

# India

Condensed from the *Study on Indigenous Peoples (Scheduled Tribes of India)* by the Association of Voluntary Agencies for Rural Development (AVARD). For more details of the case, contact: [avard@bol.net.in](mailto:avard@bol.net.in).

According to the portal of the Ministry of Tribal Affairs, the term “Scheduled Tribe (ST)” (used to refer to India’s indigenous peoples) first appeared in the Constitution of India, in Article 366(25). The said Article defined scheduled tribes as “such tribes or tribal communities or parts of groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution.”



**Bonda tribe of Malkangiri, Orissa.**  
Photo by AVARD.



The criteria followed for specification of a community as ST include: primitive traits, distinctive culture, geographical isolation, shyness of contact with the community at large and backwardness.

These tribal people, considered to be the descendants of the country's original inhabitants, are largely located in hilly tracts of Central and North Eastern India, Andaman and Nicobar Islands. Small populations are scattered in the hilly tracts of the southern states and Himachal Pradesh. State-wise concentration of ST population is depicted in Table 1.

**Table 1. State-wise Distribution of ST Population (%)**

Percentage	States
< 10	Himachal Pradesh, Maharashtra, Andaman & Nicobar Is, Andhra Pradesh
10 – 20	Jammu & Kashmir, Assam, Rajasthan, Gujarat
20-30	Jharkhand, Odisha, Madhya Pradesh
30 – 40	Sikkim, Manipur, Tripura, Chhattisgarh
40 – 60	Dadar & Nagar Haveli
60 – 80	Arunachal Pradesh
80 – 90	Nagaland, Meghalaya
90 >	Lakshyadweep, Mizoram

**Source:** Census of India, 2011

According to the 2011 Census of India, the total population of the STs is 104,281,034, of which 89.97 % are rural-based and the rest (10.03 %) are in urban areas.

Efforts made by the government right from the beginning of the planned era (1951) through various developmental plans, policies, special strategies and programs, have registered a definite quantifiable improvement in the socio-economic status of tribals. However, their quality of life is not yet anywhere near to mainstream society's, as the gap in their socio-economic status continues to prevail.

## Status of Indigenous People's Land and Resource Rights

### Access to Land and Land Rights

Land is not only an economic asset; its ownership is also socially valuable and often co-terminus with social status. The unequal distribution of land reflects both prevailing social stratification and continuation of hierarchical structures of society. So far as the access of STs to land is concerned, in none of the states are tribal people a significant proportion. A significant proportion of tribal people are concentrated in pockets, generally in hilly tracts with poor soils and low productivity.

The average size of operational landholding for ST is shown in Table 2.

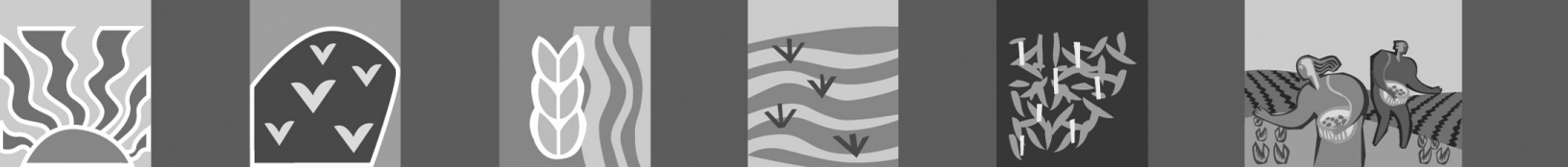
### Land Rights

Indigenous land rights are rights of indigenous peoples to land. Needless to say, resource-related rights are of fundamental significance to indigenous peoples for religious, self-determination, identity and economic reasons.

**Table 2. Average Size of Operational Land Holding for STs (in ha)**

Category	Agriculture Census 2005-06	Agriculture Census 2010-11
Marginal	0.48	0.49
Small	1.39	1.44
Semi-medium	2.67	2.70
Medium	5.76	5.73
Large	16.32	16.02
All Size Groups	1.64	1.53

**Source:** Agriculture Census 2010-11 (Provisional), Agriculture Census Division, Dept. of Agriculture & Cooperation, Ministry of Agriculture, Govt. of India, 2012.



Land is a major economic asset. The STs depend on natural resources to fulfill their subsistence needs; hunting, fishing and gathering of forest products form the basis of their livelihood.

### ***Customary Laws and the Historical Perspective***

Attempts towards erosion of tribals' customary laws date back to colonial rule with the introduction of universal laws against which there was agitation from the tribals. This ultimately resulted to the British providing concessions and autonomy to and recognition of the customs of the tribals. The history of land grab in India dates back to the 17th century with the introduction of the Zamindari<sup>1</sup> system, abolishing the then prevailing Jajmani<sup>2</sup> relationship by the Permanent Settlement Act of 1793.

Probably, the first legal recognition by the colonizers of the indigenous people of the country was provided through the Scheduled District Act of 1874. Over two centuries of colonial rule enabled concentration of power with a few, thus creating a feudal system that emerged as a great challenge in the post-independence period. Later, in the northeast, the Assam General Clauses Act of 1915 protected tribal customs and practices by restricting the application of provincial laws in the hill areas. The Montague-Chelmsford Reforms of 1919 also made similar provisions. The 1930 Indian Statutory (Simon) Commission

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<sup>1</sup> One of the major land revenue systems introduced by British rule where a single landlord is recognized as the owner of a land and provided with rights to collect taxes and rents to peasants on behalf of the British treasury. They are also entitled to give, buy, and sell the revenue collection rights, hence, are granted with secured property of land rights (Sarwar, 2012; Rashid, et. al., 2014).

<sup>2</sup> A social caste system in India where landowners pay their laborers with grain and straw after harvest (Srinivas, 2002).

recommended the protection of tribal customary rights. The Government of India Act of 1935 accepted it and divided the hill areas into Excluded and Partially Excluded parts and stipulated that no Act of the Central or Provincial Legislature would apply to them unless the Governor in his discretion so decided in view of peace and good governance.

After independence, the fate of tribals rested largely on the framers of the Constitution. The Bordoloi<sup>3</sup> Committee was formed during that time to provide inputs to the Constitution from the perspective of the tribals of the northeast region of the country. The sub-committee observed that the people of the region were sensitive towards their land, forest, lifestyle and traditional systems of justice, and thus needed safeguards and protections so as to preserve their way of life. The Bardoloi Committee also made provision for a Regional Council for the tribes other than the main tribe and sought to build up autonomous administration so that the tribal people could manage their affairs in their own traditional ways.

Since colonial rule, it was clear that two regions of the country required different governance structures because of the level of exclusion between the indigenous peoples and the rest of the population. It was for this distinction and following the demand of autonomy by tribal peoples that some special rights were granted for management of natural resources by indigenous peoples. The Uttarakhand Forest Act, 1935; the Santhal Pargana Tenacy Act and the autonomy provided to the north eastern states were some of the examples where colonial rulers provided space to accede to the pressure of rights of the indigenous peoples over the natural resources.

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<sup>3</sup> An advisory committee on Fundamental Rights of Minorities in the Tribal Areas was constituted in May 1946 by the Constituent Assembly of India.



However, these rights were recognized only after conflict; and were invariably loaded with terms and conditions. These were the Schedule V and Schedule VI areas.

The Constituent Assembly approved separate systems of governance for these two areas. Under Schedule V, the Governor was the sole legislator and competent to make laws on all subjects enumerated under the Constitution. However, the Governor was required to take the advice of the Tribal Advisory Council (TAC) and the assent of the President over legislations. The apathy of governors towards these provisions has been reflected in the Union Minister's letter to governors, reminding them of their role towards the development of the tribals in Schedule V areas.

These provisions provided the basis for the special enactments for certain regions which continued concessions to the tribals even during the post-independence period. Such enactments were later included in the Ninth Schedule to avoid any challenge to the fundamental rights. Article 13 of the Indian Constitution prevailed concerning the validity of such Act (customary laws) unless later repealed by the legislative. Through amendments, the Constitution also recognized the customary law of Nagaland (Article 371a) and Mizoram (Article 371g). However, the struggle for recognition of customary laws (through constitutional amendments) has not been easy. It has been marked by prolonged agitation and incidence of violence<sup>4</sup>. Finally, the Union government had to accede to the demands and provide "extra autonomy" to these areas through provisions of Articles 371a and 371g in the States of Nagaland and Mizoram respectively where no

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<sup>4</sup> The Naga and Mizo Nationalist struggles and the State's response of amending the Constitution to introduce Articles 371a and 371g.

law of the Parliament applies unless approved by the State Assembly.

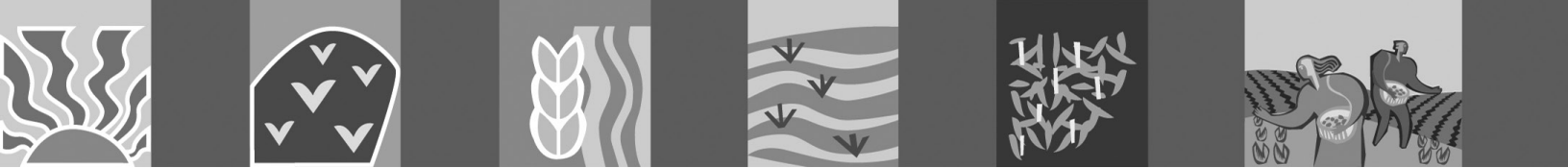
### **Land reforms in India: Issues and Challenges**

Since in the original draft of the constitutional right to property was the fundamental right under Section 19(g), it became increasingly difficult to implement land reforms. Through the first amendment to the Constitution, the Ninth Schedule was added enabling states to enact laws related to land reforms, in contravention to Section 19(g). There are more than 350 state laws under this schedule. India's first several five-year plans allocated substantial budgetary amounts for the implementation of land reforms. However, various studies, including the study of the Ministry of Rural Development, highlighted limited success in land reforms and distribution.

Land acquisitions in the name of 'eminent domain' or 'national interest' has further exacerbated the situation between the landless and the Scheduled Tribes, as a number of studies and experiences from the ground clearly suggest that STs outnumber other sectors of the society as far as displacement is concerned. Inadequate transparency, lack of accountability of officials and limited reach of those displaced led to land grabs.

In comparison to Schedule V areas, the areas under Schedule VI were provided with greater autonomy. Schedule VI areas were vested with powers to legislate, execute and adjudicate. However, the reality is that democracy has not been able to reach the grassroots and governance has been in the hands of the elite and feudal lords.

According to a World Bank report (2007), in the northeastern states, "there is a strong tendency



***“Dravidians, the original inhabitants of the country, were pushed down south and farther into the forest areas during the Aryan invasion.”***

towards center-led activities through the Forest Act 2006, while more informal community customs and traditions are dying out, thus diminishing options for enhancing livelihoods in the Northeast in a strategic and sustainable manner.”

### ***Continuous Erosion of Tribal Land Rights***

Dravidians, the original inhabitants of the country, were pushed down south and farther into the forest areas during the Aryan invasion. The process of usurpation of land rights was further exacerbated by the British colonizers, who enacted laws to manage and control the forests and natural resources.

Later, through various legal enactments such as the Forest Act and Land Acquisition Act, the Adivasis were made encroachers on their land

during pre-independence, and this continued to the post-independence period. The root of the problem is that the right to property is not a fundamental right under the current Indian Constitution. It is now a legal right under Article 300A of the Constitution that no person shall be deprived of property save by authority of law. Under Section 4(i) of the Panchayat Extension to the Schedule Areas (PESA), the authority of law for acquisition of tribal land was provided. The government, having the eminent domain over resources, made acquisition of lands of tribals easy and convenient, which slowly and gradually led to massive land grabs for various purposes such as consolidation of national parks, construction of dams, and mining.

Table 3 compares landholdings of tribals with all India figures for different categories of landholdings.

As far as STs are concerned, Chhattisgarh, Gujarat, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan account for 70 % of the tribal population in rural India. Landlessness among ST households is observed mainly in Arunachal Pradesh (11.2%), Kerala (14.3%) and Mizoram (19.5%). While among Scheduled Castes (SCs), it is high in Arunachal Pradesh (73.1%) and Lakshadweep (100%).

**Table 3. Number and Area of Operation Holdings in India in 2005-06  
(Number in thousands) (Area in thousand hectares)**

Category of Holding	ST		All	
	Number and %	Area and %	Number and %	Area and %
Marginal	4,586.16 (49.08)	2,221.51 (14.35)	83,694.37 (64.77)	32,025.97 (20.23)
Small	2,400.31 (25.69)	3,345.80 (21.61)	23,929.63 (18.52)	33,100.79 (20.91)
Semi-medium	1,550.05 (16.59)	4,145.78 (26.77)	14,127.12 (10.93)	37,897.69 (23.94)
Medium	704.03 (7.53)	4,059.72 (26.22)	6,375.34 (4.93)	36,583.40 (23.11)
Large	104.50 (1.12)	1,713.12 (11.06)	1,095.78 (0.85)	18,715.13 (11.82)
All size classes	9,345.05 (100.0)	15,485.93 (100.0)	129,222.24 (100.0)	158,322.98 (100.0)



## ***Causal factors in Post-Independence period that led to further deterioration***

### Consolidation of forests

Government ownership of forest areas in India increased from 68.96 million hectares (ha) in 1961 to 76.84 million ha in 2001. From 1970 to 2000, large areas of land were declared as protected areas (forest or conservation areas) without adequate compensation paid for those removed from them or settlement of claims. In 2002, there were eviction drives on a massive scale.

This caused huge unrest and disquiet among those who lost their rights, resources or were relocated, leading to mass movements and resistance to government laws and policies. The Panchayat Extension to the Schedule Areas (PESA) Act, 1996 was enacted, conceding to the long-standing demand for tribal control over productive land and forest and the minimizing of administrative affairs following the Bhuria Committee Report.<sup>5</sup>

An important change that happened was deletion of Right to Property (Article 19F) as the fundamental right<sup>6</sup> guaranteed by the Constitution of India in 1978. The reason for this was to ensure land reforms by providing for re-distribution of land holdings under larger population from a few zamindars (land owners). The rights and titles eroded due to notification and consolidation of forests remained unaddressed and owners and settlers of the forest became illegal settlers despite recognition of the same by the central government.<sup>7</sup>

<sup>5</sup> To make Recommendations on the Salient Features of the Law for Extending Provisions of the Constitution (73rd Amendment Act, 1992 to Scheduled Areas.

<sup>6</sup> Forty Fourth Amendment to the Constitution of India.

<sup>7</sup> Rishu and Aman, 2013 (Under Publication)

### Trends

An in-depth study of the situation suggests a mixed trend. The efforts of land grab by corporations to establish industrial complexes and mining operations are increasing. Due to the rise in the growth rate of the urban population, the demand for additional land for housing and other infrastructure has compelled the government to acquire land from surrounding rural areas.

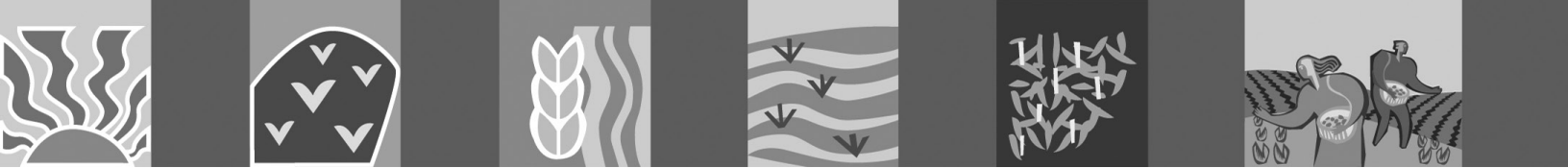
At the same time, due to enhanced levels of awareness about land rights among IPs and other forest dwellers, the demand for land titles and speedy implementation of the Forest Rights Act of 2006 has increased and government is under pressure to follow up the memorandum of understanding (MoU) signed by the Minister for Rural Development with participants of the Jan Satyagraha (non-violent footmarch).

Jan Satyagraha has been a unique experiment by Ekta Parishad with the support of other civil society organizations, including AVARD, in highlighting the issue of land rights of IPs, which received widespread media coverage.

On the whole, the situation seems to be optimistic and is expected to lead to positive outcomes in time.

## **Legal Framework Related to Indigenous People's Land Rights**

Over the years, international development agencies have recognized that development has caused negative impact on indigenous peoples across Asia and Pacific in great measure. The challenge of preventing further impoverishment resulting from environmental degradation and involuntary resettlement, acknowledging the special needs and respecting the rights of IPs



***“The International Labour Organization (ILO) Convention 169 is the only binding international treaty dealing with indigenous peoples and land rights.”***

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and other vulnerable groups, and improving the policies and building the capacity of District Management Committees (DMCs) to manage these impacts is acute (ADB,2009). The Paris Declaration on Aid Effectiveness in 2005 established global commitments for donors and partner countries to improve the management and effectiveness of aid in reducing poverty and inequality, increasing growth, building capacity, and accelerating achievement of Millennium Development Goals. These principles provide a powerful impetus for donors to help foster better integration of social and environmental considerations into developing country partners’ strategies and priorities and to continue and intensify their efforts in relation to harmonizing approaches toward addressing social and environmental issues. The Accra Agenda for Action, adopted in 2008, reaffirmed these principles and further emphasized the importance of country systems.

The International Labour Organization (ILO) Convention 169 is the only binding international treaty dealing with indigenous peoples and land rights. The Convention requires that parties to it respect the cultures and institutions of indigenous and tribal peoples, their right to continued existence within their national societies, their

right to establish their own institutions and to determine the path of their own development.

***The Legal Status of Indigenous Peoples in International Law***

Colonialism and later the process of independence have been seen as a universal reason across the globe for the limited recognition of indigenous political and territorial rights. The oppressive history has followed another painful regime of development leading to displacement and uprooting of natives. Therefore two streams of development in international law for indigenous people have been undertaken. Firstly, at the level of the United Nations (UN) and ILO, both of which have a long history of developing the definition of “what and who” constitutes indigenous peoples. However, through ILO Convention No. 169 and the draft UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the two main international commitments on the issue of indigenous peoples, the needs for addressing rights and recognition of indigenous peoples have been brought to the forefront.

ILO Convention 169 of 1989 (a revised version of ILO Convention 107 of 1957) defined indigenous peoples as “peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions” (ILO Convention 169, Part I, Article 1a).

On the other hand, consensus on the definition was sought through a series of UN workshops



and delegations. A Voluntary Fund for Indigenous Peoples was established to facilitate the attendance of indigenous delegations. Reports started flowing in from all quarters regarding the role of international financial institutions in financing projects leading to uprooting of indigenous populations. Therefore, in 1991, the World Bank revised its concerns in this area and issued Operational Directive 4.20 on 'Indigenous Peoples.'

#### The Durban Accord

The Durban Accord is a global commitment for people and Earth's Protected Areas. The IUCN World Congress on Protected Areas, or IUCN World Parks Congress as it has become known, is a 10 yearly event, which provides the major global forum for setting the agenda for protected areas.

The Accord recognizes the contribution of local communities and indigenous people in conservation despite inadequate recognition given to their efforts, protection and support (IUCN, 2005).

#### United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The United Nations Declaration on the Rights of Indigenous Peoples provides new international guidelines on the right to formulate strategies for the development or use of indigenous peoples' lands and resources. The Declaration also provides guidance with regard to protected areas.

The Rio Declaration, Agenda 21 and the Convention on Biological Diversity all recognize the unique relationship indigenous peoples have with their traditional lands and establish international legal standards that go toward

protecting indigenous peoples' rights to their traditional knowledge and practices in the area of environmental management and conservation.

#### Convention on Biological Diversity (CBD)

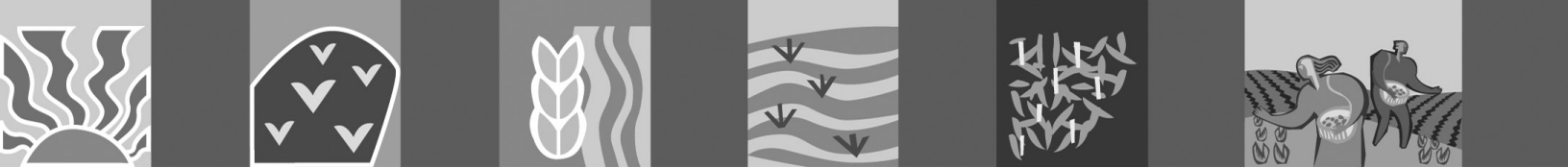
The CBD is one of the most widely adopted international agreements providing recognition of legal rights to the indigenous communities. In India, the Biological Diversity Act of 2002 was enacted but implementation has barely been able to take hold. At the international level, the International Indigenous Forum on Biodiversity (IIFB) ensured participation of indigenous people at various forums.

India is a signatory to the Earth Charter (Rio Declaration), a non-legally binding instrument, which has 27 principles. Principle 10 of the Declaration commits a country towards ensuring participation of concerned citizens in environmental issues and access to judicial and administrative proceedings, while Principles 22 and 23 commit a country's efforts towards ensuring participation of indigenous people and other local communities in sustainable management and protection of natural resources of people under oppression, domination and occupation respectively.

#### UN Framework Convention on Climate Change

The United Nations Framework Convention on Climate Change (UNFCCC) adopted in 1992 is aimed at stabilizing greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Since 1988, indigenous peoples have been participating at UNFCCC Conferences of the Parties (COP) and have released a number of statements and declarations expressing their





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concerns on the implications of climate change policies on their livelihoods and cultures (UN-ESA, 2009).

### ***Translating International Commitments into Reality***

Earlier, only in Schedule areas did tribals have ownership over the forest and natural resources. This anomaly has been corrected to a great extent through the Forest Rights Act of 2006. In Schedule VI areas, the rights over resources and their ownership were granted to indigenous peoples. But the Supreme Court of India took away all such rights (T. N. Godavarman vs. Union of India, 1996). Therefore, on one hand the sovereign rights of the state have been asserted. At the same time, through the Rio Declaration, the rights of the indigenous people and the approach to judiciary and transparency had to be ensured. However, the sovereign right over the resources was only seen in the context of outside claims rather than the claims of its own natives over the resources. This selective asserting of rights of the state while ignoring treaties on autonomy of indigenous peoples smells of a double standard.

Indigenous women are vulnerable to sexual violence. In areas of conflict, indigenous women often fall victim to abuse by members of the military and are subject to sexual enslavement, forced pregnancy, gang-rapes, sexual mutilation and killing. “In times of crises, indigenous women are often forced to leave their communities and search for shelters and jobs elsewhere, which results in cultural and spiritual isolation as well as their exposure to sexual trafficking and prostitution and exploitation as domestic workers” (International Women’s Forum, 2006:48).

Article 256 of the Constitution of India empowers the government to make laws to honor commitments made at the international level. However, since most of the international commitments are not translated in the rule of the land, they cannot be judicially challenged. Implementation of most of the non-legally binding instruments also remains largely on paper.

Dams and power plants are being constructed with alarming regularity without a thought being given to sustainable development. Professionals and contractors are reaping the ‘benefits’ – urbanities far away in Delhi get electricity, politicians get kickbacks and applause for the clearance of projects. Organizations and communities who protest for their rights are considered ‘anti-national.’

### ***National laws, policies, programs, structures, and mechanisms***

#### Provision under Article 275 of the Constitution of India

This section provides for grants to certain states that may be charged to the Consolidated Fund of India as grants-in-aid each year, as decided by Parliament. The purpose is to meet the



costs of such schemes of development as may be undertaken by the State for the purpose of promoting the welfare of the scheduled tribes in that state or raising the level of administration of the scheduled areas therein to that of the rest of the areas of that state.

### Tribal Advisory Council (TAC)

The Tribal Advisory Council (TAC) was provisioned to be formed in each state with Schedule V areas to provide assured assistance to the development of such areas. However, most of the TACs remained dysfunctional or were not formed at all.

### The 73rd and 74th Amendmenst

After the 73rd and 74th Amendments, large-scale administrative and financial powers have been delegated to local bodies constituted all over the country except in the Sixth Schedule areas.

### The Panchayat (Extension to the Scheduled Areas) Act, 1996 (The PESA Act, 1996)

The PESA Act of 1996 was initiated after the 73rd Amendment to extend decentralization to Schedule V areas. The Act empowered local village level Panchayats, referred to as Gram Panchayats.

The Civil Rights Act of 1956 and the SC and ST (Prevention of Atrocities) Act of 1989 provided for protection of members of SC and ST communities from non-members through provision of severe punishments. Land transfer from SC/ST citizens to non-SC/ST is not allowed.

### Integrated Tribal Development Project (ITDPs)

ITDPs were initiated where the ST population in a block or cluster of blocks was more than 50%.

There are presently 194 ITDPs across the country.  
Ministry of Tribal Affairs

In order to give more focused attention to the development of Scheduled Tribes, a separate Ministry of Tribal Affairs was constituted in October 1999. The new Ministry, carved out of the Ministry of Social Justice and Empowerment, is the nodal Ministry for overall policy, planning and coordination of programs and schemes for the development of Scheduled Tribes.

### The Scheduled Tribes and other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006

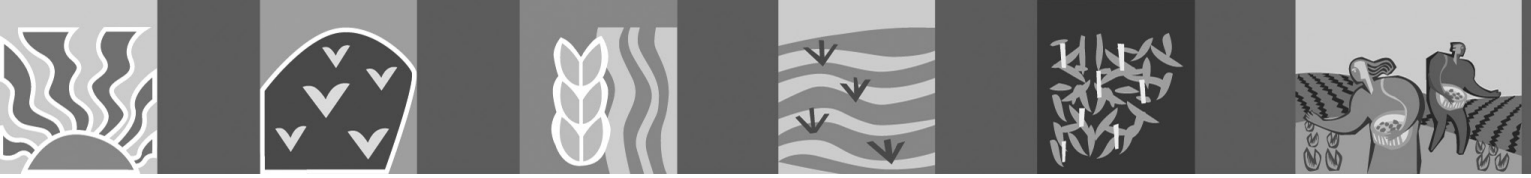
The Forest Rights Act (FRA) 2006 is a historical statutory measure undertaken to undo historical injustice done to tribal communities. As stated in the Act's Preamble, it is "to recognize and vest the forests rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests."

## **Assessment of Key Actors Promoting/ Impeding IPs' Land Rights**

### **Government**

The National Council for Land Reforms was formed in 2008 under the Chairmanship of the Prime Minister to look into unfinished tasks in land reforms.

The Constitution of India provides for special provisions for promoting economic and social development and protection against all forms of exploitation. A special provision of the Tribal Sub-Plan was adopted at the beginning of the Fifth Five Year Plan to ensure funds commitment



for the socio-economic development of tribal communities.

The Rehabilitation and Resettlement Bill, 2007 and The Land Acquisition (Amendment) Bill, 2007 have been merged and drafted into The Land Acquisition and Rehabilitation and Resettlement Bill, 2011 which has been tabled in Parliament. It

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is expected to provide proper rehabilitation policy and packages that affect many tribals across the country.

### ***Political Parties***

Land being a contentious issue, no national political party wants to touch it. However, some regional political parties, like Jharkhan Mukti Morcha (JMM) in Jharkhand, include this issue in their agenda. Most of the parties are more along the welfare and development modes, and not in the rights mode.

### ***Local Government***

The Panchayati Raj Institutions (PRIs) cover as many as 29 subjects within their jurisdiction. Compared with the Autonomous District Councils (ADCs), which are often at the state government’s mercy for funds, the Panchayat bodies are better

placed on developmental issues both in terms of range of functions and also on the financial front. They are entitled to get funds from the state as well as central government under various schemes. Further, in order to prevent the Panchayat bodies from falling into financial starvation, a Financial Commission has been established.

Women representation is an important contrast between the two laws. Since the tribal traditions do not normally recognize the role of women in social politics, the autonomous councils as well as local bodies in the Sixth Schedule areas are male dominated; women representatives are seen as exceptions rather than the rule. Here, the PRI system scores very high and is far more progressive.

Another contrasting issue is the continuity of the institutions. In case of dissolution of the Panchayat bodies, they must be reconstituted within a period of six months from the date of their dissolution. For district councils, the period for fresh elections is up to 12 months subject to the approval of the state legislature.

Most autonomous councils have neither nurtured the village level bodies nor institutionalized intermediary bodies covering groups of villages, but instead ended up keeping all power to themselves. This concentration of power in the councils has ultimately negated the democratic voice of the ordinary poor tribals and distorted the idea of grass-roots democracy due to dictatorship by a few top council members. This has obviously made corruption and inefficiency widespread in the councils.

Thus, the Sixth Schedule setup did protect land and local traditions of the tribes but could not institutionalize grass-roots or participatory



democracy. Coupled with financial dependency and corruption, this badly hampered the developmental activities.

### ***Donor Agencies and International Institutions***

Donor agencies and international institutions have not much role in this sector. However, these organizations are helping in raising awareness and local leadership development through NGO partners. At times, institutions like the World Bank attach some conditions which are mainly directed towards rehabilitation of displaced households.

### ***Private Sector***

The private sector is rather involved in impeding the land rights of IPs by grabbing the land for mining and industrial purposes and also by adopting fraudulent means by greasing the palms of corrupt politicians and officials.

### ***Civil Society***

Civil society organizations, particularly NGOs like Ekta Parishad, have played a vital role in raising awareness about land rights and organizing people for negotiation with government agencies. Some independent land rights activists are also active in awareness generation and organization of the people in groups to fight for their rights.

## **Key Opportunities and Strategies to Advance IPs' Customary Rights**

### ***Opportunities***

Existing provisions like The Panchayat (Extension to the Scheduled Areas) Act (PESA) 1996; the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act 2006 in

its amended form, and the MoU signed by the Minister of Rural Development with Jan Satyagrahis, etc., provide ample scope and opportunities to build up pressure on government to expedite the process of implementation in the larger interest of IPs.

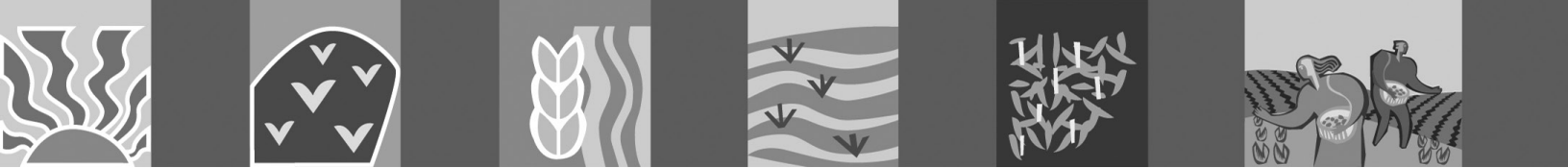
### ***Strategies***

- Engage with different political parties to include the issue of land rights of IPs in their manifestos;
- Organize IPs in groups in different linguistic regions along the line of Jan Satyagraha by Ekta Parishad;
- Continue advocacy efforts at Central and State levels for assignment of land titles to landless IPs under the existing Acts;
- Continue advocacy for protected areas for agriculture of IPs with individual and community rights on agriculture land being operated by them;
- Capacity-building of IPs/PRIs by needs-based training, local leadership development and media management to highlight the issue of land rights on a national scale and attract the attention of governments at Central and state levels with strong public opinion as support. ■

### **References:**

Asian Development Bank (2009). *Safeguard policy statement*. Retrieved from <http://www.adb.org/sites/default/files/institutional-document/32056/safeguard-policy-statement-june2009.pdf>.

Government of India. (2012): *Agriculture Census 2010-11 (Provisional)*. India: Agriculture Census Division, dept. of agriculture and cooperation, ministry of agriculture.



Government of India – Ministry of Home Affairs. (2011). *Census India 2011*. India: Government of India, Ministry of Home Affairs, Office of the Registrar General & Census Commissioner.

Government of India. (2001). *Annual Report 2000-2001*. Ministry of Tribal Affairs.

Government of India. (2011). *2010-2011 National Sample Survey Report No.543*.

Government of India. (2006). *National Family Health Survey 2005-2006*.

Government of India – Planning Commission of India. (2007). *Tenth Five Year Plan*.

Government of India – Planning Commission of India. (2011). *An Approach to the 12th Five Year Plan*.

Government of India Act, 1935. (August 1935). *ILO Convention 169. Convention concerning indigenous and tribal peoples*. June 27, 1989.

International Indigenous Women's Forum/Foro Internacional de Mujeres Indígenas (FIMI). (2006). *Mairin Iwanka Raya: indigenous women stand against violence. A Companion Report to the Secretary-General's Study on Violence Against Women*. New York: FIMI.

International Union for Conservation of Nature (IUCN). 2005. *The Durban Accord*. IUCN. Retrieved <https://portals.iucn.org/library/efiles/html/CD-033/English/grfx/products/durbanaccord.pdf>.

Ministry of Law and Justice. *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006*. 29 December 2006.

Organisation for Economic Co-operation and Development (OECD). (2009). *The Paris Declaration on aid effectiveness and the Accra agenda for action*. Retrieved from <http://www.oecd.org/dac/effectiveness/34428351.pdf>.

Organisation for Economic Co-operation and Development (OECD). (February 2005). *Paris declaration on aid effectiveness: Ownership, harmonisation, alignment, results and mutual accountability*. In High Level Forum, Paris.

Organisation for Economic Co-operation and Development (OECD). (September 4, 2008). *ACCRA Agenda for Action (AAA)*. In 3<sup>rd</sup> High Level Forum on Aid Effectiveness, 2-4 September, Ghana.

Panchayats (Extension to Schedules Areas) Act. (1996). *The provisions of the Panchayats (extension to the scheduled areas) Act, 1996 No. 40 of 1996*. 24 December 1996.

Rashid, S., Tefera, N., Lemma, S., and Yunus, M. (2014). *Population pressure and livelihood dynamics: Panel evidence from Bangladesh*. IFPRI Discussion Paper 01326. Retrieved from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2405719](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2405719).

*Rio Declaration on Environment and Development*. 16 June 1972.

Sarwar, F. H. (2012). *A comparative study of Zamindari, Raiyatwari and Mahalwari land revenue settlements: The colonial mechanisms of surplus extraction in 19th Century British India*. IOSR Journal of Humanities and Social Sciences (JHSS), 2(4)16-26.

Srinivas, M.N. (2002). *The caste system and its future*. In M.N. Srinivas. Collected essays. New Delhi: Oxford University Press, pp. 236-250.



*T.N. Godavarman Thirumulpad vs Union of India & Ors, Supreme Court of India, Judgement of 12 December 1996, (1997) 2 Supreme Court Case 267.*

*The Constitution of India. 26 November 1949.*

*The Scheduled Districts Act, 1874. 8 December 1874.*

*UN Convention on Biological Diversity. 5 June 1992.*

*UN Declaration on the Rights of Indigenous Peoples. 13 September 2007.*

*UN Framework Convention on Climate Change (UNFCCC). 4 June 1992.*

*UN General Assembly Resolution 40/131 of 1985. United Nations voluntary fund for indigenous populations. 13 December 1985.*

*UN-Economic & Social Affairs (UN-ESA). (2009). State of the world's indigenous peoples. New York: UN, ESA, Division for Social Policy and Development Secretariat of the Permanent Forum on Indigenous Issues.*

*World Bank (WB). (2007). Development and growth in Northern India: The natural resources, water, and environment nexus. Washington DC: WB.*