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New CFR guidelines: Experts say regulations can undo India's progress on forest governance

Rules show governmental unwillingness to embrace tribal diversity and culture, they say

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By Himanshu Nitnaware (<https://www.downtoearth.org.in/author/himanshu-nitnaware-169360>)
Published: Thursday 14 September 2023



📷 Adivasi women with wood in Dahanu, Maharashtra. Photo: iStock

Experts have told *Down To Earth* (DTE) that the new guidelines issued by the Union Ministry of Tribal Affairs (MoTA) for conservation, management and sustainable use of community forest resources (CFR) on September 12, 2023, disempower Gram Sabhas (village assemblies) and shift control to the government.

They added that in the absence of any understanding about CFR's progress, the country will undo progress made on forest governance.

MoTA issued fresh guidelines to "improve coordination" at the field level and ensure implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 or Forest Rights Act (FRA), 2006 in short.

The new guidelines focus on the formation of the District Level Committee (DLC) which entrusts Gram Sabhas or the community about who has rights over forest resources.

The central government has raised concerns and has sought clarity regarding multiple functionaries, authorities and departments that are involved in entrusting these rights under Section 3(1)(i) and Section 5 of FRA.

Section 5 underlines duties by empowering the holders of forest rights, Gram Sabhas and village level institutions for protection of wildlife, forests and biodiversity and ensuring that all neighbouring catchment areas, water sources and ecologically sensitive areas are well protected.

It also specifies that the habitat of tribals and other traditional forest dwellers should be protected from any destruction that would harm their culture and natural heritage.

The section guarantees that decisions are taken by the Gram Sabha to regulate access to CFR and prevent any activity that would cause harm to wildlife, forests and biodiversity.

"In 2019, a committee was formed to prepare a draft for the CFR guidelines under the chairmanship of MC Saxena. However, the draft of the guidelines sent to the tribal ministry, of which I was then a member, was never accepted," Y Giri Rao, executive director of Bhubaneswar-based non-profit Vasundhara, told *DTE*.

Simultaneously, another committee was set up by the Union Ministry of Environment, Forest and Climate Change. But the central government never revealed what the committee suggested.

"Section 5 empowers the Gram Sabha by including community-driven ideas based on local culture, people's relationship with the forest and its protection," he said.

"But the new guidelines have clearly not incorporated the suggestions that we had made and creates lot of confusion and conflicts for the provisions," Rao noted.

MC Saxena told *DTE* that under the new guidelines, the committee that has drafted them will request MoTA to 'name and shame' states that openly flout FRA and its Rules by retaining monopoly control over some types of minor forest produce (MFP) such as tendu leaves, Sal seeds, etc.

He added that currently, the forest department controls transit permits. This also violates Rules under FRA, which state:

The transit permit regime in relation to transportation of MFP shall be modified and given by the Committee constituted under clause (e) of sub-rule (1) of Rule 4 or the person authorised by the Gram Sabha.

"If state governments can get away by openly flouting FRA and its Rules, what is the guarantee that they would even read the proposed guidelines?"

Rather than forming new guidelines, there is a need to draft committees to evaluate the progress of CFR, according to Saxena.

"There is a need to check the effects of CFR implementation since 2010 as there has been none since the programme was implemented," he said.

Saxena noted that those allotted individual forest rights and CFR are two per cent and five per cent of the population respectively. "Before giving forest rights, the government mentioned 30 per cent of its forest land falling under CFR. In that sense, the amount of land owned by tribals continues to be minuscule," he said.

Rao said the new guidelines call for constituting a DLC. But it is unclear as to who its members will be. "There are about 700 tribal communities which function in their unique way and work closely towards forest conservation. Sacred groves are a unique example of how communities relate forests with their culture," he added.

He added the new guidelines seemed 'government-driven' rather than the community holding the ultimate rights.

"The new guidelines are undoing the progress made since Independence and show governmental unwillingness to embrace tribal diversity and culture," Rao said.

Saxena pressed the need to check as to whether the quality of rights given to forest dwellers have improved. Has their income improved? "There is also a need to see if they continue to be forest resource collectors or are also helping manage and improve forest cover," he said.

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Kalahandi Gram Sabhas write to NCST, invoke atrocities act against Jharkhand DFO

DFO illegally seized consignment of kendu leaves being transported from Odisha to West Bengal, federation of Gram Sabhas alleges

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By Ishan Kukreti (<https://www.downtoearth.org.in/author/ishan-kukreti-105510>)
Published: Tuesday 05 September 2023



Photo: Ishan Kukreti

In what is possibly the first such case, the Kalahandi Gram Sabha Mahasangh, a district-level federation of 100 Gram Sabhas in the Kalahandi district of Odisha, has written to the National Commission for Schedule Tribes (NCST) against the Divisional Forest Officer (DFO), Simdega, Jharkhand.

The Kasturapadar and Khasiguda Gram Sabhas of the federation had issued transit permits to a company, Green India, for carrying kendu leaves (also known as tendu), which are used to roll beedi, from Kalahandi to Dhulian in West Bengal in May this year. On May 31, the company's truck, along with 400 sacks of kendu, was seized during transit by the DFO of Simdega forest division in Jharkhand.

The Mahasangh has alleged that the seizure is in violation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The letter dated June 19, 2023 appealed NSCT to take legal action against the Simdega DFO for "illegal interference with the enjoyment of forest rights of Schedule Tribes and Other Traditional Forest Dwellers".

"As per the Amendment Rules 2012 under the Forest Rights Act, the forest title holder vested with community rights can now use any means of transportation for Minor Forest Produce (MFP), including tendu leaves, and legally they cannot be restrained / obstructed from doing so,

since interference with enjoyment of forest rights of SC / ST has been included as an offence under Section 3 (g) of SCs and STs (Prevention of Atrocities) Act, 1989 as amended,” the Mahasangh letter to NCST said.

“They are knowingly creating hurdles to prevent adivasis from exercising their right to sell MFP and earn a livelihood. By seizing kendu illegally like this, they want to curtail our livelihood and ensure that no trader ever comes to buy MFP from us,” Byasadev Majhi, secretary of the Mahasangh, told *Down To Earth*.

The Mahasangh was constituted under rule 2 (1) (d) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012.

The rule confers the right to, “to sell as well as individual or collective processing, storage, value addition, transportation within and outside forest area through appropriate means of transport for use of such produce or sale by gatherers or their cooperatives or associations or federations for livelihood,” over rights bearing Gram Sabhas and individuals under FRA.

The NCST issued a notice to Jharkhand’s Principal Chief Conservator of Forest (PCCF) and Simdega’s Deputy Commissioner, District Collector and DFO on July 18, seeking a response within 15 days.

On July 24, the DFO, through PCCF, responded to the NCST notice, stating that the inter-state transport of kendu leaves requires a transit permit which has to be counter-signed by a forest officer, failing which it is a violation of the Indian Forest Act of 1927.

The response of the DFO, communicated to the NSCT by the PCCF, Jharkhand, noted further that, “...rule 2(1)(d), which is related to the Community Forest Rights (CFR) holder, gives the rights to the CFR holder to transport MFP like kendu leaves within and outside the forest, not to non-CFR holder or M/s Green India to transport kind leaves outside the state”.

The DFO also stated that since the seizure involved a non-CFR holder, Anwar Hussain of Green India, the question of preventing a CFR-holder from enjoying their forest rights and the application of the atrocities act, does not arise.

On June 22, the company was fined Rs 11,00,000 by the Jharkhand Forest Department. The Mahasangh, on August 30, challenged the explanation provided by the forest department.

“The FRA clearly states that the act supersedes any law that came before FRA. The DFO has raised all the arguments based on the Indian Forest Act, which is a violation of section 4(1) of FRA. They are refusing to accept the spirit of the act and recognise the authority of the Gram Sabha,” Majhi said.

“Article 19 of the Constitution guarantees the fundamental right to travel across the country, earn a livelihood anywhere in the country or settle down anywhere in the country. Now if a person who holds a CFR title wants to sell kendu in West Bengal, does it mean they have to personally go to West Bengal? Are such laws applied to any other commodity being traded in the country? How will an economy even function like this?” said Shomona Khanna, a Supreme Court advocate and former legal advisor to the Union Ministry of Tribal Affairs.

Down to Earth tried to speak with the Simdega DFO, but his phone was switched off. The story will be updated as soon as a response is received.

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