008, later amended on 6 September 2012.



Photo Courtesy : Indigenousepeoplesnet.wordpress.com

TIMELINE TOWARDS FOREST RIGHTS ACT, 2006

Pre-Colonial Period

The tribal communities had absolute rights over the management of the local forest resources.

India Forest Act, 1865

Gave authority to the Forest Department to define rules and regulations to local rulers as well as over lands under direct British rule); Violations were criminalized. The British colonial government gained an absolute monopoly over forests and communities lost their say.

India Forest Act, 1878

Passed to resolve the shortcomings of the first act, which had been drafted hastily; this act was more balanced in favour of Indian rulers. It specified three sections which controlled/had rights over forests – the British; Indian rulers/Indians; Indigenous communities.

National forest policy, 1894

Future forest policy of the British colonial government; more rights are given to the British authorities; forest clearance is authorized if necessary.

India Forest Act, 1927

Consolidated all previous Acts; But it was mainly intended to exploit the forest resources mainly for timber; More expansion of agriculture into forest cover; diversion of forest land was permitted; There was no provision of the development of forests but for industrial development and defense purposes.

POST INDEPENDENCE PERIOD

National forest policy, 1952

Expansion of the forest cover envisaged with the support of private/commercial interests; 33% of the total area of India was forest cover (reduced to 13% in 2023); sustained supply of raw materials for defense purposes; private forests were to be controlled; checks on grazing and shifting cultivation; preservation of critical wildlife; no diversions for agricultural purposes.

Wildlife Protection Act 1972

The Centre's Wildlife Protection Act, 1972 was enacted to conserve animals, birds, plants. It has six schedules

- ⇒ Schedules I and II provide absolute protection and prescribe the highest penalties;
- ⇒ Schedules III and IV provide protection; prescribed penalties are lower

- ⇒ Schedule V – vermin may be hunted
- ⇒ Schedule VI – endemic flora cannot be planted or cultivated

India Forest Conservation Act, 1980

More focus on conservation. Forest affairs were brought under the concurrent list to limit state governments' monopolistic control over forests. There were three notable changes in this act:

- ⇒ decisions on converting forest lands into non forest purposes are shifted to the Concurrent List
- ⇒ conversion of natural forests into plantations is prohibited
- ⇒ the rights of indigenous communities to collect non-timber forest produce and the right to participate in the conservation and management of forests and forest resources is reinstated

National forest policy, 1988

Recognized a set of ideas such as: the inseparable relationship and interdependency between indigenous communities and forests, the safeguarding of traditional rights; the necessity of integrated development programs; the making of forest villages equal to revenue villages.

It is clearly mentioned in the affidavit of the Ministry of Environment and Forests submitted before the Supreme Court of India, that the forest dwelling community members had been unlawfully cleared out/cleared from their traditional rights over forest land;

Forest Rights Act, 2006

The Act was passed to rectify the historical injustice done to forest dwelling communities. It recognizes and vests 'forest rights' and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers. The Act provides an overall framework for recording forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest lands. The act also aims to strengthen the forest conservation regime by conferring on forest rights holders the responsibility and authority for sustainable forest use, conservation of biodiversity and the maintenance of ecological balance.

The Forest Rights Act 2006 is a historical law recognizing the forest rights of tribal peoples, and is the first inclusive mechanism addressing Adivasi rights. The Act recognizes and mandates the conservation of the traditional resource use areas of tribal people and envisages the coexistence of people and wildlife by recognition of the rights of both in protected areas. The act ensures/sets out a bottom-up approach from the initiation of a claim onwards. The act recognizes and ensures the customary rights of tribal people, including rights to minor types of forest produce, rights over water bodies and, very significantly, habitat rights in the case of particularly vulnerable tribal groups (once proven). The act is a remarkable effort to deepen democratic process in forest governance; it confers the power to determine forest rights upon Grama Sabhas, which are basic units of democratic decision-making.

However, the implementation of the FRA proceeds at snail's pace even though it came into force at the end of 2007. The governments have focused more on transferring forest right titles to individuals rather than to communities. Moreover, most implementing officers and even most of the intended beneficiaries of the act are not properly educated about it. In many cases Forest Rights Committee members are not even aware that they are the members of such committees. The various agencies charged with implementation have operated independently of each other and indeed are sometimes at odds.

Community empowerment needs to happen at every level. But, across India, there are only a few organizations involved in this process of enabling community members to secure their rights as envisaged by the act, and their work does not get adequate support from the authorities.

Chapter II

“Rights including community tenures of habitat and habitations of *primitive tribal groups and pre-agricultural communities*” (Section 3 (1) (e))

Scheduled Tribal communities and Particularly Vulnerable Tribal Groups

Before we understand the Forest Rights Act we need to understand the legal definitions of Scheduled Tribes and of PVTGs. These two categories, and some of the challenges and issues in identifying of PVTGs, are now explained:

Scheduled Tribe

Scheduled tribes are among the most disadvantaged socio-economic groups in India. The term ‘scheduled tribe’ is primarily an administrative and constitutional concept. Article 366 (25) of the Constitution of India refers to Scheduled Tribes as those communities, who are scheduled in accordance with Article 342 of the Constitution, But that article simply made provision for tribal groups to be specified (by states) without identifying any criteria. The essential characteristics of Scheduled Tribes were laid down by the Lokur Committee in 1965. For communities to be identified as Scheduled Tribes they needed to be characterized by:

1. Primitive traits
2. Distinctive culture
3. Shyness of contact with the community at large
4. Geographical isolation
5. Social and economic backwardness

Particularly Vulnerable Tribal Group

PVTGs are the most marginalized sections of the Scheduled Tribes of India. These are communities who are relatively isolated, educationally and socio-economically backward, living in a habitat generally far away from mainstream amenities.. It is a Government of India categorization to enable improvement in the conditions of certain communities with particularly low development. PVTG is neither a constitutional category nor does it describe constitutionally recognized communities.



How did this classification come about?

The **Dhebar Commission (1960-61)** and other studies suggested that there existed inequality amongst tribal communities in terms of their development. In 1975, based on the Dhebar Commission report, the government created **Primitive Tribal Groups (PTGs)** as a separate category and identified 52 such groups. In 1993, 23

more groups were added making it 75 PTGs. In 2006, the Government of India renamed the PTGs as **Particularly Vulnerable Tribal Groups (PVTGs)**.

The criteria:

1. A pre-agriculture level of technology
2. A stagnant or declining population
3. Extremely low literacy
4. A subsistence level of economy.

Major Issues and Challenges:

1. Incoherency in identification

States differ on the method of identification of PVTGs. The spirit of the direction made by MoTA was only loosely followed; accordingly there has been no uniformity in identifying PVTGs.

2. Outdated list

The Anthropological Survey of India observed in 1977 that the list of PVTGs is overlapping and repetitive. For example, the list contains some groups such as the Mankidia and the Birhor in Odisha.

3. Lack of baseline surveys

The Anthropological Survey of India observed 75 PVTGs; base line surveys existed only for about 40 of them. The lack of baseline surveys hinders effective implementation of welfare schemes.

Note: Base line surveys are done to precisely identify the PVTG families, their habitat and their socio-economic status, so that the impact of development initiatives can be measured.

4. Impact of developmental projects

In 2002 a Standing Committee formed by the MoTA to review the ‘Development of Primitive Tribal Groups’ shared/reported that tribal people, especially PVTGs, are the worst affected of any groups by projects like dams, industries and mines.

5. Denial of land rights

PVTGs have faced systematic alienation from their resources due to conservation purposes - the declaration of Reserved Forests and Protected Forests. For example: In 2009 245 Baiga families were forced out of the Achanakmar Tiger Reserve, when it was so notified under Project Tiger. Further, despite the Forest Rights Act 2006, the habitat rights of PVTGs are still being forfeited in many instances. For example the Mankidia community of Odisha is denied habitat rights in Similipal Tiger Reserve (STR) by the state’s forest department

A list of PVTG communities is given in the annexure 1.

Chapter III

“The right to community tenures of the habitat and habitation over customary territories used by PVTG communities include not only habitation but also social, economic, spiritual, sacred, religious and other purposes.” (23011/16/2015-FRA)

Habitat rights in the Forest Rights Act 2006

‘Habitat rights’ is one of the important rights that should be recognized under the provisions of the Forest Rights Act. Even though there are 75 officially recognized different Particularly Vulnerable Tribal Groups (called Primitive Tribal Groups until 2006) across the Indian subcontinent, there has as yet been no proper initiative from the authorities to recognize the requisites of these vulnerable tribal community members.

- **“Rights including community tenures of habitat and habitations of *primitive tribal groups and pre-agricultural communities*”** (Section 3 (1) (e))

What is ‘Habitat’?

As per the definition of the term ‘habitat’, it could be an area either of customary or any other habitat where Particularly Vulnerable Tribal Groups or Pre-Agricultural Communities have a claim and/or an area which they have enjoyed access to since time immemorial. ‘Customary’ in this context may mean, especially when relating to tribal community people, traditional. Habitat can be defined as a specific place or natural and perfect existence for an animal, plant or organism to exist and co-create. Habitats are very important for a healthy, harmonious and balanced life.

The term ‘habitat’ has been defined clearly under section 2 (h) of the Forest Rights Act and further described in reference to the rights to such habitat under section 3 (1) (e). The definition of habitat under the former is as follows;



“Habitat includes *the area comprising the customary habitat and other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling scheduled tribes*” (Section 2 (h))

There has been confusion of the term ‘habitat’ with ‘awaaz’ which commonly means house or habitation in the Hindi-speaking belt. Many states wrongly equated the term habitat to mean providing housing facilities under schemes like the Indira Awas Yojana. To dispel this confusion, the Ministry of Tribal Affairs issued a clarification on 23 April 2015 (23011/16/2015-FRA) as follows;

“The right to community tenures of the habitat and habitation over customary territories used by PVTG communities include not only habitation but also social, economic, spiritual, sacred, religious and other purposes”

In this sense, habitat rights go beyond the community and individual rights envisaged under the Forest Rights Act. Habitat rights aim to protect not just the land rights and livelihoods of the people dwelling in forests, but cover the ways of life of cultures. These are composite rights over larger landscapes that recognize territories used by primitive tribal groups and pre-agricultural communities for habitation, livelihood, social, economic, cultural and other purposes.

Filing and submission of Habitat Rights claims

Every claim under the Forest Rights Act 2006, whether it is to individual or community forest rights, is claimed by way a claim form, for example, A, B or C that is submitted to the SDLC along with substantiating/supporting evidence. Decisions on claims are generally taken by Grama Sabhas. But the Act is not very clear about the role of Grama Sabhas in this process. There are as yet no final guidelines to submitting a claim to habitat rights. At the same time, it can be interpreted as per Rule 12 (d) of the Act that the community as a whole, its representatives, or an organization of community members, can submit such a claim for habitat rights.

The Act does not explicitly stipulate methods for claiming habitat rights nor is there a separate claim form under the FRA. But in FORM B, which is a claim form for community rights as per Rule 11(1)(a) and Rule 11(4), the community members could

fill in against the fourth point under ‘Nature of community rights enjoyed’ any community tenures of habitat and habitation for PTGs and pre-agriculture communities as spelled out under section 3(1)(e) of the Act. We can clearly understand as per Rule 12 (1) (d) of FRA (amended) rules, 2012, that submissions can be made by a member of PVTG through their community or traditional community institutions. The primary verification has to be done by the Forest Rights Committees representing the respective community groups and habitat areas.

As per Rule 12 (1)(e), the claimants must prepare a map delineating each claim and locating recognizable landmarks. In the map, the community members could possibly mark all of their rights areas relating to social, economic, spiritual, and cultural or of any other important aspects.



Points to remember

Form B - claim for community rights or (a new claim form developed by community members with the knowledge of recognizing authorities)

No separate claim form for habitat rights

To be entered in column 4 – the nature of community rights enjoyed – where the habitat rights have been mentioned as – “community tenures of habitat and habitations of primitive tribal groups and pre-agricultural communities.”

Facilitation of habitat rights and the process of verification

State governments must ensure that on receipt of intimation from the Forest Rights Committee, officials of the Forest and Revenue Departments remain during the onsite verification of the claims and evidence.

Forest Rights Rules require Forest Rights Committees to ensure that the claims from PVTGs are verified when such communities or their representatives are present. Further, the right to community tenures may be recognized over the customary territories used by the PVTG for habitation, livelihoods, social, economic, spiritual, cultural and other purposes. In some cases, the habitats of PVTGs may overlap with forests and with the rights of other people or communities.

As per Rule 8 of the Forest Rights amended Rules, 2012, District Level Committee must also ensure that the rights of PVTGs

and other vulnerable communities such as pastoralists and nomadic communities are addressed, keeping in mind the objectives of the Forest Rights Act.

Ensure that the claim from a member of PVTG or pre-agricultural community for determination of their rights to habitat, which may either be through their community or traditional community institution, are verified when such community or their representatives are present (Rule 12 (1) (d)) and

Prepare a map delineating the area of each claim indicating recognizable landmarks (Rule 12 (1) (e))

(This is done intimating/in consultation with the concerned claimant and the Forest Department)

In view of the distinctive and acute vulnerabilities of Particularly Vulnerable Tribal Groups, district level committees should play a proactive role in initiating the process of recognition of the habitat rights in consultation with the traditional institutions of the PVTG and ensure the claims for habitat are submitted before the relevant Gram Sabhas. For this purpose, wherever necessary, the floating and transient nature of Grama Sabha membership should be kept in mind. This has been reiterated by the Ministry of Tribal Affairs vide Circular dated 23 April .2015 (23011/16/2015-FRA).

As per the guidelines, district Level Committee should ensure that records of prior recorded nistari or other traditional rights are provided to Gram Sabhas and if claims are to be filed for

recognition of such age-old usufructory rights, such rights should not be rejected except for valid reasons, to be recorded in writing. It suggests that DLCs should also facilitate the filing of claims before the concerned Gram Sabhas since there would be a transient population in the area used traditionally used.

Steps for submission of claims

Organize Grama Sabhas in all identified settlements of the PVTG (if it might include the sessions on habitat rights, DLC members shall/must be present at the meeting,



Consult traditional leaders and FRC members (a statement from community elders is one of the two kinds of evidence to be produced before the Grama Sabha when making a claim over customary forest land; District level committees should ensure that the records of prior recorded nistari or other traditional rights are provided to Gram Sabhas)



Preparation of Habitat Maps (the map has to include the customary territories used by the PVTG for habitation, livelihoods, social, economic, spiritual, cultural and other purposes. The map does not necessarily have to be digitalized)



Filing of Claims: Forest rights committees shall, based on the information and other inputs from the community elders and others, prepare the claims having complied with all sufficient evidence and presented before the respective Grama Sabhas/ Village Assemblies/Oorukkootams)



Submission of claims

Habitat rights on Revenue land

The FRA recognizes rights on forest land as defined under section 2 (d) of the Act. It is to be noted that the definition of ‘forest land’ adopted by the FRA is in accordance with the judgement of the Supreme Court in the Godavarman case that the definition be used ‘in the widest possible sense’. Therefore, unclassified forests, un-demarcated forests, existing or deemed forests which are often on revenue land can also be deemed forest land under the FRA. Habitat rights of PVTGs are there applicable both recorded forests and also forests that come within the definition of forest land under the FRA on such revenue lands which mean the land under the administrative control of the revenue department. If the habitat area or its part of a PVTG does not come within the definition of forest land then such habitat rights cannot be recognized under Forest Rights Act. However it may be recognized under respected revenue laws of the concerned State Government or under the relevant provisions of the Panchayat (Extension to Scheduled Areas) Act 1996

Proposed Guidelines for determination and recognition of Habitat Rights

A study was commissioned in 2014 under a UNDP-MoTA project to devise a mechanism for recognition of the habitat rights of PVTGs under the Forest Rights Act. The study proposed guidelines for determination and recognition of habitat rights of particularly vulnerable tribal groups and specific roles and responsibilities of different authorities under the Forest Rights Act in the habitat rights recognition process.

The guidelines are in three sections;

- Section 1 deals with the preparatory phase describing the processes to be followed before the initiation of the claim for habitat rights.
- Section 2 deals with the actual process to be followed for determination and recognition of habitat rights
- Section 3 outlines the specific roles and responsibilities of different authorities under the FRA with respect to recognition of habitat rights.

The proposed guideline suggested including NGOs with a proven track record of working under the FRA to support concerned/relevant government officials and staff in capacity building programs. The guideline has also proposed different steps to be followed under each section; these steps are as follows (in brief):

1. Preparation of state action plan
2. Initiation of PVTG Habitat Rights recognition process
3. Organize Grama Sabhas in all identified settlements of the PVTG
4. Consultation with Traditional Leaders and FRC members
5. Filing of Claims
6. Submission of claims
7. Preparation of Habitat Maps

The proposed guideline has also spelled out specific roles and responsibilities to be performed at different levels of government.

Pre-claiming process of Habitat rights

Habitat rights being complex, dynamic and flexible, the decision making process is equally complicated. The process is liable to become highly specific for each community. Therefore it becomes crucial to involve PVTG communities and their representative in the decision-making from the beginning and to take fully informed decisions relating to the determination of habitat rights. Indeed, this is a legal requirement under the Forest Rights Act. The PVTG communities are very reserved in sharing their opinions and speaking about their society and culture. So the community members need to be made aware of the FRA and its provisions related to habitat rights. They would also need handholding/intimate/close support during the discussions and deliberations on habitat rights determinations. The facilitation of claim making to habitat rights will always need sensitive engagement with PVTG communities.

Habitat areas parameters

- Social criteria – PVTG societies though they are numerically very small, might be further divided into clans which might maintain separate territories within their larger habitat areas. It should also be kept in mind that their traditional institutions and their methods and systems of decision making might not be necessarily aligned with mainstream institutions.
- Cultural and religious rights – several ritualistic practices of the forest dwelling communities are associated with sacred groves and other objects or entities in the forest land

and its areas. Most of their worship areas might also be falling within the core zones of protected areas. Their dependency over forest resources is not limited to food and NTFP trades but extends to housing, music and art etc. All these must be included in the process of mapping of habitat areas.

- Livelihood rights – communities depends on various forest based resources for their livelihood and other economic needs. This not only includes non-timber forest produce, but, the catching and sale of freshwater fish and the value addition and marketing of all these non-wood products.
- Natural and geographic areas including forests, cliffs, rocks, streams, rivers and ponds. Other traditional boundaries of PVTG communities and any overlap with other community territories are also to be considered.

Parameters for analysing habitat rights areas

It could be good if the following parameters used to assess the feasibility and potential of generating Habitat Right claims in different areas. The data generated out of this analysis would help us get detailed quantitative and qualitative information on different kinds of socio-economic-cultural aspects of the proposed PVTG communities who are entitled to claim habitat rights. This pre-claim analysis would also help to derive a clear picture and understanding of the context of the habitat area and the claimant communities. Data analysis sheets have been attached as annexure- II

Chapter IV

Habitat rights – Three stories

1. Story of Baiga PVTG, Baigachak, Samnapur, Madhya Pradesh

The Baiga, one of the 75 PVTG communities who are eligible to get habitat rights under FRA, 2006, live in the sal forests of Maikal Hills, in Dindori district of Madhya Pradesh and were the first in India to secure their right to habitat.

A notification passed by the British colonial government in 1890 had recognized seven villages in the region as having limited rights over the forests. This area was called Baiga Chak (today the Baiga territory takes in over 52 villages). The recognition of Baiga Chak was done after several attempts by the British to remove the community from the forests. Shifting cultivation or Bewar done by the Baigas was outlawed as one of the measures to drive them out of these villages. But some of the officials realized that the community has been completely dependent on forests and led a simple life. With the recognition of Baiga Chak the community members in the seven villages were allowed to continue to practice Bewar farming. This recognition was short-lived, being withdrawn after the Forest Act, 1927.

Over the years, increasing state control over the forests and the diversion of forest land for development and conservation has seriously threatened Baigas. Although Gazette notifications since 1890 provided the basis of for giving the habitat rights to the Biagas, the local administration, activists, experts and community leaders were not informed about the implementation of such rights.

Even though the FRA envisaged a legal basis to habitat rights, absent proper guidelines to implement these rights, it was difficult to make claims.

In 2013, participatory exercises to help the Baigas claim the habitat rights began. The exercise was conducted to determine the habitat zone of the tribe, the crops they grew, and their cultural beliefs. After the participatory exercises for habitat rights, the administration came to appreciate the shifting collection that protected and enriched the soil. It involves mixed cropping of up to 18 varieties of grains, vegetables and mushrooms.

In November 2014 Chhavi Bhardwaj, then district collector of Dindori, held the first meeting with FRA activists and community leaders and members to recognize habitat rights. To explain their habitat, Baigas used the example of a tiger's territory. Tigers roam a large area in a forest when they hunt, not just its dwelling, which could be a cave. When the collector was convinced a mapping exercise was undertaken in which villagers were asked to prepare their own maps. These maps were later overlaid with relevant data with the help of GPS locators.

Community members and activists alleged that the forest department opposed the claims to habitat rights and they did not even attend the meetings organized by the district collectorate.

In November 2015, after three years of research consultation and mapping, the authorities handed over the legal titles to the community members. They received rights to over 9300 hectares, for about 900 households in seven villages. When distributing the land titles the Dindori administration told the people they were

now free to enjoy their ancestral rights over the land and forests and that even the state could not transfer any of their lands for non-community uses without their consent. As mentioned earlier, there are 52 Baiga villages at present spread over the Samnapur taluk of Dindori district,. It this area is all to be considered for habitat rights, it would range from the Achamakmar forests in Chhatisgarh to the Amarkantak forests in Madhya Pradesh.

2. Stories of Kadar PVTG, Vazhachal, Kerala

Kadar Adivasi community people are the food gathering, seasonally nomadic and forest dwelling community endemic to the Anamalai hills of the southern Western Ghats. This story is spoken about the people who live in 8 different settlements who received CFR title including the rights over their habitat area falling under Vazhachal forest division of Thrissur district in Kerala. Collecting forest products and hunting were their two primary means of livelihood. Food gathering is an ecologically viable subsistence activity as far the Kadar are concerned. The community claims a long history of conserving, managing and governing the forest resources that has never been duly recognized by the State and other mainstream actors of forest governance. Vazhachal, the traditional habitat of Kadar community people, is the first locality where the community forest rights have been implemented in the state of Kerala

The FRA recognizes and ensures the customary rights of the people, rights on minor forest produces, water bodies and, very significantly, habitat rights in the case of particularly vulnerable tribal groups if evidences are produced. The Act recognizes the

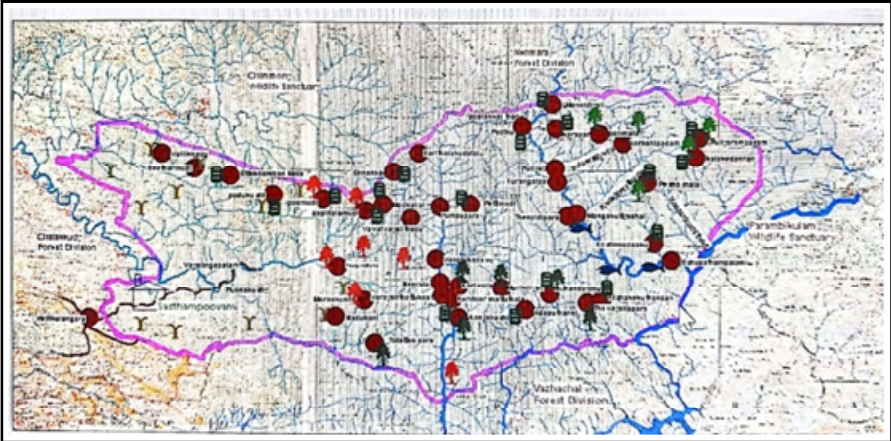
conservation of traditional resource use areas of tribal people The Kadar are using this law to protect the forests through their Grama Sabhas. Kadar follows an 'invisible' boundary system in the case of resource usage. Kadar have their own habitat for forest produce collection.

Processing of claiming and award of titles:

Awareness programs and campaigns on CFRs began during 2009. Claims were made for Community Rights (CR) and Community Forest Rights (CFR) in 9 villages in Vazhachal Forest Division including 8 Kadar (PVTG) and one Malayar (non PVTG) villages in 2010-11. The Hornbill Monitoring team of Kadar facilitated the Gram Sabhas in empowering them for resource use mapping and demarcating the area. Hornbill monitoring team is a group of Kadar community members selected and trained by the Hornbill foundation in order to monitor the population and habitat of the hornbill birds that are resident in the forests of Vazhachal division. This began with holding GS meetings, discussions, listing of CRs (NTFPs, fish, firewood, cattle grazing and other resources), mapping, and support to FRCs and GS for preparing and filing claims and collecting evidences. In addition, the CFR area associated with their habitations was demarcated which essentially (refers to their present use of habitat), intellectual property and the Section 5 through Section 3(1)i (CFR management) were also claimed.

Total CFR area declared under the FRA in Vazhachal area is for 40000 hectare. Individual rights of the Kadar had already settled under the FRA. Community Forest Resource (CFR) rights were conferred to the Kadar of the Vazhachal forest division, under

which section 3(1) (c), (d), (e), (i), and (k) are recognized. It gives rights over resources such as water bodies, and minor forest produce items and protection of intellectual property rights.



Post CFR stories

Through the recognition of community forest resource rights, the Kadar have obtained a legal recognition for their resource dependency and economy. Through the formation of the CFR management committee, a large forest area can be governed through the Gram Sabha.

The Kadar have used the act as a governance mechanism of their forest area in many instances. There is a proposed dam project in the area, which is just 400 metres away from the Vazhachal hamlet. The Kadar have consistently stood against the dam project for the last 20 years and the project was stalled by their legal intervention. In 2015, Vazhachal Grama Sabha passed a resolution against the dam and other development projects in their area and submitted a copy of the resolution to the High Court of Kerala.

There are a total of nine Grama Sabhas in the Vazhachal forest division. In support of the Vazhachal Gram Sabha, all other eight Gram Sabhas also passed resolutions against the proposed dam.

On 4 November 2018 the Vazhachal Grama Sabha took some important decisions regarding their work and forest protection. In the meeting, they discussed the need of getting high wage for the Adivasis when they work at the forest depot which otherwise goes to non-Adivasis. High wages are paid for work such as loading and unloading of the first quality wood. Generally, Adivasis only get a chance to be involved in the loading of low quality wood and hence they get low wages. Later on, the trade unions have admitted and supported Adivasi demands for high wage labour.

But in almost all other districts and other protected areas CFR claims are still pending with the sub divisional level committee and the State government does not show any interest for the passing of claims and conferring of traditional rights.

3. Stories of Bhariya PVTG – Patalkot, Madhya Pradesh



Bhariya is one of the Bhariati speaking Particularly Vulnerable Tribal Groups of Madhyapradesh. They live in Patalkot, a completely isolated valley located around 400 meters below Tamiya Taluk in Chhindwara district. Patalkot was inaccessible by road until recently. Bhariyas are known for their deep knowledge on different types of herbs and medicinal plants that grow within the valley in plenty.

The Bhariya PVTG community secured rights under rule 8(h) & 8(i) of the Forest Rights Act. They received title for habitat rights in a public event organized at Jabalpur. Shri Jagdeep Dhankhar, Hon'ble Vice President of India and Shri Shivraj Singh Chouhan, Hon'ble Chief Minister of Madhya Pradesh distributed the title to Bharia traditional leaders.

The habitat rights title were received in the names of Bhariya PVTG community members and other tribal community members living within 12 villages within Patalkot region of Tamiya Taluk

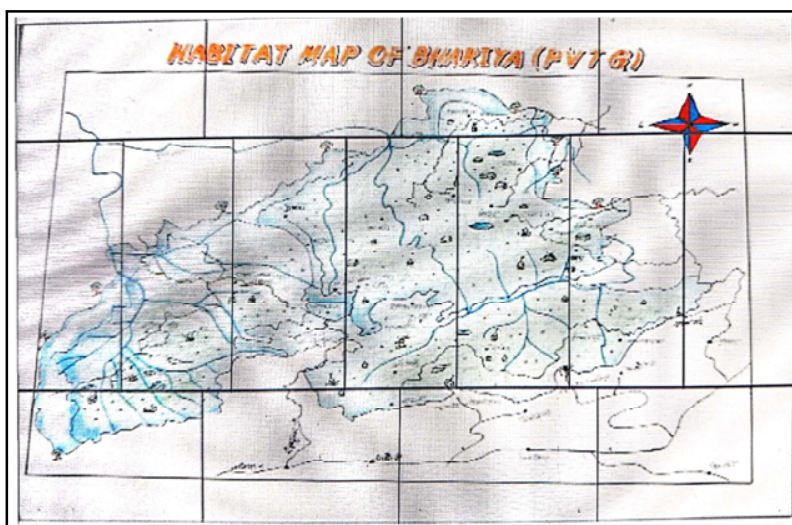
of Chhindwara district. The habitat area where titles are received is located within 3 Grama Panchyats namely Harrokchar, Kareamkewad and Ghatlingh. The names of 12 villages are for which the rights are given as follows; (1) *Gad Madhal Harokchhar*, (2) *Khamarpur sehra pachgol*, (3) *Dhumni Malni Domni*, (4) *Sookhabhandar Harmau*, (5) *Jhiran*, (6) *Kare aam rathed* (7) *Chimtipur* (8) *Dhomyapade khokri Gujjdongri* (9) *Palni Gaildubba*, (10) *Khatt linga* (11) *Gudi Chhathri* and (12) *Khanasulttana kaudiya*

Process of claiming the habitat rights for Bhariya community

The claim process of claiming was initiated many years ago. The process of the community mobilization towards the claiming of Habitat of Bhariya community had actually been started since 2017 with support of Naresh Biswas, of Nirman, a grass-roots level NGO operating in the district for last many years. In the words of Gyanza Bharti, who is the head of the FRC of Khanasulttana kaudiya, “We were not aware of Habitat rights until Nareshji talked about the habitat rights received at Baiga Chowk. A series of meetings on the topic of habitat rights with community members at different villages have been held since then.” The villagers were given training on form filing by the organization, with the support of selected community leaders in all these villages. These Bhariya leaders have also been exposed to the examples of Baiga community members who have already received habitat rights titles.

Meanwhile, the Madhya Pradesh state tribal welfare department and the Chhindwara district administration with the

help of Mr. Hari Omm Shukla of Gram Udyog Sanstan, Mandla, facilitated the process of mapping habitat rights on ground. The teams of GUS and Chhindwara district administration have been in regular touch and were also taking guidance from the field experts from different organizations and individuals on a regular basis. The field level exercise (data collection, claim compilation in form B & C, preparing sketch maps of all the smaller habitat of the 12 villages and then consolidating it to a larger map, claim submission, follow-up with SDLC & DLC) was done by the team of Gram Udyog Sansthan and the Chhindwara district administration with the support of the Grama Sabhas of all these 12 villages.



The Bhariya community used forms "B" and "C" to claim rights over Community Forest Resources since the FRA does not provide separate forms for claiming habitat rights titles. These four attachments as given below that have been annexed along with

the title to give the reader lucid ideas of the titles and other details of Habitat rights received by the Bhariya community in two areas.

- ◆ Annexure 1: names of the inhabitants of all 12 villages and their 29 hamlets
- ◆ Annexure 2: names of the 12 villages and their 29 hamlets
- ◆ Annexure 3: Habitat Map - sketch map,
- ◆ Annexure 4: details of compartment with area over which the rights were recognized.

Habitat right is one of the rights under the FRA which is poorly understood and that is why India does not have any good examples to date. These good practices need to be shared so that people across the country can learn and replicate it in their areas so that it will ultimately help all others amongst 75 PVTGs spread across India.

Conclusion

Over the many years of the implementation of the Forest Rights Act, several issues have arisen as obstacles in both letter and spirit to its for the implementation, including non-recognition of unhindered rights over non timber forest produce to forest dwellers; non-recognition of their community rights; harassment and eviction of forest dwellers without settling their forest rights; rejection of their claims; inadequate awareness of the provisions of the Act and the Rules etc. in the light of these issues, several guidelines were laid down in order to clarify the misunderstanding but there are many issues yet to be solved on grounds as well as administrative level.

The Forest Rights Act, 2006 was born out of continuous struggles and protests of indigenous people for so many years. The Act is starting to evolve transparent democratic processes. It is the responsibility of governments to encourage and support to this evolution. There must be collaboration between four different government departments – the Departments of Forests, Panchayati Raj, Tribal Affairs, and Revenue - If the objectives of the Act are to be realized. Violations under this law must be punishable. Likewise, state governments and DLCs have to take necessary steps and initiatives to strengthen the traditional as well as Grama Sabha institutions of all Particularly Vulnerable Tribal Groups in order to ensure that habitat rights are secured for these extremely vulnerable population.

Annexure 1

List of PVTGs

States and Union territories	Particularly Vulnerable Tribal Groups
Andaman & Nicobar Islands	Great Andamanese, Jarawas, Onges, Sentinelese, Shorn Pens
Andhra Pradesh and Telangana	Bodo Gadaba, Bondo Poroja, Chenchu, Dongria Khond, Gutob Gadaba, Khond Poroja, Kolam, Kondareddis, Konda Savaras, Kutia Khond, Parengi Poroja, Thoti
Bihar and Jharkhand	Asurs, Birhor, Birjia, Hill Kharia, Konvas, Mal Paharia, Parhaiyas, Sauda Paharia, Savar
Chhattisgarh	Asurs, Birhor, Birjia, Hill Kharia, Konvas, Mal Paharia, Parhaiyas, Sauda Paharia, Savar
Gujarat	Kathodi, Kohvalia, Padhar, Siddi, Kolgha
Jharkhand	Same as above
Karnataka	Jenu Kuruba, Koraga
Kerala	Cholanaikayan (a section of Kattunaickans), Kadar, Kattunayakan, Kurumbas, Koraga
Madhya Pradesh and Chhattisgarh	Abujh Macias, Baigas, Bharias, Hill Korbas, Kamars, Saharias, Birhor
Maharashtra	Katkaria (Kathodia), Kolam, Maria Gond
Manipur	Marram Nagas
Odisha	Birhor, Bondo, Didayi, Dongria-Khond, Juangs, Kharias, Kutia Kondh, Lanjia Sauras, Lodhas, Mankidias, Paudi Bhuyans, Soura, Chuktia Bhunjia
Rajasthan	Seharias
Tamil Nadu	Kattu Nayakans, Kotas, Kurumbas, Irulas, Paniyans, Todas
Tripura	Reangs
Uttar Pradesh and Uttarakhand	Buxas, Rajis
West Bengal	Birhor, Lodhas, Totos

Annexure II

Data analysis Sheet

A scoring method on a scale of 0 to 10 can be used for the analysis. The following are the parameters to be used:

1. **Compact/ nucleated or mixed settlement of PVTG community:**

Does the PVTG community live in compact or mixed settlements? The score will be high if the PVTG community lives together in compact nucleated settlements in the proposed Habitat Rights area. The score will be low if the PVTG community lives in mixed settlement with other Adivasi or non-Adivasi communities. Nucleated settlements makes it easier to organise and mobilise PVTG communities; strengthen traditional institutions; and improve participation of people in Gram Sabhas. Score on a scale of 0 to 10 for the type of settlement.

2. **Well defined Habitat Rights area:**

Is the proposed Habitat Right site a well defined area? For instance, Patalkot, Chui Pahad and Baiga Chak are well defined areas. How well is the Habitat Right area defined? High score would indicate a well defined area while a low score would mean that the area is not well defined.

3. **Availability of documentation/ records:**

Are good documentation and records (historical, geographical, social, anthropological, ecological, weather, etc.) available for the proposed Habitat Right site? Score on a scale of 0 to 10.

4. **Level of organisation/ mobilisation amongst people**

What is the level of organisation/ mobilisation amongst people in the proposed Habitat Rights area? Are people proactive in demanding forest rights? Score on a scale of 0 to 10.

5. **Status of traditional institutions**

What is the status of traditional institutions of Adivasi communities in the proposed Habitat Rights area? Weak or strong? Do traditional institutions encourage participation of women? Do people accept the decision making process of these institutions? How active is the traditional institution on a scale of 0 to 10.

6. **Attitude of government officials**

What is the attitude of Government officials (District Collector, DFO, CEO, etc.) towards the demand for Habitat Rights? Do they support the Habitat Rights process or is there opposition to Habitat Rights from the main Government officials? Score on a scale of 0 to 10. Low score would mean opposition while a high score will indicate support.

7. **Overlap with protected areas**

Does any area of the proposed Habitat Rights site overlap with protected areas. To what extent? Score on a scale of 0 to 10. High score would indicate a high overlap while a low score would indicate a low overlap.

8. **Overlap with sensitive areas**

Does any area of the proposed Habitat Rights site overlap with any sensitive area (maoists, mining, big projects, railway

line, highway, etc.). Score on a scale of 0 to 10. High score would indicate a high overlap while a low score would indicate a low overlap.

9. Track record of NGO/ CBO

What is the track record of the NGO/ CBO that will work with the PVTG community for facilitating their Habitat Right claim? Has the NGO/ CBO been successful in organising/ mobilising the PVTG community on the issue of forest rights? Do they have a good rapport with the PVTG community? Does the NGO/ CBO have the capacity to facilitate the Habitat Right claims process? Score on a scale of 0 to 10.

10. Status of Gram Sabha

What is the present status of Gram Sabha/s inside the proposed Habitat Rights area? Do elections for Gram Panchayat take place on time? Do Gram Sabhas take place on the scheduled dates? Do men and women from the PVTG community participate in the Gram Sabhas? Indicate the present status of the Gram Sabha/s in the proposed Habitat Right area on a scale of 0 to 10. A low score would indicate low status (or weak) Gram Sabha/s while a high score would indicate high status (or strong and functional) Gram Sabha/s.

11. Status of Forest Right Committees

What is the present status of Forest Right Committees (FRCs) in the proposed Habitat Rights area? Have FRCs been constituted properly? Do the FRCs have representation of PVTG members and women? Has training and orientation on legal aspects of forest right issues been provided to the FRC members? Do FRCs have the capacity to properly assess

and validate Habitat Right claims? Indicate the present status of FRCs on a scale of 0 to 10. A low score would indicate low status (or weak) FRC while a high score would indicate high status (or strong and functional) FRC.

12. Participation of women

How do women from PVTG community look at forest rights? To what extent are women participating in the forest rights process on a scale of 0 to 10.

13. Ease of access to the Habitat Rights area

How easy or difficult it is to reach the proposed Habitat Rights area?

14. Extent of changes in the traditional landscape of the PVTG community

To what extent have changes taken place in the traditional landscape of the PVTG community? For instance, clearing of forests for commercial plantations or agriculture; deforestation leading to barren land; shrinking of common lands; etc. Indicate the changes on a scale of 0 to 10. Low score would indicate less changes while a high score would indicate more changes.

15. Relationship of PVTG community with other Adivasi/non-Adivasi communities

How is the traditional relationship of the PVTG community with other Adivasi or non-Adivasi communities in the area? Weak or strong. Indicate on a scale of 0 to 10.

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