

**AN EMPIRICAL STUDY ON THE
LEGISLATIONS ON TRIBAL RIGHTS & ITS
IMPLEMENTATION STATUS: GOOD
PRACTICES AND LESSONS LEARNT**

SCSTRTI

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LIST OF ABBREVIATIONS

| | |
|---------|--|
| CFR | Community Forest Resource |
| CFR | Community Forest Rights |
| CFR CMC | Community Forest Resources Conservation & Management Committee |
| CPGRAMS | Centralized Public Grievance Redress and Monitoring System |
| CrPC | Criminal Procedure Code |
| CSA | Child Sexual Abuse |
| CSO | Civil Society Organization |
| CVC | Central Vigilance Commission |
| CVO | Chief Vigilance Officer |
| CWC | Child Welfare Committee |
| DARPG | The Department of Administrative Reforms and Public Grievances |
| DFO | Divisional Forest Officer |
| DLC | District Level Committee |
| DLSA | District Legal Service Authority |
| DPMC | District Planning & Monitoring Committee |
| DPP | Director of Public Prosecutions |
| DPP | Director of Public Prosecutions |
| DVMC | District Level Vigilance & Monitoring Committee |
| FCA | Forest Conservation Act |
| FD | Forest Department |
| FIR | First Information Report |
| FRA | Forest Rights Act |
| FRC | Forest Rights Committee |
| HAL | Hindustan Aeronautics Limited |
| HRPC | Human Rights Protection Cell |
| IFR | Individual Forest Rights |
| ILO | International Labour Organisation |
| IPC | Indian Penal Code |
| ITDA | Integrated Tribal Development Agency |
| ITDP | Integrated Tribal Development Programme |
| JPC | Joint Parliamentary Committee |
| LARR | Land Acquisition Rehabilitation and Resettlement Bill |
| MCL | Mahanadi Coalfields Ltd |
| MFP | Minor Forest Produce |
| MGNREGS | Mahatma Gandhi National Rural Employment Guarantee Scheme |
| MoEF | Ministry of Environment and Forest |
| MOTA | Ministry of Tribal Affairs |

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| MSP | Minimum Support Price |
| NALCO | National Aluminium Company Limited |
| NCSC | National Commission for Scheduled Caste |
| NCST | National Commission for Scheduled Tribe |
| NGO | Non Government Organization |
| NTFP | Non Timber Forest Products |
| NTPC | National Thermal Power Corporation |
| ORV | The Odisha Reservation of Vacancies |
| OSPCPA | Odisha State Commission for Protection of Child Rights |
| OTFDs | Other Traditional Forest Dwellers |
| PCRA | Protection of Civil Rights Act |
| PDS | Public Distribution System |
| PESA | Panchayats Extensions to Scheduled Areas |
| PHCs | Primary Health Center |
| POA | Prevention of Atrocities |
| POCSO | Protection of Children from Sexual Offences |
| PPP | Public - Private Partnership |
| PRIs | Panchayat Raj Institutions |
| PTGs | Primitive Tribal Grops |
| PVTG | Particularly Vulnerable Tribal Grops |
| RFR | Recognition of Forest Rights |
| RI | Revenue Inspector |
| ROR | Record of Rights |
| RPDAC | Rehabilitation and Periphery Development Advisory Committee |
| RTI | Right to Information |
| SA | Scheduled Areas |
| SC | Scheduled Caste |
| SCA | Special Central Assistance |
| SCSTRTI | Scheduled Castes and Scheduled Tribes Research and Training Institute |
| SDLC | Sub-Divisional Level Committee |
| SDVMC | Sub-Divisional Level Vigilance & Monitoring Committee |
| SIA | Social Impact Assessment |
| SJPU | Special Juvenile Police Units |
| SLMC | State Level Monitoring Committee |
| SPP | Special Public Prosecutor |
| SSM | Similipal Surakshia Manch |
| ST | Scheduled Tribe |
| SVMC | State Level Vigilance & Monitoring Committee |
| TAC | Tribes Advisory Committee |
| TSP | Tribal Sub Plan |
| TSS | Tribal Sub Scheme |
| UKHEP | Upper Kolab Hydro Electric Project |

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| UNDRIP | The United Nations Declaration on the Rights of Indigenous people |
| UNICEF | United Nation Children's Fund |
| UPA | United Progressive Alliance |
| WHO | World Health organization |

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EXECUTIVE SUMMARY

Tribes and their rights in historical perspective

India is the nation with the highest concentration of tribal population in the world. They are identified as 'Adivasis', with the population of 8.43 crores (9.17%) of the total population of country as per 2011 Census who mostly inhabit in hills and forests of the country. They occupy about 15% of the country's total land mass hence, realisation and recognition of their right is of utmost importance in national interest.

The Adivasis before the invasion of India by Mughals and British were considered to be equal part of society and were fully involved in kingships, in land and forest politics, in tributary relationships with other groups, in particular occupational specialisations and even in commerce and war. They were also internally variegated, hierarchized and gendered communities. Their control over their land was disrupted with the spread of Mughal sultanate in India which led to several revolts by tribal communities against the Mughal Rulers. Prominent rebellions against the Mughals include those of the Bhils in 1632 and of the Bhil Gonds in 1643. The arrival of the British in India was greeted with a similar sort of antagonistic reaction over land ownership and use of resources.

The land policies of the British government were very invasive of the rights of the tribal communities in India over their inhabited land. The 19th Century witnessed the establishment of a Forest Department by the British Government along with certain legislations that made it possible for the British Government to economically extract forest resources. The widespread eviction of tribal communities from forest areas was ordered for generating timber economy and other revenue resources resulted numerous rebellions against the British government.

Although the Indian Forest Act came into being in 1927, no particular system or settlement rights were formulated for tribal communities. The British legislation and invasive policies affected tribal right to use of resources.

In the post-independent period, the British policy of isolation was switched to the integration model of tribal development. The first Prime Minister of independent India, Mr. Jawaharlal Nehru, formulated a tribal policy called 'Panchasheel' making a herculean contribution to the tribal development policies. Further, the constitution of India was brought into force on 26th January 1950 which duly recognises several rights for tribal people and imposes positive obligation upon the State for development of tribal communities in India. The Constitution termed the 'adivasi communities' as 'Scheduled Tribes'. The constitution further specifies the administration in tribal areas in two specific schedules i.e. Schedule 5 and 6.

Important legislations for Scheduled Tribes

After Independence tribal development policies were framed in different successive Five Year Plans by planning commission to mainstream tribal societies. The government of India has taken a positive and progressive approach in regulating and facilitating tribal rights in the country. The Wildlife Protection Act, 1972 was an important piece of legislation pertaining to wildlife conservation and tribal settlement rights and various authorities are also assigned to implement the provisions of the same. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted with an object to recognise crimes in context of tribal

people and provides for enhanced punishment other than that provided in the Indian Penal Code. It provides for establishment of special courts to deal with atrocities case and also provides for compensation to the victims in particular offences prescribed in the Act. The Panchayat [Extension to Scheduled Areas] Act, 1996 was enacted to extend the 73rd constitutional amendment of 1993 to the scheduled areas so as to enable tribal society to assume control over their own destiny to preserve and conserve their traditional rights over natural resources. This act recognizes the prevailing traditional practices and customary laws of the local people besides management and conservation of natural resources through gram panchayat. It encourages the organization of people through gram sabha and state.

India has witnessed a series of progressive welfare legislation securing tribal rights in different aspect. Particularly, the The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which was enacted to ensure recognition and protection of forest rights of inhabiting scheduled tribes particularly their right over their land and use of forest resources. It also provides framework for implementing authorities and various committees. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was enacted to harmonize the process of land acquisition of for developmental projects by government which causes displacement of affected population. This Act provides for seeking free consent before acquisition of land and provides for due compensation and rehabilitation and resettlement.

Apart for the national welfare legislations, the States with tribal population is India have also played a vital role in upliftment of their tribal population. States with tribal population have enacted several welfare regulations, schemes, programs, scholarships etc. for upliftment of tribal population.

The state of Odisha since independence has acted as a welfare state and has enacted several state laws/regulations protecting tribal rights one of such example is Orissa Scheduled Areas Transfer of Immovable Property Regulations, 1956. Its Regulation II imposes restriction on transfer of land belonging to scheduled tribe to non-tribals. For providing compensation to victims of atrocities the state has enacted Odisha Victim Compensation Scheme which is amended as per the present-day condition in need of the society. The state has adequate machineries dealing with the same such as National Commission for Scheduled Tribes and Human Rights Protection Cell established in the SP's office of every district for receiving grievances. ITDA's are established for ensuring and recording the rights granted to tribal communities and the Collector's office has an office of Land Acquisition Officer who ensures implementation of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Apart from the government machineries, there are many non-government actors/ civil societies who play a very vital role in raising tribal issues and facilitating the process of recognition of rights of tribal communities.

Role of judiciary in securing rights of Scheduled Tribes

With the progress of time since independence, judiciary in all the hierarchical forums of India has acted positively in interpreting relevant provisions of the legislative enactments and supporting the development of the scheduled tribes in the country. Supreme Court has time and again stated guidelines and set-up commissions to ascertain the implementation of tribal rights.

Relevance of the present study

In the wake of the development of legal regime securing tribal rights and the developmental boost-ups given by central as well as state governments, an absence of a comprehensive study makes it difficult to assess the status of implementation of these welfare legislations in the context of scheduled tribes. Hence, comprehensive study is necessary combining the legislative, judicial and administrative aspects as regards to implementation of such legislations in the context of scheduled tribe communities in the State.

Objectives of the study

- To analyze the legislations pertaining to the protection of tribal rights and identify major areas of concern.
- To assess the effectiveness of implementation of the relevant legislations and to identify the grey areas and the way they are influencing the desired outcome of such legislations.
- To examine the extent to which the practices under the law have been meeting the needs and expectations of the tribal population in the state of Odisha.
- To provide an overview of the good practices and lessons achieved through implementation of the legislations.

Methodology

During the course of the research (including field study and desk review), correlation between the legislations and authorities at different levels was analyzed and their implementation status was examined. Upon conducting the examination of the implementation status, the research dealt with the effect of such implementation/non-implementation. In this course, related theories were tested by the scale of 'inductive reasoning' and related theories were constructed vide 'deductive reasoning'.

Desk review concerning all the relevant legislations pertaining to protection of tribal rights were ascertained in accordance with the need of the project. Among these ascertained legislations, few legislations were opted and reviewed for analysis including its implementation status and the outcome of its implementation covering all the thematic areas of tribal rights such as fundamental rights under constitution and right to use of land, forest, self-governance and other statutory rights. After reviewing the relevant literatures and references, relevant judicial decisions were studied, finally, a concise chapter plan was prepared.

The following key legislations pertaining to scheduled tribes were assessed in the national and state context

- Constitution of India, 1950
- Scheduled Tribes (Prevention of Atrocities) Act, 1989
- The Protection of Children from Sexual Offences (POCSO) Act, 2012
- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
- Odisha Tribes Advisory Council Rules, 1983

- Orissa Scheduled Areas Transfer of Immovable Property Regulations, 1956
- Odisha Victim Compensation Scheme, 2018
- Odisha Rehabilitation and Resettlement Policy, 2006

For selecting sample districts, a thematic approach was undertaken having geographical and communal distinction. The major tribal districts such as Koraput, Kandhamal, Sundargarh and Mayurbhanj were selected to check the status of implementation of the selected legislations and its outcome due to implementation. In the sample districts all the case studies relating to the opted thematic areas envisaged in the chapter plan were assessed through online media/press and official sources. For the purpose of a comprehensive analysis, numerous cases from each thematic area have been assessed but five cases from each thematic area is incorporated in this study report for preparing a concise analysis and other assessed cases are annexed to the report for the perusal for the interested readers. Relevant villages, based on cases, were identified in the sample districts for fact finding. Further, relevant authorities were consulted in sample districts for seeking information regarding implementation of the selected legislations. Few government offices provided all the required information such as gathering information regarding government implemented schemes etc. from District Welfare Office, Land Acquisition Office and ITDA. In few other government offices, detailed information as sought was not duly received as the authorities cited privacy concerns such as District Legal Service Authority, Human Rights Protection Cell at SP's Office of the District.

Further, the identified villages were visited and conducted focused group discussions with the inhabitants therein and recorded their statements.

Filing of RTI applications constituted an important part of data collection method. RTI applications under the Right to Information Act, 2000 were made to SC & ST Welfare Department of the state seeking required information. In the preferred RTI applications, information pertaining to three thematic areas were sought particularly, recognition of forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; displacement of persons caused and their resettlement and rehabilitation made in developmental projects in the state and information regarding the cases of atrocities recorded along with the follow up details under Scheduled Tribes (Prevention of Atrocities) Act, 1989 and The Protection of Children from Sexual Offences (POCSO) Act, 2012.

In this context, it is relevant to mention herein that during the completion of the tenure of this project all the information has not been received and is still being received despite of filing the applications before six months in contrary to the provisions of the Right to Information Act, 2005. The data received thus far are duly incorporated in the subsequent relevant chapters.

After preparation of the draft report, the content of the reported is tested with legal scale to ascertain the indicative status of implementation of the analyzed legislations. Thereafter, a deductive reasoning is drawn from the quantitative analysis so conducted thereby stating the good practices by government in the field of protecting tribal interest and further notes the drawbacks and deficiency in implementation of the analyzed legislation by stating the reason behind the same. The report is concluded by providing recommendation for strengthening the implementation process of the state and indicates the flaws in the legislation by providing imperative reasoning in support of the same and further makes recommendation for overcoming the same.

Chapter contents

The first chapter has explored the recognition of 'adivasis' as 'scheduled tribes' under the Constitution of India by explaining the legal understanding of the terminology. It elaborates various safeguards provided under the constitution by citing relevant articles including social, cultural, political and economic safeguards. Thereafter, this chapter deals with the agencies entrusted under the constitution for protecting tribal interest. In this context, the power and functioning of the National Commission for Scheduled Tribes (NCST) formed under Article 338A is analyzed. For assessing its power and functioning in context of Odisha, the case study of displaced persons in Rourkela Steel Plant is assessed wherein displaced persons had complained to NCST for non getting adequate rehabilitation. On analysis, it is found that the Commission is a quasi-judicial authority having limited power and jurisdiction explained in details in the chapter. Further, it analyses the central and state government agencies mandated under the constitution for protection of tribal rights such as Ministry of Tribal Affairs (MOTA) and SC ST Development Department, Odisha thereby analyzing the schemes implemented in the state of Odisha particularly in the sample districts. This chapter further analyses the role of the Governor envisaged under the 5th Schedule of Constitution of India and the functioning of the Tribes Advisory Council (TAC).

The second chapter deals with the prevention of atrocities against the tribals. For examining this aspect, this study considers the numerical data regarding the commission of atrocities in the state of Odisha received through RTI applications and information collected from local authorities in sample districts and further analyses the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 and the subsequent amendment thereto in order to create a comparative scenario and figures out whether this legislation has helped in decreasing the cases of atrocities in the state. This chapters unboxes all the key provisions and express it in the simplest form for the understanding of a layman. Such key provision in this Act is limited to the offences enumerated and punishments prescribes, establishment of special courts, conducting inquiry and providing rehabilitation to the victims. This chapter also analyses the role of judiciary in upholding the provisions of the Act. In this context, it is to mention herein that the judgment of supreme court is analyzed relating to diluting the provision of the Act (section 18A of amended Act, 2018) relating to non-applicability of the provision for anticipatory bail and inquiry before filing of FIR. For assessing the implementation status of the provisions of this Act, this chapter considers few cases each from the sample districts and analyses whether the inquiry was rightfully carried out further it checks whether the compensation and other rehabilitation is rightfully provided to the victim of the atrocity.

The third chapter deals with protection of tribal population against atrocities but is limited to sexual offences against children (minors under the age of 18 years). Past couple of decades have witnessed the growth of sexual offences against the minors particularly in tribal areas. In the wake of this, the Prevention of Children from Sexual Offenders Act, 2012 was enacted which is a subject matter of analysis in this chapter. This chapter explores the salient features of the act and lists the key provisions envisaged therein particularly, offences recognized under the Act (such as aggravated penetrative sexual assault, sexual harassment etc.) and elaborates

with the process for reporting case under the act, the investigation process, institutional mechanisms provided therein, establishment of special courts and the payment of compensation under the Act. After dealing with the aforementioned subject matter, this chapter assesses the status of implementation of the provisions of the Act in the state of Odisha and one of the key findings noted was that the state had enacted Victim Compensation Scheme since 2012 and is duly amended from time to time increasing the amount of prescribed compensation. In order to check the implementation status in the state, this chapter lists down few case studies wherein it could be noted that the POCSO Courts in Odisha are proactive in upholding the provisions of the POCSO Act, 2012 and in some cases the courts have ordered capital punishments for the offenders.

The fourth chapter deals with the legal protection afforded to the tribal population for securing their right over forest resources. In this context, this project analyses the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 along with Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008. The chapter explores the subject matter of 'forest rights' by analyzing the claims envisaged in the Act namely, individual claims and community claims and deals with the institutional mechanism envisaged under the act entrusted with the power for granting forest rights to individual and communities. In this process, the power and functioning of the institutional mechanisms namely, FRCs, SLDC and DLC entrusted with the power to verify and grant the claims are assessed. This chapter further analyses the granting of the IFR and CFR claims in the sample districts and notes down the reason for rejection of any such claim at different level. This chapter also analyses the role of judiciary in upholding the provisions of the Act. Apart from the above, this chapter has listed few case studies of recognition of community forest resource claims in the districts of Kandhamal which shows the progressive approach of aforementioned institutions (local authorities) for entrusting forest rights claims.

The fifth chapter deals with the protection of land rights of tribals in tribal areas. In the wake of developmental projects, private lands are being acquired for public purposes which causes displacement of persons. These affected persons at times are provided with minimum or no rehabilitation and resettlement. Hence, in this context, this chapter analyses the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 its Rules, 2015, Land Acquisition Act, 1894 and Odisha Rehabilitation and Resettlement Policy, 2006. This chapter explores the key provisions relating to seeking of consent prior to acquisition of land, compensation payable and acquisition of land in tribal areas. Further, this chapter enumerates few cases studies from the sample districts wherein the land has been acquired for public purposes namely, HAL displacement in Koraput, NTPC displacement in Sundargarh etc. On analysis of these enumerated case studies, it is found that in most of the cases proper rehabilitation is not given to the affected persons and further notes the reasons behind violation of such rights. It also finds that in few cases appropriate rehabilitation has been done as per the state RR Policy and states other relevant deductions.

The chapter seven presents the findings, observations and recommendations of the study pertaining to the legislations and their implementation in the context of scheduled tribes of Odisha.

Findings of the study

On assessment of the constitution of India, it was found out that the constitution has provided special recognition to the tribals and have provided for their safeguards. These safeguards include, social, political, educational etc. apart from providing for fundamental rights and other safeguards, the constitution establishes a mechanism for regulating tribal affairs which is envisaged in its 5th & 6th Schedule. For the purpose of this study, 5th Schedule is the relevant part as Odisha is one among the states included in the said Schedule. Under the said schedule the Governor is entrusted with the regulatory power and a Tribal Advisory Council is established to decide on tribal affairs. In furtherance of this, the state of Odisha has also enacted Orissa Tribes Advisory Council Rules, 1983. Apart from this, subsequent amendments have been made by securing reserved positions in government sector for education and jobs.

Right to protection of life and rights to live with dignity is fundamental right in India. In order to secure this right of the tribal population, SC ST (POA) Act, 1989 was enacted by the Parliament. The said Act provides for offences and prescribes punishments, establishment of special courts, conducting inquiry and providing rehabilitation assistance to the victims. With advancement of time and need of the hour the said act is duly amended in 2018 thereby strictly enforcing the anticipatory bail provision envisaged in section 438 of Cr.P.C. but the same provision has been diluted by the hon'ble supreme court of India. On assessing the legislation called SC ST (POA) Act, 1989, the following deductions are made:

Assessment of disposed cases under SC ST (POA) Act, 1989

Upon assessment of the disposed cases in the sample districts, it was observed many cases have been with vested interests which lacked merits, many cases were reported which actually took place, many cases were not reported because of social stigma and many cases are settled in the mediation made by the people of the village. Delving deep into the judgments of the disposed cases, it was observed that in most of the cases the witnesses along with the victim turn hostile.

- i. **Process of Inquiry:** The relevant Acts relating to the Scheduled Tribe communities provides for the process of inquiry. It states that the investigation shall be done by the Superintendent of the Police and the Executive Magistrate. Upon assessment it was found that the investigation process is duly followed in the state in letter and spirit. However, it is also observed that despite the completion of investigation reports, in number of cases, the police have delayed to file the charge sheet which leads to delay in the process of justice.
- ii. **Off-court settlement of issues:** Upon assessment of the implementation of SC ST (POA) Act, 1989 in the sample districts, it was observed that many of the aggrieved scheduled tribe population do not seek the legal recourse of justice rather, they call for an off court settlement which is carried out in the presence and recommendation of the elderly persons or community leaders of the village or of cluster of villages or from their own socio-political hierarchy at different levels.

The POCSO ACT 2012 in relation to STs

With the advancement of time, criminal offences against scheduled tribes is seen as a bigger challenge. Particularly, there is a substantial increase in the number of sexual offences against ST population especially, tribal children. For tackling this challenge in the country, the Parliament enacted POCSO Act 2012 and provided punishment for sexual offences against children and provides for rehabilitation therein. Apart from this, the Act prescribes methods for conducting medical examination of the victim, and also provides for the process of conducting enquiry. For the purpose of the project, this study is limited to assessment of the Act in the context of tribal population in the state. Upon assessment of this legislations the following observations are made:

- i. **Assessment of disposed cases in sample districts:** Observations on the the disposed cases under POCSO Act in the sample districts almost matches to the observations made in assessment of SC ST (POA) Act, 1989. However, it was specifically found out from the evidence trial stage of the cases that the victims make statement in support of the accused thereby changing her earlier statement given to police. A major reason behind this is because sexual offences are immoral for most of the tribal population and they try to settle the issue by getting the victim married to the accused. Further, in many cases the accused is kind of known relative of the victim for which the community members try to resolve the matter at their level and hence influence the victim to change statement in court of law to save the accused and save the relations. There are also certain marriage customs that come on the way of exercising provisions under the POCSO Act. The marriage by force, marriage by capture, marriage by elopement customs prevailing in the ST communities customarily go against the provisions of POCSO Act. There are also sanctions and punishments approved under customary law of particular ST communities that helps in out of court settlement of the cases. Many cases remain unreported because of the customary law and local traditions. A general observation is that only such cases are reported where there is interference of statutory bodies like district child protection units or such other official concerns. However, following specific observations require mention here.
- ii. **Establishment of special courts:** Upon assessment of the said Act, it was noted that the state government has been proactive in implementing the mandates of the POCSO Act in the State. As many as 24 special courts have been designated as POCSO court in Odisha covering the scheduled tribe dominated areas of the state. The POCSO courts have been expediting the cases as per procedural formalities and justice administration.
- iii. **Rehabilitation to the victims under POCSO Act:** Until the amendment of the POCSO Rules in 2020, there was an ambiguity regarding the fund from which the compensation is to be made and the authority dealing with this process. Unlike other states, Odisha had enacted Odisha Victim Compensation Scheme, 2012 which duly provided for compensation to victims under POCSO Act and made the DSLA responsible to carry out the process of compensating the victim.

Forest Rights Act

Forest resources constitute a source of livelihood for scheduled tribe population invariably in the state of Odisha. This makes assessment of the forest rights of the scheduled tribes very much important. In this regard, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 along with Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 has been assessed. Upon assessment of the said legislation, the following observations have been made.

- i. **Entitlement of community claims:** The assessment of the said Act revealed that the local authorities have been pro-active in verifying and entitling community claims. All the community claims applied in the sample districts have been considered for granting titles, although not all have been finally granted. However, in the entire process from claim making to claim granting the following has been noticed that suffice to say why the claim granting is going on at a relatively slower rate.
- ii. **Lack of awareness regarding the entire process of claiming forest rights:** One of the key observations from the field study is that the claimants are not well aware of the requirement to have a claim over the land and forest. Hence, the claimants neglect the process of verification of claims. At times, due to lack of awareness, authorities take advantage of the situation. For example, forms were sold to claimants by authorities. In most cases the community members believe that the said forest is under their bonafide use since generations and hence they are the de-facto rights holders. Hence, they do not feel the urgency of filing a claim. It is remarkable that where external agencies like NGOs have been providing hand holding support, there the claims are made early and the processes are followed well and the claim is expedited by the ST community.
- iii. **Improper formation of gram sabha:** Gram Sabha is the local body entrusted with the power to verify claims. On assessment in the field, it was observed that the gram sabhas are often not formed as prescribed. On delving deep into the topic, it was observed that non enactment of PESA Rules makes the process of constitution of gram sabha ambiguous.

Legislations on Land Rights

The legislations on land rights that primarily address the right to land of the tribal population has been one of the major thematic areas assessed in this project. Due to increase in the number of development projects in the State, which are generally established in the scheduled tribe dominated areas, a large segment of the tribal population have been displaced and have not been duly rehabilitated. This project has assessed the land rights of the tribal in this context. The land acquisition in India was initially governed under Land Acquisition Act, 1894 wherein no provisions for rehabilitation and resettlement was provided. Hence, National Rehabilitation & Resettlement (R&R) Policy was developed. In the state of Odisha, the Odisha R&R Policy of 2006 was referred while rehabilitating the displaced persons. Post 2013, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act was enacted which provided specifically for acquisition of Tribal Land and made specific provisions for rehabilitation and resettlement. Upon making an assessment of the said

legislations and policy in the context of the case studies undertaken, the following deductions are made:

- i. **Seeking of consent:** In the process of acquisition of land, seeking consent of the affected persons is the most important aspect. On assessment of the indicative case studies, it was observed that the process of obtaining consent was vitiated. No strict process was adopted in obtaining consent from the affected persons.
- ii. **Analysis of assessed case studies:** Most of the assessed case studies are prior to 2013 which indicates that the land thus acquired in the studied cases are to be rehabilitated under 2006. Moreover, studying of the 2013 Act raises an ambiguity whether the 2013 Act will apply to the cases prior to 2013 regarding the rehabilitation and resettlement of displaced persons.
- iii. **No adequate rehabilitation made to displaced persons:** Apart from the case study of NTPC, Darlipali, Sundargarh none other development projects in Odisha have adequately provided rehabilitation and resettlement to the displaced persons.

Protection framework and administrative compliance

The legislations thus studied provides for a framework of protection of tribal interests. In order to give effect to the framework a proper administrative compliance is required. On delving deep into this aspect of the protection framework, it was observed that the state has established special administrative cell for protection of interest of scheduled tribes pertaining to different subject matters. Human Rights Protection Cell (HPRC) is one of such special administrative body established to protect civil rights. It is established in the Office of Superintendent of Police in every district and is responsible for receiving grievances under SC ST (POA) Act. The Child Welfare Committee is another example of such administrative body which receives grievances for child abuses. ITDAs are established in designated pockets of scheduled tribe areas of the state who are responsible for spreading awareness for recognition of tribal rights and their promotion.

Critical observations

Despite the fact that there are systems and procedures set, protection frameworks in place, administrative compliances being made, there still remains issues to be resolved or to make the justice system more proactive and purposeful. To sum up the observations made on assessment of the said legislations in terms of their implementation in the state, the following observations are made:

Lack of preparedness for developing awareness campaigns: Lack of awareness is the major reason for violation of rights of the citizens particularly, the scheduled tribes. A major reason of this is the rate of illiteracy in the tribal areas. The constitution of India levies a positive obligation upon the states to ensure education to everyone and the states have also been progressive in ensuring the same. Yet, the process of evolution of society is taking its own time. Be that as it may, this study observes that the authorities have failed to spread proper awareness

in the tribal areas in any of the thematic areas of the tribal interest. It may be assumed that the authorities have not been able to make them understand the nexus between their right over their land, forest resources etc. and the corresponding obligation of the state to ensure the same. The scheduled tribes in general are not aware of appropriate forums to seek remedy if their right is violated.

Proactive intent of the State: The constitution of India in its Part IV imposes a positive obligation upon the state to enact the national legislations in the state and to enact any such welfare legislation/schemes/rules. It is to mention herein that the state of Odisha has been proactive in implementing national provisions in the state. The instances of reflection of proactive approach of the state that this report recorded are as follows:

- i. The mandates of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are duly implemented in the state. The special courts are set up in tribal areas to deal with cases of atrocities. The joint enquiry report is prepared by the designated authorities i.e. Asst. Commissioner of Police/ Sub-Divisional Police Officer and the Executive Magistrate in the prescribed performa under the Act. Immediate rehabilitation assistance is provided to the victim. District Welfare Officer (DWO) make the payment of compensation as per the Schedule – I of the Act and maintains the record.
- ii. The POCSO Act, 2012 is duly implemented in the state. As many as 24 special courts have been designated in the state as POCSO courts including that in scheduled tribe dominated areas. The POCSO Courts have been proactive in dealing with the cases. In few cases, capital punishment is ordered to the accused upon found guilty. Post enactment of the POCSO Act in 2012, Odisha was one among the first states to notify victim Odisha Victim Compensation Scheme under section 357A of Cr.P.C. in the same year, and the compensation to the victims under POCSO Act are paid under this scheme unlike in most of the states in India prior to enactment of POCSO Rules, 2020. Even the Supreme Court had felt the ambiguity in identifying appropriate fund for making payment under the Act.
- iii. The provisions of FRA are appropriately implemented in the state. The institutions under the Act i.e. FRC, SDLC and DLC are rightly functioning in verifying the claims. Apart from these, other state institutions such as ITDA and local NGOs play a vital role in spreading awareness and facilitating people in availing their claims. It may be noted here that the state has accepted all the community claims in the sample districts. Individual claims are also given equal importance and at any instance if any dispute arises, the claim is remanded back for verification without directly rejecting it.
- iv. The state has also played a vital role in safeguarding land rights of the tribal peoples. The provisions of LARR Act, 2013 have been implemented in the state. The acquisitions carried on post 2013 requires a comprehensive Systematic Impact Assessment (SIA) prior to acquisition and the Act also provides specifically for acquisition of tribal land and prescribes compensation and rehabilitation. Prior to 2013, the state had enacted its Rehabilitation and Resettlement Policy in 2006 to provide rehabilitation to those displaced.

Designated offices & systematic maintenance of records: In the state of Odisha, separate offices have been designated to carry on the activities and maintain the records. For example, Land Acquisition Office (LAO) established in the Collector's Office maintains records of land acquisition in every district; ITDA ensures promotion of forest rights in tribal areas and maintains its records, DSLA is the authority to provide legal assistance to the needy ones. Apart from the designated offices, the state has fixed a permanent template to maintain the records (including storage of soft copies). For example, the format of joint enquiry report in the atrocity cases is same in all districts; same format for recording information on granting of IFR and CFR claims. It is pertinent to mention herein that there is no set template in the state to maintain the records relating to land acquisition for developmental projects.

Irregular commission of meetings: This report observes that in most of the cases the authorized officials and members meet routinely as per the mandate of the act, for example the verification of claims by SDLC and DLC; submission of joint enquiry report in atrocity cases but, this report also observes irregular commission of the meetings. For example, the Odisha Tribes Advisory Rules, 1951 provides for two annual meetings in one year whereas the Council has conducted three meetings in five preceding years.

Relative lack of legal & procedural awareness among government authorities: Any welfare legislation could be rightly implemented if the implementing authorities are well versed with it. This report observes that there is a relative lack of legal and procedural awareness among the relevant authorities. This report notes that, for example in case of FRA implementation, in certain study villages the members of FRCs were not aware regarding requirement of requisite documents as a proof of evidence for their land. Especially, in case of claiming land right by an OTFD it becomes extremely difficult to establish 75 years of ancestry.

Lack of judicial interference despite other evidences: Prosecution needs evidences to prove its case. Hence, in support of the statement of the victim the prosecution advances witness. It is observed from the assessment of the criminal legislations that in most of the cases dealt in the sample districts, the accused is acquitted because the victim who had initially stated the offence committed the crime refuses the same before court despite other evidences prove the offence committed by accused such as medical report proved sexual offence. Despite the availability of other evidence, the accused is acquitted on the basis of the statement of the victim and the court hold the victim hostile.

Lack of intent to make good the previous loss: The assessed government records accessed through RTI applications and procured from government offices reflect that the law has not been appropriately implemented much before the present time i.e. before 2-3 decades leading to aggravation in disputes. Yet, none of the authorities in the current situation have initiated in any process to resolve the issues. For example, approximately 5000 acres of land was acquired in excess for establishment of HAL in Sundabeda, Koraput in 1963; part of the same land is used for other government purposes and another part is still unused which is at times forcefully cultivated by the previous land owners.

Non-cooperation between members of gram sabha & forest department: Non-cooperation between two agencies of the state is the most disgraceful in a democratic setup which adversely

affects the rights of the scheduled tribe. This report observes that there are dispute between the decision of Gram Sabha and the Forest Department happening frequently. In few cases of Kandhamal District, the Gram Sabha has permitted the tribals to sell forest produce but while carrying on the same, the officers of Forest Department stop them from transporting the forest produce outside forest area, which is a violation of provisions contained in the Act.

KEY RECOMMENDATIONS

- i. Need for a comprehensive study on status of PESA Act, 1996 in Odisha:** The entire subject matter of entrusting forest rights and safeguarding land rights is a matter self governance. The same is safeguarded by the Constitution of India. Hence, PRIs have been set for carrying on the decision making in local level. The functioning of Gram Sabha forms a major part of it. It plays a vital role in verifying forest rights claims and also in providing consent for acquisition of their land. It is pertinent to mention herein that the power and functioning of Gram Sabha the core subject matter of PESA Act, 1996 although its Rules are yet to be enacted. Hence, a comprehensive study of PESA Act is required in light of the land and forest rights of the tribal population in the state to assert whether the tribals are actually benefitted by the implementation of the legislations protecting forest and land rights in tribal areas.
- ii. Design and organise large scale awareness camps:** It is undisputed that the authorities are carrying on large scale awareness camps yet they have not been successful in spreading awareness regarding the implementation of laws and also regarding the rights and duties of affected persons. Information dissemination campaigns should have several dimensions to reach out to the people. They should have a mass communication approach i.e. reaching out through radio, television and other media to ensure that people receive the basic messages the communication material seeks to convey.
- iii. Development of proper investigation methodology:** From the aforementioned assessment of legislation affording protection to scheduled tribes including children against atrocities and sexual offences, it can be concluded that in most of the cases charges are wrongly framed and it is also noted in the judgments that improper/incomplete investigation is done by the police wrongly incriminating the accused persons. Hence, the justice system provided by these penal legislations could not be availed by the target population. It is relevant to mention that there is no proper structuring of the investigation process in criminal cases. In this context, it is highly recommended to develop a stringent investigation process in criminal cases specially in cases pertaining to tribals as they are provided with special protection under Indian constitution.
- iv. Ensuring proper rehabilitation assistance & protection to victims of atrocities and witnesses:** It can be deducted from the assessment of the aforementioned criminal cases dealt by special courts in Odisha that the witness and the victims have turned hostile. The reason for this could not be known properly during the course of this project. But for the sake of proper implementation of the justice system as provided by criminal justice system and ensuring justice to the victims adequate protection should be

afforded to the victims and prosecution witnesses so that they are not be threatened to withdraw from their statement given to police.

- v. **Enhancing the scope of judicial interference:** The criminal justice in India prevails from 19th century, approximately 150 years old which was framed by the colonial government in the light of past days' conditions. The criminal justice system is based on the statement of the victim. In cases where the victims are turned hostile, the wrongdoer is set free from the legal consequences. It can be observed from this assessment that in most of the cases of atrocities in tribal areas, the victims and witness have turned hostile and the accused is acquitted despite of availability of medical evidence against him. In this context, it is highly recommended that the criminal justice system be amended in present day situation so that the scope of judicial interference be extended to consider other relevant evidences such as medical report to hold the accused guilty even if the victim turns hostile. This shall ensure proper implementation of justice system.
- vi. **Intensive capacity building approach:** Though the authorities are well and adequately designated yet the number of committees fall short regarding the verification of forest rights claims. The same situation prevails in all aspects of tribal interest. Hence, there is a need to increase the number of authorities per target population. Moreover, these authorities are required to be intensively trained to familiarize them with the provisions of the required legislations.
- vii. **Improve implementation mechanism:** Despite a stable implementation mechanism which has been, to a reasonable extent, successfully implemented in the studied legislations and cases, disputes keep arising between the authorities and the tribal population. There has been instances where there is a dispute between the decision of the gram sabha which is in conflict with the decision of Forest Department resulting in violation of the rights of the tribals. Apart from this, this study recommends to appoint experts to identify the forest lands while verification of IFR and CFR claims.
- viii. **Development of online portal:** In the era of globalization, internet has come to the rescue for gathering information. In this era, the government has not maintained an online portal for all the offices of the relevant state departments. The websites of few departments are well developed but are not routinely updated hence, they lack the updated latest information or orders in relation to the legislations for protection scheduled tribes in the state, the implementation mechanisms and the status updates.

AN EMPIRICAL STUDY ON THE LEGISLATIONS ON TRIBAL RIGHTS & ITS IMPLEMENTATION STATUS: GOOD PRACTICES AND LESSONS LEARNT

INTRODUCTION

India is one of the Nations with the high concentration of tribal population in the world. They are identified as ‘Adivasi’ that is the collective term for the Tribes of India.¹ They are considered to be the indigenous people of India² prior to the Dravidians³ and Indo-Aryans. It refers to "any of various ethnic groups considered to be the original inhabitants of the Indian subcontinent"⁴. However, India does not recognise Tribe as Indigenous people. India ratified the International Labour Organization (ILO) Convention 107 on Indigenous and Tribal Peoples of the United Nations (1957). In 1989, India refused to sign the ILO Convention 169.

Adivasi is a modern Sanskrit word specifically coined for that purpose in the 1930s by political activists⁵ that stated ‘Adivasis are the original inhabitants of the Indian subcontinent’, which was recognised by the Supreme Court of India.⁶ In Hindi, *Adivasi* means ‘Original Inhabitants’, from *ādi* 'beginning, origin'; and *vāsin* 'dweller' (itself from *vas* 'to dwell'), thus literally meaning 'original inhabitant'.⁷

The constitution of India grouped these ethnic groups together "as targets for social and economic development. Since that time the Adivasi of India have been known officially as Scheduled Tribes. Article 366 (25) defined scheduled tribes as "such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this constitution".

A substantial list of Scheduled Tribes in India are recognised as tribal under the Constitution of India. Tribal people constitute 8.6% of the nation's total population, over 104 million people according to the 2011 census.

One concentration lives in a belt along the Himalayas stretching through Jammu & Kashmir, Himachal Pradesh and Uttarakhand in the northwest, to Assam, Meghalaya, Tripura, Arunachal Pradesh, Mizoram, Manipur and Nagaland. In the north eastern states of Arunachal Pradesh,

¹ Encyclopedia Britanica

² Mohandas Karamchand Gandhi (1968), The Selected Works of Mahatma Gandhi: Satyagraha in South Africa, Navajivan Publishing House,

³ Minocheher Rustom Masani; Ramaswamy Srinivasan (1985), Freedom and Dissent: Essays in Honour of Mino Masani on His Eightieth Birthday. Democratic Research Service.

⁴ Encyclopedia Britanica

⁵ Robert Harrison Barnes; Andrew Gray; Benedict Kingsbury (1995). Indigenous Peoples of Asia, Association for Asian Studies

⁶ S. Faizi & Priya K. Nair, 2016. Adivasis: The World’s Largest Population of Indigenous People, Development. Palgrave Macmillan; Society for International Development, vol. 59(3), pages 350-353, December.

⁷ Adivasi, n. and adj." OED Online. Oxford University Press, June 2017.

Meghalaya, Mizoram, and Nagaland, more than 90% of the population is tribal. However, in the remaining northeast states of Assam, Manipur, Sikkim, and Tripura, tribal peoples form between 20 and 30% of the population. Other tribal peoples, including the important tribes like Santhals, Oraon, Munda, and Ho live in Jharkhand, West Bengal, Odisha. Central Indian states have the country's largest tribes, and, taken as a whole, roughly 75% of the total tribal population live there, although the tribal population there accounts for only around 10% of the region's total population.

Smaller numbers of tribal people are found in Odisha in eastern India; Karnataka, Tamilnadu and Kerala in southern India; in western India in Gujarat and Rajasthan, and in the union territories of Lakshadweep and the Andaman and Nicobar Islands. About one percent of the populations of Kerala and Tamil Nadu are tribal, whereas about six percent in Andhra Pradesh and Karnataka are members of tribes.

The Adivasi population in India constitute 8.43 crores (9.17%) of the total population of country as per 2011 Census. They mostly inhabit in hills and forests of the country. They occupy about 15% of the country's total land mass hence, realisation and recognition of their right is of utmost importance in national interest.

Indian Tribes in pre-independence era

The history of tribal life during the British Rule in India has found mention in many scholarly writings and historical documents. Beginning in the 18th century, the British added to the consolidation of feudalism in India, first under the Jagirdari system and then under the Zamindari system. Beginning with the Permanent Settlement imposed by the British in Bengal and Bihar, which later became the template for a deepening of feudalism throughout India, the older social and economic system in the country began to alter radically. Land, both forest areas belonging to Adivasis and settled farmland belonging to non-Adivasi peasants, was rapidly made the legal property of British-designated zamindars (landlords), who in turn moved to extract the maximum economic benefit possible from their newfound property and subjects.⁸ Adivasi lands sometimes experienced an influx of non-local settlers, often brought from far away by the zamindars to better exploit local land, forest and labour. Deprived of the forests and resources they traditionally depended on and sometimes coerced to pay taxes, many Adivasis were forced to borrow at usurious rates from moneylenders, often the zamindars themselves. When they were unable to pay, that forced them to become bonded labourers for the zamindars. Often, far from paying off the principal of their debt, they were unable even to offset the compounding interest, and this was made the justification for their children working for the zamindar after the death of the initial borrower.

Land dispossession and subjugation by British and zamindar interests resulted in a number of Adivasi revolts in the late eighteenth and early nineteenth centuries, such as the Santal hul (or Santal rebellion) of 1855–56. Although these were suppressed ruthlessly by the governing British authority, partial restoration of privileges to Adivasi elites and some leniency in tax

⁸ Govind Kelkar; Dev Nathan (1991), *Gender and Tribe: Women, Land and Forests in Jharkhand*, Kali for Women, [ISBN 978-1-85649-035-1](https://doi.org/10.1080/03610129108839035).

burdens resulted in relative calm, despite continuing and widespread dispossession, from the late nineteenth century onwards. The economic deprivation, in some cases, triggered internal Adivasi migrations within India.

The Adivasis before the invasion of India by Mughals and British were considered to be equal part of society and were fully involved in kingships, in land and forest politics, in tributary relationships with other groups, in particular occupational specialisations and even in commerce and war.⁹ They were also internally variegated, hierarchized and gendered communities.¹⁰ During the pre-Mughal period in India, the Adivasis were not considered impure by the upper caste Hindu population, unlike dalits. The tribal population back then lived in remote habitations and had self-governance particularly, control over their lands based on their segmental organisation according to descent systems where their forms of lifestyle ranged from hunters or gatherers to farmers.¹¹ This form of lifestyle was and control over their land was disrupted with the spread of Mughal sultanate in India wherein their sovereignty of ownership over their land was challenged which led to several revolts by tribal communities against the Mughal Rulers. Prominent rebellions against the Mughals include those of the Bhils in 1632 and of the Bhil Gonds in 1643.¹² The arrival of the British in India was greeted with a similar sort of antagonistic reaction over land ownership and use of resources.

The 19th Century witnessed the establishment of a Forest Department by the British Government along with certain legislations that made it possible for the British Government to economically extract forest resources. The sustainable methods of traditional use of forests and the needs of forest ecology was ignored by invasive, revenue-centric legislations enacted by British government. The widespread eviction of tribal communities from forest areas was ordered for generating timber economy and other revenue resources. Due to these changes in the lifestyle of tribal habitations numerous rebellions against the British government were staged by the tribes such as the tribals of Bastar, the Kuki, the Nagas and the Santhals are all examples in this regard.

Although the Indian Forest Act came into being in 1927, which provided that any forest area or wasteland that was not privately owned could be marked as reserved areas, no particular system or settlement rights were formulated for tribal communities in India living in forests and large areas were not surveyed for this purpose. Tribal people involved in agriculture continued to cultivate crops without official land ownership. This instead created a system of patronage from the government under which nobody was allowed to use resources from forests without permissions garnered from the forest department. The practice of logging, hunting, foraging, or agriculture by tribals and non-tribals alike under this system thus constituted

⁹ S. Guha (2013), 'Beyond Caste: Identity and Power in South Asia, Past and Present', *Brill's Indological Library*, Volume 44.

¹⁰ Shashank S. Sinha's work on the changing gender structure amongst tribes of Chota Nagpur; Sinha, 'Adivasis, Gender and the "Evil Eye"'; Uday Chandra's essay here shows how status differentiation based on land-rights marked tribal protest politics in the colonial era'.

¹¹ Subhash Meena, Nitesh Pal Singh Meena, 'Psychosocio Political Problems of Tribes in India', *Tribes in India*, 2015, page 44-51.

¹² *Ibid.*

encroachments. The above-mentioned British legislation and invasive policies affected tribal habitations in India particularly their right to use of resources further possessing a challenge for government of independent India.

Indian Tribes in post-independence era

In the post-independent period, the British policy of isolation was switched to the integrated model of tribal development. Various customary programmers were started in the tribal areas for bringing about social and economic change among the tribal people. The first Prime Minister of independent India, Mr. Jawaharlal Nehru, formulated a tribal policy making a herculean contribution to the tribal development policies. Based on his integrationist model Nehru gave the 'Policy of Panchsheal'.¹³ Further, the constitution of India was brought into force on 26th January 1950 which duly recognises the past irreparable loss suffered by tribal communities due to British policies and provides several rights for tribal people and imposes positive obligation upon the State for development of tribal communities in India. The Constitution termed the 'Adivasi communities' as 'Scheduled Tribes'. The constitution further specifies the administration in tribal areas in two specific schedules i.e. Schedule 5 and 6.

In order to save the tribal people from decades of subjugation, deprivation, poverty, penury and other socio-economic development related problems the Constitution of India provided safeguards and constitutional guarantees for their all round development especially centering around three major areas such as Social, Economic and Political rights of the tribal communities.

The Constitution's safeguards that includes laws and regulations to protect tribal communities is very important. It provides safeguards because it is committed to protecting India's cultural diversity and promoting equality as well as justice. Constitutional safeguards are necessary to protect tribal groups from exploitation and also for their advancement as they have been exploited for a long time by the upper castes and upper sections of society. If there were no such safeguard the tribal communities would have continued through deprivations from their rights and entitlements. In an egalitarian society, such as the one adopted by the founding fathers of Indian democracy, it was therefore absolutely necessary to have these safeguards with a view to bridging the gap between the haves and the have-nots.

Article 15 of the Indian Constitution states that the state shall not discriminate any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Article 19(5)[13] of the Constitution of India guarantees the tribal people right to own property and enjoy it in any part of the country. Article 46 of the Constitution provides that the State shall promote with special care the educational and economic interests of the weaker sections of the society and in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. Considering the prevailing miserable and appalling conditions of the scheduled Tribes who had remained far behind and segregated from national life, it became imperative to adopt a policy of protective discrimination as an equalizer to those who were too weak to compute with the advance section of the society in the race of life. The

¹³ Rath, G.C. [2006] "Tribal Development in India contemporary Debates", Sage Publication, New Delhi Pg.86.

constitution prescribes protection and safeguards for the scheduled castes and scheduled Tribes, and other weaker sections either specially or by the way of insisting on their general rights as citizens with the objects of promoting their educational and economic interests and of removing the social disabilities. The constitutional safeguards and constitutional guarantees provided to Scheduled Tribes has been summarized below

Table: 1 Constitutional safeguards for Scheduled Tribes

| | | |
|---------|-----|---|
| Article | 46 | Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections: - The state shall promote with special care the educational and economic interest of the weaker sections of the people, and in particular of the scheduled castes and the scheduled tribes and shall protect them from social injustice and all forms of exploitation. |
| Article | 244 | The scheduled and Tribal areas Administration of scheduled areas and Tribal areas: - 1) The provisions of the fifth schedule shall apply to the administration and control of the scheduled areas and scheduled tribes in any state specified in part 'A' or 'B' of the first schedule other than the state of Assam. 2) The provisions of the sixth schedule shall apply to the administration of the tribal areas in the state of Assam. |
| Article | 330 | Special provisions relating to certain classes Reservation of seats of scheduled castes and scheduled tribes in the house of the people 1) Seats shall be reserved in the house of the people for – a) The schedule caste. b) The scheduled Tribes except scheduled tribes in the tribal areas of Assam. c) The scheduled tribes in the autonomous districts of Assam. 2) The number of seats reserved in any state for the scheduled castes or the scheduled tribes under clause [I] shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that state in the house of the people as the population of the scheduled castes in the state or of the scheduled tribes in the state or part of the state, as the case may be, in respect of which seats are so reserved, bears to the total population of the state |
| Article | 332 | Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the state:-- 1) Seats shall be reserved for the scheduled castes and the scheduled tribes, except the scheduled tribes in the tribal areas of Assam, in the Legislative Assembly of Every state specified in part 'A' or part 'B' of the first schedule. |

| | | |
|---------|-----|---|
| | | <p>2) Seats shall be reserved also for the autonomous districts in the legislative Assembly of the state of Assam.</p> <p>3) The number of seats reserved for the scheduled caste or Scheduled Tribes in the legislative Assembly of any state under clause [I] shall bear, as nearly as may be, the same proportion to the total number of Seats in Assembly as the population of The Scheduled Castes in the state or of the Scheduled Tribes in the state or part of the State, as the case may be, in respect of Which seats are so reserved, bears to the Total population of the state.</p> <p>4) The number of seats reserved for an autonomous district in the legislative Assembly of the state of Assam shall bear to the total number of seats in that Assembly proportion not less than the population of the district bears to the total population of the state.</p> <p>5) The constitution for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and municipality.</p> <p>6) No person who is not a member of Scheduled Tribes of any autonomous District of the state of Assam shall be Eligible for election to the legislative Assembly of the state from any constituency of that district except from the Constituency comprising the cantonment and municipality of shillong.</p> |
| Article | 334 | <p>Reservation of seats and special representation to cease after ten years- Notwithstanding anything in the foregoing provisions of this part, the provisions of this Constitution relating to</p> <p>a) The reservation of seats for the Scheduled Castes and Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and</p> <p>b) The representation of the Anglo – Indian community in the House of the People and in the Legislative Assemblies of the States by nomination; shall cease to have effect on the expiration of a period of ten years from the commencement of this Constitution: Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.</p> |
| Article | 335 | <p>Claims of scheduled castes and scheduled tribes to services and posts:- The claims of the members of the scheduled castes and the scheduled tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the union or of a state.</p> |
| Article | 338 | <p>Special officer for Scheduled Caste, Scheduled Tribes etc:-</p> |

| | | |
|---------|-----|--|
| | | <p>1] There shall be a special officer for the Scheduled Caste and Scheduled Tribes to be appointed by the president.</p> <p>2) It shall be the duty of the special officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the president upon the working of those safeguards at such intervals as the president may direct and the president shall cause all such Reports to be laid before each house of Parliament.</p> <p>3) In this article, references to the Scheduled Caste and Scheduled Tribes shall be construed as including references to such other backward classes as the president may, on receipt of the report of a commission appointed under clause [I] of article 340, by order specify and also to the Anglo-Indian community</p> |
| Article | 339 | <p>Control of the union over the Administration of Scheduled Areas and the Welfare of Scheduled Caste and Scheduled Tribes:-</p> <p>1) The president may at any time and shall at the expiration of ten years from the commencement of this constitution by order appoint a commission to report on the administration of the scheduled areas and the welfare of the Scheduled Tribes in the states specified in part A and B of the first schedule. The order may define the composition, powers and procedure of the commission and 83 may contain such incidental or ancillary provisions as the president may consider necessary or desirable.</p> <p>2) The executive power of the union shall extend to the giving of directions to any such state as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State</p> |
| Article | 340 | <p>Appointment of a commission to investigate the condition of backward classes:-</p> <p>1) The president may by order appoint a commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the union or any state to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the union or any state and the conditions subject to which such grants should be made, and the order appointing such commission shall define the procedure to be followed by the commission.</p> <p>2) A commission so appointed shall investigate the matters referred to them and present to the president a report setting out the facts as found</p> |

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| | | by them and making such recommendations as they think proper. 3) The president shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each house of parliament |
| Article | 342 | 1)The president may, after consultation with the Governor or Rajpramukh of a state, by public notification specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this constitution be deemed to be scheduled tribes in relation to that state. 2) parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause [i] any tribe or tribal community or part of or group within any tribe or tribal community, but save a aforesaid a notification issued under the said clause shall not be varied by any subsequent notification |
| | | |

Table 2: Constitutional Guarantees for Scheduled Tribes

For the protection, socio-economic and political development of scheduled Tribes, the constitution of India guarantees:

| | A | Social |
|---------|--------|--|
| Article | 14 | Equality before law |
| Article | 15(4) | The state to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. |
| Article | 16 | Equality of opportunity for all citizens in matters relating to employment or appointment to any 86 office under the state. |
| | 16(4A) | The state to make provisions in matters of promotion to any class or classes of posts in the services in favour of the Scheduled Castes and the Scheduled Tribes. |
| Article | 338 | A national commission for Scheduled Caste and Scheduled Tribes to investigate, monitor and evaluate all matters relating to the constitutional safeguards provided for the Scheduled castes and the Scheduled Tribes in the states |
| Article | 339 | Appointment of a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the states. |
| Article | 340 | Appointment of a commission to investigate the conditions of socially and educationally backward classes and the difficulties under which they labour and to make recommendations to remove such difficulties and to improve their conditions. |

| | | |
|---------|----------|--|
| Article | 342 | To specify the tribes or tribal communities to be scheduled tribes |
| | B | Economic |
| Article | 46 | The state to promote with special care the educational and economic interest of the weaker sections of the people, and in particular, of the 87 Scheduled Castes and the Scheduled Tribes and protect them from social injustice and all forms of exploitation. |
| Article | 275[i] | Grant-in-aid from the consolidated fund of India each year for promoting the welfare of Scheduled Tribes and administration of Scheduled Areas. |
| Article | 335 | The claims of the members of the Scheduled Tribes in the appointment to services and posts in connection with the affairs of the union or of a state to be taken into consideration consistent with the maintenance of efficiency of administration |
| | C | Political |
| Article | 244(c) | Through the fifth Scheduled the administration and control of Scheduled Areas and the Scheduled Tribes in any state, other than the states of Assam Meghalaya, Tripura and Mizoram by ensuring submission of Annual Report by the Governors to the president of India regarding the Administration of the Scheduled Areas and setting up of a Tribal Advisory council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes. |
| Article | 244(21) | Special provisions through the sixth scheduled 88 for the administration of Tribal Areas in the states of Assam, Meghalaya, Tripura and Mizoram by designating certain Tribal Areas as Autonomous Districts and Autonomous Councils and Regional Council. |
| Article | 330 | Reservation of seats for the Scheduled Castes and the Scheduled Tribes in the house of the people. |
| Article | 332 | Reservation of seats for the Scheduled Castes and the Scheduled Tribes in the Legislative Assemblies of the state. |
| Article | 243-D | Reservation of seats for the Scheduled Castes and the Scheduled Tribes in every Panchayat. Extension of the 73rd and 74th Amendments of the constitution to the Scheduled Areas – through the Panchayat (Extension to the Scheduled Areas) Act 1956- to ensure effective participation of the tribals in the process of planning and decision making |

Along with the constitutional safeguards and guarantees provided to the Scheduled Tribes in India, several statutory laws have been enacted over different periods for the welfare and development of the subjects. Just after Independence, tribal development policies were framed in different successive Five-Year Plans by planning commission of making them incorporated into the mainstream societies or thereby making their own destinies of ‘self-development’ by getting rid of exploitation by non-tribals. The government of India has taken a positive and

progressive approach in regulating and facilitating tribal rights in the country. The major legal instruments having direct and indirect implications concerning protection of the Scheduled Tribes to maintain their basic ways of living and living with dignity have been briefed below.

In 1952, a new forest policy was formulated that boosted the formation of forest development committees in different states of India to hitch the commercialization of forest resources.¹⁴ In report of the committees on “Forest and Tribals in India” (1982), which was developed under the chairmanship of B.K. Roy Burman, an Indian anthropologist saying that “there is a symbiotic relationship between the tribal social organization and forest economy in the specific historical context of our country.” Committee highlighted that “tribals are not only forest dwellers but also they have evolved a way of life which, on the one hand is woven round forest ecology and forest resources is protected against degradation by man and nature.” The committee recommended that “the symbiosis between the tribal communities and forest management should be established through imaginative forestry programmes and conservation and reorganization of traditional skill of labour.”¹⁵

In order to prescribe punishment for the preaching and practice of “Untouchability” for the enforcement of any disability arising therefrom and for matters connected therewith, the Protection of Civil Rights Act, 1955 has been enacted.

In order to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been enacted.

The Wildlife Protection Act, 1972 was an important piece of legislation pertaining to wildlife conservation and tribal settlement rights and various authorities are also assigned to implement the provisions of the same. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted with an object to recognise crimes in context of tribal people and provides for enhanced punishment other than that provided in the Indian Penal Code. It provides for establishment of special courts to deal with atrocities case and also provides for compensation to the victims in particular offences prescribed in the Act.

The Panchayat (Extension to Scheduled Areas) Act, 1996 was enacted to extend the 73rd constitutional amendment of 1993 to the scheduled areas so as to enable tribal society to assume control over their own destiny to preserve and conserve their traditional rights over natural resources.¹⁶ This act recognizes the prevailing traditional practices and customary laws of the local people besides management and conservation of natural resources through gram panchayat. It encourages the organization of people through gram sabha and state.

The 21st century has witnessed a series of progressive welfare legislation securing tribal rights in different aspect. Particularly, the The Scheduled Tribes and Other Traditional Forest

¹⁴ [Mann, R.S. [1993]. “Cultural and Integration of Indian tribe”, M.D. Publication, New Delhi, Pg. 36.

¹⁵ Dash, J. [2002]. “Impact of forest policies in the indigenous people”. APH Publishing Company, New Delhi Pg. 357-358.

¹⁶ Shrama B.D. [2001], “Tribals Affairs in India: A crucial Transition”, Sahyog pustak Kutir, Pg. 305.

Dwellers (Recognition of Forest Rights) Act, 2006 which was enacted to ensure recognition and protection of forest rights of inhabiting scheduled tribes particularly their right over their land and use of forest resources. It also provides for implementing authorities and various committees.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was enacted to harmonize the process of land acquisition of for developmental projects by government which causes displacement of affected population. This Act provides for seeking free consent before acquisition of land and provides for due compensation and rehabilitation and resettlement.

Apart for the national welfare legislations, the States with tribal population is India have also played a vital role in upliftment of their tribal population. States with tribal population have enacted several welfare regulations, schemes, programs, scholarships etc. for upliftment of scheduled tribal population.

THE TRIBAL PROBLEMS TODAY

Despite several initiatives taken by Government of India and other State Governments where the Scheduled Tribes are in good numbers the Scheduled Tribes today have been facing many unsolved problems. In general, the problems of the Indian tribes can be discussed under the following heads:

Loss of Control over Natural Resources:

Before the coming of the British, the tribals enjoyed unhindered rights of ownership and management over natural resources like land, forests, wildlife, water, soil, fish, etc. With the advent of industrialisation in India and the discovery of mineral and other resources in tribal inhabited areas, these pockets were thrown open to outsiders and state control replaced tribal control. Thus, began the story of unending miseries for the tribals. With the impetus to the development process after independence, pressure on land and forests increased.

This resulted in loss of ownership rights over land, owing to chronic indebtedness, unscrupulous landlords, moneylenders, contractors and officials. With the concepts of protected forests and national forests gaining currency, the tribals felt themselves uprooted from their cultural moorings and with no secure means of livelihood.

Lack of Education:

According to the 1991 Census, nearly 70 per cent of the tribals are illiterates. Although it cannot be denied that education can act as the instrument for betterment of the tribals ensuring greater participation for them in the development process, still there are certain factors which inhibit the tribals from taking to education.

These factors include tribal superstitions and prejudices, extreme poverty, nomadic lifestyle of certain tribes, lack of interest in alien subjects taught through an alien language and a lack of suitable teachers and other facilities in the tribal areas.

Displacement and Rehabilitation:

After independence, the focus of the development process was on heavy industries and the core sector. As a result huge steel plants, power projects and large dams came up—most of them in the tribal inhabited areas. The mining activities were also accelerated in these areas. Acquisition of tribal land by the government for these projects led to large scale displacement of the tribal population. The tribal pockets of Chhotanagpur region, Orissa, West Bengal and Madhya Pradesh suffered the most.

The cash compensation provided by the government was frittered away on wasteful expenditure. No settlements were provided for the displaced tribals within the industrial areas, who were forced to live in peripheries in slums or to migrate to adjoining states to work as unskilled workers in conditions of poverty. The migration of these tribals to the urban areas causes psychological problems for them as they are not able to adjust well to the urban lifestyle and values.

Problems of Health and Nutrition:

Because of economic backwardness and insecure livelihood, the tribals face health problems, such as prevalence of disease, like malaria, cholera, tuberculosis, diarrhoea and jaundice, problems associated with malnutrition like iron deficiency and anaemia, high infant mortality rates, low levels of life expectancy, etc.

Gender Issues:

The degradation of the natural environment, particularly through the destruction of forests and a rapidly shrinking resource base, has had its impact on the status of women. The opening of the tribal belts to mining, industries and commercialisation has exposed tribal men and women to the ruthless operations of the market economy, giving rise to consumerism and to commoditisation of women.

Erosion of Identity:

Increasingly, the traditional institutions and laws of tribals are coming into conflict with modern institutions which create apprehensions among the tribals about preserving their identity. Extinction of tribal dialects and languages is another cause of concern as it indicates an erosion of tribal identity in certain areas.

THE SCHEDULED TRIBES OF ODISHA IN CONTEXT

As per the census 2011, the ST population of the State of Odisha stands at 95,90,756 persons. This constitutes 22.85 % of the total population of the state and 9.17 per cent of the total tribal population of the country. It means among every five persons one is a ST in the state. The tribes of Odisha are distributed in all the thirty districts in varying number. In terms of the numerical strength of the ST population in the districts, Mayurbhanj district has the largest followed by Sundargarh and Keonjhar districts whereas, Puri district has the smallest population. The tribal population is largely concentrated in the interior hilly areas of the districts located at the south and the northwestern region.

The state of Odisha since independence has acted as a welfare state and has enacted several state laws/regulations protecting tribal rights one of such example is Orissa Scheduled Areas Transfer of Immovable Property Regulations, 1956. Its Regulation II imposes restriction on transfer of land belonging to scheduled tribe to non-tribals. For providing compensation to victims of atrocities the state has enacted Odisha Victim Compensation Scheme which is amended as per the present day condition in need of the society. Apart from the above, education is given highly importance in the state. Numerous pre-matric and post-matric scholarships are given to aspirant tribal student. Numerous Ashram schools and hostels are made in all the districts of the state under different schemes. The state has adequate machineries dealing with the same such as National Commission for Scheduled Tribes and Human Rights Protection Cell established in the SP's office of every district for receiving grievances. ITDA's are established for ensuring and recording the rights granted to tribal communities and the Collector's office has an office of Land Acquisition Officer who ensures implementation of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Apart from the government machineries, there are many non-state actors/ civil societies who play a very vital role in raising tribal issues and facilitating the process of recognition of rights of tribal communities.

With the progress of time since independence, judiciary in all the hierarchical forums of India has acted positively in interpreting relevant provisions of the legislative enactments and supporting the development of the scheduled tribes in the country. Supreme Court has time and again stated guidelines and set-up commissions to ascertain the implementation of tribal rights.

PURPOSE AND OBJECTIVES OF THE STUDY

There is a little doubt that Tribal communities continue to be the most marginalized group in India and so in any other State. Social indicators of developments around standards of health facilities, education opportunities and attainment, level of employment or standard of housing, sees Tribal communities enjoying fewer opportunities, and suffering greater burdens, than the rest of the population.

The United Nations Declaration on the Rights of Indigenous People (UNDRIP), adopted in 2007, for which India voted, recognizes among other things indigenous peoples' rights to self-determination, autonomy or self-governance, and their right against forcible displacement and relocation from their lands or territories without free, prior and informed consent. In addition to the UNDRIP, there is the International Labor Organization (ILO) Convention concerning Indigenous and Tribal Peoples, 1989 which is based on the "respect for the cultures and ways of life of indigenous peoples" and recognizes their "right to land and natural resources and to define their own priorities for development." India is not a party to this, but it is a party to the ILO Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, 1957.

At the domestic level, the Constitution provides special dispensation to tribal areas in matters of governance under the Fifth and Sixth Schedules, which is further fortified by the *Samatha v. State of Andhra Pradesh & Ors* (1997) judgment where the Apex Court declared that the transfer of tribal land to private parties for mining was null and void under the Fifth Schedule.

The framework for protection of the rights of tribal and indigenous people is further strengthened by the Recognition of Forest Rights Act, 2006 which protects the individual and community rights of tribal people in forest areas and their right to free and prior informed consent in event of their displacement and resettlement. A couple of other important legislation was the Protection of Civil Rights Act, 1955 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 that aimed to eradicate untouchability and exploitation of SC and ST by people belonging to other castes. In addition; there is also the Panchayat Extension to Schedule Areas Act (PESA) 1996. Thus, a number of legislative measures have been framed by the law makers to protect tribal rights in the country.

Tribal community in India has been most vulnerable community in the country. Even after centuries, the condition of Tribal communities is an area of great concern. The violation of fundamental human rights often has been perpetrated on them. Tribal communities have faced isolation and social discrimination from the mainstream society which is often seen in tribal pockets. Understanding of current Tribal societies need a basic respect to the historical processes, which have determined the course of consecutive changes in ideological, political, economic and socio-cultural life of the Tribal communities. The Indian democratic state accords several statutes in the constitution where the rights of Tribal communities are protected and social justice is determined for. However, the democratic experiment has not been successful in this respect. Therefore, there is a surge of Tribal movements in the country for their rights. All tribal people of India have a thing in common- they all share a history of injustice.

Though a number of legislations have been enacted to protect and promote tribal rights, the results are yet to be documented comprehensively. In the wake of the development of legal regime securing tribal rights and the developmental boost-ups given by central as well as state governments, an absence of a comprehensive study makes it difficult to assess the gravity of the situation prevailing in grass-root level of the tribal areas as a result of implementation of these welfare legislations. In India, the last quarter of the 20th century and first quarter of the current millennium have witnessed the growing recognition of the place and relevance of tribal rights in the society resulting in enactment of such legislations. However, there seems to exist huge gap between the ideal of the tribal rights laws and the field realities. Hence, comprehensive study is necessary for a combined study of all the legislative, judicial and administrative steps and figure out the indicative status of the tribal population inhabiting within the premises of Odisha.

OBJECTIVES OF THE STUDY

The present study aims

- To analyze the legislations pertaining to the protection of tribal rights and identify major areas of concern.
- To assess the effectiveness of implementation of the relevant legislations and to identify the grey areas and the way they are influencing the desired outcome of such legislations.

- To examine the extent to which the practices under the law have been meeting the needs and expectations of the tribal population in the state of Odisha.
- To provide an overview of the good practices and lessons achieved through implementation of the legislations.

RESEARCH METHODOLOGY

The research method followed is broadly explorative, analytical and case study based. It involved desk reviews, field work, consultations with stakeholders and digging out legal information from relevant fora and authorities. The research method also emphasized on correlation between the legislations and authorities at different levels and their implementation status was examined. Upon conducting the examination of the implementation status, the research dealt with the effect of such implementation/non-implementation. In this course, related theories were tested by the scale of ‘inductive reasoning’ and related theories were constructed vide ‘deductive reasoning’. For the completion of this project, the study followed the following steps.

Desk Review

Before initiating with the primary research work of the project, all the relevant legislations pertaining to protection of tribal rights were ascertained in accordance with the need of the project. Among these ascertained legislations, few legislations were opted and reviewed for analysis including its implementation status and the outcome of its implementation covering all the thematic areas of tribal rights such as fundamental rights under constitution and right to use of land, forest, self-governance and other statutory rights. After ascertaining the relevant legislations to be assessed all the secondary literatures and references were collected in hard and soft copies. Major source of literature and references were collected from the Library of SCSTRTI, Bhubaneswar and some were collected from internet sources particularly from peered review journals for example, www.jstor.com, www.manupatra.com etc. After reviewing the relevant literatures and references, relevant judicial decisions were studied. Finally, a concise chapter plan was prepared.

Table 3 – Thematic areas of study - List of National Legislations assessed

| Sl. No. | National Legislation |
|---------|--|
| 1. | Constitution of India, 1950 |
| 2. | Scheduled Tribes (Prevention of Atrocities) Act, 1989 |
| 3. | The Protection of Children from Sexual Offences (POCSO) Act, 2012 |
| 4. | The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 |
| 5. | The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 |

Table – 4 Thematic areas of study - List State schemes/regulations assessed

| Sl. No. | Schemes/Rules/Regulations |
|---------|---|
| 1. | Odisha Tribes Advisory Council Rules, 1983 |
| 2. | Orissa Scheduled Areas Transfer of Immovable Property Regulations, 1956 |
| 3. | Odisha Victim Compensation Scheme, 2018 |
| 4. | ANWESHA Scheme |
| 5. | Pre-Matric & Post Matric Scheme |
| 6. | Odisha Rehabilitation and Resettlement Policy, 2006 |

Sample study area and cases

After collecting and reviewing relevant legislations and literatures/references and preparation of chapter plan, the parameters of selecting sample districts were decided. For selecting sample districts, a thematic approach was undertaken having geographical and communal distinction. The districts were selected wherein there are issues pertaining to all the aspects of the tribal rights especially, pertaining to the thematic areas covered under the legislations opted for analysis. In selection of sample districts all the case studies relating to the opted thematic areas envisaged in the chapter plan were assessed through online media/press and official sources. For the purpose of a comprehensive analysis, numerous cases from each thematic area have been assessed but five cases from each thematic area is incorporated in this study report for preparing a concise analysis and other assessed cases are annexed to the report for the perusal for the interested readers. Hence, the district of Koraput, Kandhamal, Sundargarh and Mayurbhanj were selected to check the status of implementation of the selected legislations and its outcome due to implementation. After the assessment of the relevant cases and selection of sample districts, relevant villages were identified in the sample districts for fact finding into the cases and also for ascertain the implementation of the selected legislations and recording its outcome of implementation. Further, relevant authorities were identified in sample districts and consulted for seeking information regarding implementation of the selected legislations.

Filing of application under Right to Information (RTI)

After identifying the sample districts, RTI applications under the Right to Information Act, 2000 were made to SC & ST Welfare Department situated at Secretariat, Bhubaneswar seeking combined information of the state as a whole for assessing the implementation of the identified legislation in the whole of the state on the basis of the numerical data so obtained. In the preferred RTI applications, information pertaining to three thematic areas were sought particularly, recognition of forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; displacement of persons cased and their resettlement and rehabilitation made in developmental projects in the state and information regarding the cases of atrocities recorded along with the follow up details under Scheduled Tribes (Prevention of Atrocities) Act, 1989 and The Protection of Children from Sexual Offences (POCSO) Act, 2012.

In this context, it is relevant to mention herein that during the completion of the tenure of this project all the information could not be received and is still being received despite of filing

the applications before six months in contrary to the provisions of the Right to Information Act, 2005. The data so received are duly incorporated in the subsequent relevant chapters.

Field visit and discussion with relevant stakeholders

After identifying the relevant authorities and sample villages, it was visited by the research team dealing with this project for seeking/recording relevant information. At first, the relevant authorities were approached and all necessary information were received. Few government offices provided all the required information such as gathering information regarding government implemented schemes etc. from District Welfare Office, Land Acquisition Office and ITDA. In few other government offices, detailed information as sought was not duly received as the authorities cited privacy concerns such as District Legal Service Authority, Human Rights Protection Cell at SP's Office of the District. Further, the identified villages were visited and conducted focused group discussions with the inhabitants therein and recorded their statements.

Table – 5: List of authorities consulted in the sample districts

| S.L No. | Name of the Authorities | Position |
|----------------|--------------------------------|---|
| 1 | Dr. Brundha D. (IAS) | Collector & District Magistrate, Kandhamal |
| 2 | Sri Prateek Singh (IPS) | Superintendent of Police, Kandhamal |
| 3 | Sri Sheshadeva Behera | DWO, Kandhamal |
| 4 | Sri Birendra Kumar Das | Nodal Officer, ITDA, Kandhamal |
| 5 | Vishwanathm Neelannavar, (IFS) | DFO cum Wildlife Warden, Kandhamal |
| 6 | | District Legal Service Authority, Kandhamal |
| 7 | Madhusudan Mishra, OAS (SAG) | Collector & District Magistrate, Koraput |
| 8 | Mukesh Kumar Bhamoo (IPS) | Superintendent of Police, Koraput |
| 9 | Madhusmita Mohapatra | DWO, Koraput |
| 10 | Karu Soren | Project Administrator, ITDA, Koraput |
| 11 | Rinku Kumari (IFS) | Divisional Forest Officer, Koraput |
| 12 | Pradhan Tuli Amma | Land Acquisition Officer, Koraput |
| 13 | | District Legal Service Authority, Koraput |
| 14 | Nikhil Pavan Kalyan (IAS) | Collector & District Magistrate, Sundargarh |
| 15 | Soumya Mishra (IPS) | Superintendent of Police, Sundargarh |
| 16 | Sunil Tandi | DWO, Sundargarh |
| 17 | Ramakrushna Gand | Project Administrator, ITDA, Sundargarh |
| 18 | Kalunge Gorakh Waman (IFS) | Divisional Forest Officer, Sundargarh |

| | | |
|----|-------------------------|--|
| 19 | Prasant Tete | Land Acquisition Officer, Sundargarh |
| 20 | Abhijit Palai | District Legal Service Authority, Sundargarh |
| 21 | Vineet Bhardwaj (IAS) | Collector & District Magistrate, Mayurbhanj |
| 22 | Smit P. Parmar (IPS) | Superintendent of Police, Mayurbhanj |
| 23 | Chittaranjan Mohapatra | DWO, Mayurbhanj |
| 24 | Basant Kumar Sethi | Project Administrator, ITDA, Mayurbhanj |
| 25 | Swayam Mallick | Divisional Forest Officer, Mayurbhanj |
| 26 | Samarjit Kar, OAS-A(JB) | Land Acquisition Officer, Mayurbhanj |
| 27 | Soumyarup Sahoo | District Legal Service Authority, Mayurbhanj |

Report preparation

After collection of all necessary information including information collected from the government authorities and from the affected persons, certain other case studies were attempted keeping in light the importance of the issue and the relevance of information so collected. All the information thus gathered (inclusive of the information received through RTI applications) has been compiled as per the chapter plan. After preparation of the draft report, the content of the report was tested with legal scale to ascertain the indicative status of implementation of the analyzed legislations. Thereafter, a deductive reasoning was drawn from the quantitative analysis so conducted thereby stating the good practices by government in the field of protecting tribal interest and further notes the drawbacks and deficiency in implementation of the analyzed legislation by staying the reason behind the same. The report is concluded by providing recommendation for strengthening the implementation process of the state and indicates the flaws in the legislation by providing imperative reasoning in support of the same and further makes recommendation for overcoming the same.

REVIEW OF LITERATURE

Here our purpose of reviewing the literature is to place this study in a historical perspective and to relate its findings to previous knowledge and suggest further research. For the purpose of the study relevant books, journals, news articles, historical records, government reports, theses and dissertations, etc. were consulted to provide an overview of past studies on the subject.

Various research studies reviewed from the published literature have been generally classified into thematic research studies reviewed from the published literature have been classified into i) ethnographic studies, ii) studies relating to the problems of tribal people, and iii) studies relating to the development of tribal populations in India.

Ethnographical Studies

Verrier Elwin (1943) who suggested that tribals should be kept isolated in their hills and forests. Elwin's theory is known in social anthropology as 'public park theory'. He suggested that

ordinarily the non-tribal people should not be allowed to enter into tribal pockets without permission of the state government. This system would guarantee the isolation of the tribals.

Ghurye (1943) contested the theory of public park. He argued that the tribals were nothing more than backward caste Hindus. They should be treated at par with the Hindus. Following Ghurye's argument, Majumdar (1944) took a slightly different position. His suggestion was that the cultural identity of the tribals as far as possible should be retained. He feared that if the isolation was broken the tribals would lose their ethnic identity. To maintain it, he hypothesized that there should be 'selected integration' of the tribals. While spelling out, he argued that not all the elements of civilization should be allowed to enter the tribal area. Only those which have relevance with tribal life should be permitted into such area. Such a policy would keep the tribals away from the vices of urban life.

The scientific study of tribal economy in India was first undertaken by two scholars Nag and Saxena. Nag (1958) made an extensive field tour in the areas of Madhya Pradesh like, Mandla, Bilaspur, Durg, Balaghat and studied the Baiga economy in the context of general economic theories lying emphasis on the sources of economy of Baigas. Saxena followed a model of Nag and studied the tribals of Western Hills in Madhya Pradesh and presented the economy of five tribes. These two studies have some limitations like, exclusion of socio-cultural conditions of the tribes on their study areas.

Verma (1959-1960) has discussed the socio-cultural organisations of the Sanria paharias, Mai-paharias and Knmarbhag. He has examined various phases of the tribal life, pregnancy and birth, puberty, widow remarriage, place of women in the society, religion, village council and political institutions.

Yyas (1967) presents the historical, social and economic life of the Baniyas of Rajasthan, Andhra Pradesh, Punjab and Gujarat. Yyas thus points out the differences in customs and practices of the Baniyas of different States. This study has a good comparative background, still it has a limitation like unsuitability of the methodology.

Vimal Shah (1969) studied the tribal economy of Gujarat based on the All India Rural Development and Investment Survey of the RBI (1961-62) and the study undertaken by the Gujarat State. Shah selected a sample of 1120 rural households selected from 28 villages. This study has very effectively brought out the tribal economy in Gujarat. He points out that, there is very little diversification in occupation. Agriculture continues to be the main stay of tribal population, very little investment is made to modernise it, very few inputs are made to increase the productivity of land, and many people mostly depend upon traditional agencies for their credit requirements. All these are obviously, the characteristics of a subsistence economy.

Vidyarthi (1970) attempted to examine the impact of urbanisation on tribal culture. He studied the impact of the emergence of a heavy engineering complex in a tribal belt of Chotanagpur, and by analysing the pattern of socio-economic changes that occurred in this region owing to large scale industrialisation. Speaking about the process of modernisation among the tribal people in India's borders, Roy Burman(1973) rightly maintains that, tribals live among the non-tribals, but hardly share a common life. Their contacts are few and formal. In fact, according to him, the tribals in urban areas are in neither of the two worlds fully. Many of them adopt the

technology, skill of the modern world, still retaining the emotions of the tribal world. At the primitive level of aspiration, tribals were not concerned with the fact that they were a minority at the regional level. Now, with political and occupational aspirations at the regional level and national levels, tribals begin to feel themselves as a significant minority. This is the gift of modern education in particular and the modernisation in general. Through his study he expresses his dissatisfaction regarding the strategies for tribal's modernisation.

Dean Joros (1973), in his study, presents his views on the relation between political socialisation of the tribals and integration process or the effect of tribal welfare programmes on their political socialisation. He reveals that by analysing the political socialisation process of tribals, a more complete evaluation of tribal welfare programmes would be ensured. This view is also explained by Mathur (1977). He points out that induction into political culture and integration into the mainstream of national life are part of one and the same process and without political socialisation being achieved, tribals' integration into the national social life is impossible. Political socialisation must precede their integration into national life. Motivation and objective underlying the tribal welfare programmes and political socialisation are common.

Nirmal Kumar Bose (1977), gives some insight into the tribe's social life. "Tribes differ from others in their social system. They have retained their own marriage regulation. Almost all marry within their restricted local group, and are sometimes guided by their own elders or political chief in internal and external affairs. In other words, they form socially distinct communities who have been designated as tribes and listed in the Schedule for special treatment, so that within a relatively, short time they can come within the mainstream of political and economic life if India". Doshi (1978) takes a case study of Bhils, on the process of unification and integration. He said that, a sort of integration is achieved by the tribals' with the wider society as a result of political unification. They are aware of the working of democracy, democratic institutions and identification with the level of values. This study has limitation like neglecting the economic aspects of tribals.

Gopala Rao. (1978) examines the process of transfer of land from the tribals to the non-tribals and the various factors influencing such transfers, by taking a case study of Mondemkhal, a mixed village of tribes and castes, at Parvathipuram taluk of former Srikakulam district. Data were collected by canvassing schedule and by holding prolonged interviews with the tribal elders and village officials. Land has been alienated by some people to finance agricultural operations. Cultivators require cash to buy cattle and to pay the labourers. It is clear from the study, that credit being taken on pledging land led to land alienation. Land has a tremendous prestige value in the rural context and it could stand as a security both for borrowing and lending.

Roy Burman (1978) speaking about the tribal integration process, points out that, present context integration means four things: independent thinking, democratic style of life, secularism and planned economy. These are urgently needed for the tribals to integrate themselves into the mainstream. Sharma (1980) has discussed the status of tribals in India during ancient times. The epistemological theoretical perspective about the tribals of this period is very clear. It was the time when the Aryans and, at a later period, the high caste Hindus make all efforts to have their hegemony over the tribals. Sharma has applied material approach to the

study of history. This study of tribals is based on the assumption that the mode of production involving the theory of surplus leading to class formation continues to the best working hypothesis, notwithstanding countless assertions to the contrary.

Jaganath Panday (1981) tries to analyse the classes and class relations in three villages of Orissa and considers the particular mode of production operating in the economy. The study covers predominantly a tribal village, a village characterised primarily by feudal relationships and a village mainly showing signs of capitalist development in agriculture. Pradeep Kumar Bose (1981), in his paper, questions the validity of observing stratification pattern among Indian tribes on the basis of caste hierarchy or 'Sacred' hierarchy or division on class basis. This is observed in the context of Gujarat tribes. Tribal population in modern market and production systems and their incorporation into modern political systems are shown regional variations in occupations, use of modern machinery etc. Data were collected from seven districts of Gujarat, through survey method and random sampling, identifying four distinct classes: rich peasant, middle peasant, poor peasant and agricultural labourers.

Renuka Pameche (1985) has studied political aspects of the Bhils and the process of the formation of elite in Bhil Society – Elaborate accounts of the traditional political system of Bhils and the impact of the modern system on them is given. A serious limitation of this book is that, it has not taken into consideration the socioeconomic aspects of the poor tribals. Alock Kumar (1986) has attempted to analyse and interpret the socio-cultural organisation and economic structure of Mal-paharias tribe, Santal-parganas district Bihar in the light of regional geographical complex. Based on his extensive field work, he examines the land use, income expenditure pattern, size of the families and its geographical ratification. Devendra Thakur (1986) made an elaborate study about the Santhals in Bihar. The study highlights their socio-economic conditions. It has been observed to what extent they were responsive to the projects and programmes undertaken during the different developmental plans.

Before the introduction of Five Year Plans, during the colonial rule, the tribals in the country as a whole remained in isolation. If the problem of untouchables in pre-independent India was that of pollution, vis-a-vis purity, the problem of tribals or adivasis was that of isolation. They were considered backward and savage. Lamenting on such an approach to the study of Indian tribals, Yogendra Singh (1986) observes: The colonial ethnographers, for instance, took a placid, even a synchronic view of the tribal society. The conceptual framework development by the British administrators-turned ethnographers and by anthropologists was inspired by the then prevailing model in anthropology. Tribal communities were treated as isolates and the primitive condition was described as a state of Arcadian simplicity.

Geetha Menon (1987), reveals that the impact and the loss of common property resources are very severe on tribal women. She shows that the hardship of the tribal women has been increasing. Thus, tribal women are the major victims of the deprivation of the traditional rights of the tribals in common property resources. Ramamani (1988), presents a descriptive analysis of the main features of tribal economy. She also postulates in this study the gap between the tribals and non-tribals, and the protective and promotional measures in order to reduce this gap. Christoph Von Furer - Harnendart (1988), has discussed the pattern and causes of disintegration

of the traditional tribal system, failure of welfare programmes by taking the example of two tribes, Apa Tanis of Arunachal Pradesh and Gonds of Andhra Pradesh. He found that the two tribes stood at opposite ends of a spectrum today. While Apa Tanis was clearly set on upward path, the Gonds were threatened by an apparently irreversible decline in their fortunes. He claims that Apa-Tani tribe of Arunachal Pradesh numbered about 15000, achieved development and integration without losing its identity because of protection given by the Government of India.

Ramakant Prasad (1988), deals about the tribe of Bihar which has little population and living in different ecological settings. This tribe represents variations within a culture due to various ecological settings. It depicts the total way of the tribe name 'pabhaiya'. This book further illustrates how a small tribe exists with its socioecological conditions and the problems they are facing today. It deals with the problems and prospects of the tribe and gives an outline for development and protection of such a marginal tribe in Indian continent.

Buddudeb Chaudhauri's (ed.) (1992)' Tribal Transformation in India', in five volumes, is a collaborative effort of Indian scholars to capture the changing tribal scenario and a whole diversity of issues related to tribal economy, agronomy, politics, ethnicity, ecology, education, technology transfer, social political movements, religious faiths and rituals in an indigenized, yet more articulate framework, with both diagnostic and remedial models. With the latest concepts/research tools in anthropology and related disciplines, the authors make a fresh look at micro and macro level dynamics of the tribal situation in India, vis-a-vis the socio-cultural relations.

Haimendorf (1943) described some of the measures taken by the Madras Provincial Government to development among Chenchu tribal and the schemes implemented for their well-being. He also described various change taking place in the Chenchu society due to opening up of Chenchu areas and intrusion of contractors into Chenchu forest. Haimendorf suggested for the removal of contractors from forest scene and pleaded for employing tribals in the forest department. He also listed out various changes that have come in the Reddies economy due to the entry of traders. He also listed out some of the recommendations he gave to the local rulers for modifying the administrative structure in the interests of the tribal.

Debojyoti Das (2010) has pointed out that planners, scientific experts and community facilitators today engage with the idea of forest degradation caused by swidden farming through promotion of participatory conservation and address conservation issues under a community drive development project to bring about improvement in native life. V. Elwin (1943) published problem-oriented monographs for the first time which was a first systematic and analytical publication about the tribal problems.

Ramaiah and Ramamani had attempted to study the tribal economy in Telangana and Andhra Regions respectively. Tabang Mibang (2010) The effect or the emerging trends is noticeable in the gradual decline of solidarity of clan, village and community, erosion of authority of village council and the institution of reciprocities mutual cooperation among the people replacing traditional social values, ethos, etc., by new social capital in the form of youth organizations, cultural associations, student unions, community based organizations, self-help

groups and NGOs pertaining to emerging issues like health, gender, environment, education, etc.

Raghavaiah (1962), a pioneer social worker on the tribal development has made several attempts to analyze the tribal life in Andhra Pradesh as well as India. He brought out two valuable books, 'Tribal Revolts' and 'Tribes of India', which presented a review of the problems of the Tribals. He explained on Yanadis stressed on the need for a scientific analysis of problems faced by the tribal and for a following cautious approach in dealing with tribal. He reiterates that since tribal population cultural distinct, the analysis of their problem should be done with the help of specific methodologies.

Yet another interesting study on tribal welfare was done by Bapuji (1974). He analyzed the working of special standing committee on tribal welfare in Zilla Parishad of Vishakapatnam, Andhra Pradesh. According to statute the Standing Committee is only an advisory body to the Zilla Parishad and it has no powers to initiate or administer policies. The Zilla Parishad delegated only the power to review and sanction the tribal welfare schemes of Zilla Parishad and Government implemented tribal areas Committees role in changing the conditions of the tribal people is limited by the statute itself. The task of tribal upliftment is a complex one which involves the participation of various departments. The composition of the committee predominantly with tribal members is an act of breaking the past and introducing a new turn in pre-history of tribal welfare of the district since the government and Zilla Parishad started launching several programmes for the emancipation of this down trodden masses, the tribal members of the Standing committee should try to follow the stock of the present trend to break through the vicious circle of backwardness but struck the roots of the tribal community since the long past.

In yet another study, Muniratnam Reddy (1979), describes the domestic groups among the Begatha have limited circles. This is indexed by the different phases of development varying from one generation types of three to four generation types of groups. At the three of this investigation the tendency for the domestic groups was to consist a couple and their children. Aged persons living isolated were residues of the terminal stages of the domestic group. The transitional process of the domestic groups is governed by demographic, ecological, historical, political and religious factors. The author's analysis. Indicates transformation of the one types and attainment of a state of equilibrium after a countless number of generations. An underlying tendency of transformation of one generation types into two generation types is also indicated in the chain of transformation.

Studies Relating to Problems

Mohan Reddy (1980) studied the contribution of Minor Forest Produce to the tribal economy in Warangal district of Andhra Pradesh. Vijayendar Reddy studied about the functioning of public distribution system in the tribal areas of Telangana Region in Andhra Pradesh. Similarly, Aiyappan dealt with various problems faced by tribal due to forest labor, land alienation and forest regulations. His report discussed the twin problems of exploitation and land alienation by Shahukars (rich people) and recommended for restricting their activities. The report suggested for a separate tribal welfare authority and for taking up various welfare measures such as providing marketing facilities, co-operative credit, educational services, medical, etc.

On the other hand, Madhava Rao referred to various problems faced by Gond community in Adilabad district which are more environmental specific and those that are relevant to the integration of Gonds with the mainstream section of that region. Sudhakara Reddy (1995) in his comprehensive study, discusses the processes and problems of displacement, rehabilitation and sociocultural changes occurred among the displaced Scheduled Tribe, Yanadis of the Shriharikota Island in Andhra Pradesh where the rocket launching station was established by Indian Space Research Organisation, government of India. The author also tries to portray the traditional social and cultural fabric and adaptation of the Yanadi islanders prior to their displacement, which serves as the basis for understanding the continuity and change in the environment, society and culture. He analyses the rehabilitation programmes and the resultant factors and the forces behind the system of forced migration and adaptation of the Yanadis to the new environment, outside the rehabilitation centres. He also describes the pattern and processes of continuity and change on the socio-cultural set up of Yanadi islanders.

Bhujendra Nath Panda (1996) has made sincere attempt to study the personality adjustment, mental health, attitude and academic achievements of more acculturated Saora tribes. Through an in-depth analysis, this book gives practical suggestions to teachers, and policy makers to realise the pros and cons of tribal acculturation. Thus, the findings have obvious implication for policy makers in tribal education and development.

Sarit Kumar Chaudhuri (2004) reflected on the fact that the tribals had to face feudal-colonial domination, caste prejudices, illiteracy, poverty and isolation. The status of tribal society in the wider national context has been perceived as segmentary and autonomous. The tribes are generally portrayed as discrete categories, having little linkages whatsoever with the happenings of the mainstream civilization. They have scarcely been assumed as important constituents of the country's organic system.

According to Awadesh Kumar Singh (2003) tribal farmers are subject to myriad forms of exploitation by the highly interlocked non-tribal axis of power that dominates the land, landlease, labour, credit and input markets. It is typically a case where the person to whom the tribals have to sell their produce at much lower than market rates. In absence of good harvests and substantial earnings tribals are forced to sell their agricultural produces and even assets like land. In some cases, tribals are forced to work as bondage labour to their money lenders. Felix Padel, Samarendra Das (2010) among other things reflected that the main reasons for the gulf between policy and practice is a lack of acknowledgement or analysis of the corruption, intimidation and exploitation that happens at every stage of a development project or of the environmental degradation involved. Interestingly, Bose cautioned against the over-enthusiasm in implementing protective legislation and pointed out that it may lead to separatist tendencies as occurred in Nagaland. Because while providing position discrimination to them, without clear cut understanding of the consequences like disintegration.

Reddy (1979), analyses the reasons for the failure of a welfare schemes introduced for the benefit of the Chenchus (literate tribe) of Atmakur taluk in Kurnool district, who exhibit a neutral section. An analysis of the colonization scheme whose main objective was to wean the Chenchus away from their traditional activities and settle them as cultivators, made in light of the culture and socioeconomic organization of the Chenchus, highlights the reasons for its

failure. These are seen as the failure of the project administration to take into account the culture, behavior pattern and social organization of these people before implementing the programme discouragement from neighboring riots, mismanagement of cultivation by the project officials, and the short time given to the Chenchus for their re orientation.

Bina Sakalani (2010) Tribal people find themselves vulnerable to global market forces which are beyond their understanding. In terms of human resource development, they have low capacity to handle its challenges. These are the people who resist melting into the global market economy and their presence is taking by modern economies as unprogressive and backward, as they are takes to be a hindrance in the speedy market growth.

Daisy Nath (2010) Tribal women are double victims of globalization. With the massive land alienation to large scale industries by the foreign investor in the name of development, tribal women are under pressure to look after their families and to work in the field. Most of the women have lost their traditional livelihood. Vinay Kumar Srivastava (2010) Tribes have become aware of the importance and power of money; they also know the ways in which

they have been systematically deprived of control over their resources; they also know that their unity and leadership will help them fight inequality and unjust systems. Muralidhar Rao (2007) now tribals in Andhra Pradesh are discernable moving from shifting cultivation (Podu) stage to settled cultivation. However, the progress in this respect varies from tribe to tribe and as per the geographical area of inhabitation.

According to Jagabandhu Samal (2010), tribals no longer live alone. Contacts are there between them and their non-tribal neighbours. Modern forces are also actively moulding their way of life. As culture is dynamic, the tribals have faced and are facing changes. Factors responsible for the transformation are broadly of two types; Traditional and Modern.

Sundara Rao and Sankara Reddi Majji (2007), Explains the planning process for tribal development in Andhra Pradesh can be broadly divided into pre-independence and post-independence periods. In both periods the approach adopted and schemes implemented are based on certain events happening in various tribal areas of the country and the consequent approach enunciated from time to time. Again, the two approaches in the two periods can be broadly be characterized as development oriented taking the basic objective and nature of measure introduced. In spite of much emphasis tribal development, the benefits of plan development have not fully percolated in to the tribal areas. The tribal people remained backward both economically and socially. In his thought-provoking study, Pandey (1997) presents an important correction to the tendency of western researchers and conservative scholars. He has succesfiilly tried to investigate the problem of underdevelopment, the culture of powerlessness and culture of poverty among tribals vis-a-vis the Indian society.

Amita Baviskar (1998) who has studied the erosion and destruction of environment in her study of Narmada valley, argues that positivism has failed to comprehend the tribal conflicts over the developments in the valley. She says that in such researches positivism is in conflict with the epistemological situation of the tribal people. The methodology of 'critical enquiry' postulated by Baviskar argues that there are two important variables: (1) the perspective of the tribals on the life as they live; and (2) the perspective of the researcher who 'interprets' the meaning of

life given by the objects of study. Here it is very clear that the researcher becomes a strong variable. It is his ideological bias, his values and his definition of life which interpret the life of the tribal. Perhaps the authentic perspective of the tribals remain unexplained or not properly represented by the researcher.

Tripathy's (1999) book contains eleven selected contributions of eminent authors relating to various issues and problems of tribals along with policy options. The role of financial institutions and cooperatives in mitigating the tribal economic problems, the impact of development plans and poverty amelioration schemes, etc., have discussed at length. Based on secondary as well as field data collected through survey, this work portrays the evaluation and analysis of tribal problems and policy paradigms to tackle the problem of backwardness in tribal regions.

Studies Relating to Development

Deogaonkar (1994) traces the origin and growth of the efforts for the development of tribal population in India. Apart from examining various approaches to tribal development, it enumerates the administrative structures and organisational strategies adopted during the last many years of planning, the outlay on tribal development during the plans and the priorities adopted have also been indicated. The Tribal Sub-Plan strategy and its implementation has been examined elaborately. The personal policy adopted in tribal development finds a special and critical treatment.

Shyamal Kr. Jana (2010) views that one of the commitments of our national government after Independence has been to bring about all-round development of small and marginal communalities that have lagged behind socially and economically in the process of national development. The basic objective therefore is to raise their standard of living at par the national average. But in the process of development, the policies and programmes of development keep on shifting and the economy of these communities do not get full benefit from development schemes. In recent years, these communities have further exposed to globalization through national commitments to the process.

Behara and Jумыir Basar (2010) In spite of preferential treatment to tribals they are still technically and economically backward and impoverished. Many development projects in tribal areas without developing tribes had been found marginalizing or excluding them from participation in the process of development. Evidently, tribal communities are still on the last rung of the national development interventions. There has been class formation in classless communities in spite of general backwardness.

Janardhan Rao (1987) studied the problem of land alienation in Tribal areas of Warangal district, which dealt with the various aspects of land alienation and also the simultaneous process of de peasantization of tribals. Rajiv Mili and Others (2010) paradoxically, efforts of the government to find solutions through settled agricultural practices have been responsible for marginalization of the shifting cultivation practice and the resultant vulnerability of the practitioners.

Ravinder (1995) made an attempt to study the impact of developmental programmes on tribals living in the Warangal district of Telangana Region. Srinibash Panda, Priyanka Priyadarshini

(2010) argues that in this era of globalization no set formula of the developed countries on economic development can be applied successfully in the Indian context unless and until new avenues are opened up to develop the indigenous people. Nabam Nakha Hina (2010) opines that, after independence the most spectacular agent of change introduced in the state happened to be education. It is education that not only created awareness but also developed skill of learners thereby enlarging the choices of the tribal people.

Behara and Jumyir Basar (2010) holds that the informal system of education was compatible to the subsistence needs of the tribal communities. The knowledge system, both as ideological perception and skill endowment, was the total worldview which got manifested in their faiths, beliefs, social relations, social norms, customs and ways of securing material means of existence by way of their interaction with nature. The knowledge was transmitted from generation to generation by words of mouth and participation in various performances and activities and for livelihoods. In particular, the skill of cultivation, hunting, fishing, weaving and making of handicrafts were learnt from observation, imitation and participation.

Singh (2010) is of view that due to the advanced science and technological developments, the social structure of society is rapidly changing. The change is fast and touches upon every facets of life. Such change is fast and touches upon every facets of life. Such changes in production, distribution and consumption patterns are affected by many technological innovations and media revolutions.

Ajay Kumar and Himani (2010) has provided an analysis of Tribal Sub-Plan approach. According to him, even though the Sub-Plan approach envisaged appropriate administrative measures as an integral part of the new strategy, it was stated that vehicle the sub-plans may primarily provide the economic and social inputs, the protective and administrative aspects should be taken care of under the appropriate Constitutional Provisions. It was, therefore, decided that, as far as possible, the Sub-Plan area should become coterminous with the Scheduled areas. To be specific, Vyas (1971) describes the tribal development in Rajasthan. During the three Five-year Plans, there was existence of Tribal Development Blocks. The programme has not been employment oriented though in fact employment opportunities revolves round the agriculture, but it has not benefited equally all the section even among the tribals. The Family Planning campaign, distribution of seeds, soil conservation, installation of pumping sets, lift irrigation, loan for purchase of implements, fisheries schemes, poultry farming, demonstration for improved agriculture, loans for school building, etc., are included in schemes of T.D.Blocks. Priorities in tribal development can be considered along two lines. The need of the area and the need of the people. For the areas as a whole the priorities could go along communication, larger irrigation dam, electrification, training-cum-production centers, etc. for individual families the priorities may go along agriculture needs, loans for food grains in scarcity conditions, schooling, housing, etc. It is therefore, necessary to develop the basis of felt needs, convey its meaning, and priorities be assessed through scientific study.

Jagannath Dash and Kabiraj Behera (2010) for a traditional society especially tribal community like that of “Paraja” in south Orissa, the fundamental features are always in favour of the maintenance of their socio-cultural tradition. Like others they also need money (in cash) for their livelihood but it should not be at the cost of their socio-cultural tradition. It is easier to

lose traditional values to acquire economic development. Day-by-day due to the impact of globalization, people are tending towards new economic order which may ultimately fade away their traditional values.

One of the classic works done by Sachidananda (1971), describes the resettlement of tribals ever carried out both under the programme of resettlement of landless agricultural laborers introduced during the Third Five-year Plan period and other special schemes. In addition, about 4.34 lakh hectares of waste land were also distributed during the First Three Plan periods. The Central and State Governments launched upon several programmes to induce tribal cultivators to switch over to permanent cultivation. The distribution involved in resettlement is many but are surmountable given the proper approach, willingness and preference among officials. The improvement introduced in the new settlements was neither revolutionary nor spectacular and so the tribal did not feel an alien in his home.

Sumit Kumar in his article Tribal Rights in India: Challenges and Achievement in 21st Century argues that since Independence, development of tribal people has always been an major concern in India. For this, the Indian Government has taken up many challenging tasks by implementing related programmes, policies and provisions from the Constitution. These initiatives have been carried out with an aim to start working from the ground level so as to provide equality and social justice to the underprivileged or scheduled tribe people. The most important rationale and object of such initiatives are to ameliorate their socio-economic conditions. That said, even after 70 year of India's independence, the conditions of the tribal groups, in most cases, have not seen visible improvements and still constitute a weaker section of the Indian society. This could be seen from ecological, economy and educational angles. It is very unfortunate that the adopted policies, programmes and plans have not seeped deep into these underprivileged sections of the society as they are often squandered by the top echelons of the concerned authorities. For instance, in every five year plan, government of India has made so many policies and programmes to eliminate poverty, illiteracy, equality, unemployment, prostitution, trafficking, child labour, bonded labour, untouchability, violence in domestic help, naxalism, land acquisition etc., but all these have remained as mere words on paper without any substantial outcome. With these aspects in mind, he has analyzed all the major policies, programme and constitutional provisions which have been implemented from time to time for the upkeep of the tribal people in India¹⁷.

Purshottam and Vanita Dhingra holds that Tribal community in India has been the most vulnerable community. Their fundamental human rights are violated in every step of life. Tribals are backward and poor, living in naturally isolated regional inhabitant. Tribals in remote areas are still devoid of common infrastructure facilities of road and communication, health

¹⁷ Sumant Kumar (2018), Tribal Rights in India: Challenges and Achievements in 21st Century, Best Publishing House, New Delhi. Available at [https://www.researchgate.net/publication/333746625 Tribal Rights in India Challenges and Achievement in 21 st Century](https://www.researchgate.net/publication/333746625_Tribal_Rights_in_India_Challenges_and_Achievement_in_21_st_Century)

and education and safe drinking water and sanitation, which do not allow them to absorb technological and financial help provided by government.¹⁸

An article – A possible solution to the problem of diminishing tribal sovereignty argues that the capacity of Indian tribal sovereignty to protect tribes from outside encroachment and interference has steadily diminished from when the concept was first enunciated in the nineteenth century in the Marshall Indian Law Trilogy. This article assumes as a working premise that only bringing tribes into the Constitution as co-equal sovereigns will end the attrition. The article examines how this might happen, either through creative interpretation of existing constitutional text or by amending the Constitution. Each of these proposals is examined to see if it empowers tribes to manage their futures more effectively, is capacious enough to include the vast majority of tribes, maintains the union's security and stability, and has political salience. The article concludes that only the creation of a virtual nationwide election district for all members of a tribe to elect tribal representatives to Congress will meet these criteria.

Krishna Halavath in his publication on Human Rights and Realities of Tribals' Lives in India: A Perfect Storm,

throws light on the domination and exploitation ridden tribal society. Tribal community in India has been most vulnerable community in the in equal, domination and exploitation ridden society. They are on the breadline of their socio-economic and political rights. Even after centuries, the unchanged condition of Tribal communities is leading in India. The violation of fundamental human rights and the state brutality has been perpetrated on them, particularly on tribal women. Tribal communities have faced isolation and social discrimination like that of Dalits from the mainstream society. Understanding of current Tribal societies need a basic respect to the historical processes, which have determined the course of consecutive changes in ideological, political, economic and socio-cultural life of the Tribal communities. The Indian democratic state accords several statutes in the constitution where the rights of Tribal communities are protected and social justice is determined for. However, the democratic experiment has not been successful in this respect. Therefore, there is a surge of Tribal movements in the country for their rights. All tribal people of India have a thing in common- they all share a history of injustice. The present paper explores within the larger framework of human rights in general and how tribal rights violated in particular, in the state of Odisha.

¹⁸ Purushottam and Vanita Dhingra, Understanding The Indian Tribal Life And Their Issues, International Journal of Advanced Research. Available at: <http://www.journalijar.com/article/19014/understanding-the-indian-tribal-life-and-their-issues/>.

CONSTITUTIONAL PROVISIONS OF TRIBAL RIGHTS AND STATUTORY INSTITUTIONS

This chapter aims to analyse the legal protection afforded to the scheduled tribes in India in general and in the state of Odisha in particular by portraying the provisions pertaining to recognition and protection of scheduled tribes embedded in the Constitution of India and by further analysing the functioning of the institutional mechanisms provided therein.

PROTECTION OF ST UNDER CONSTITUTION OF INDIA

The founding fathers of the constitution including Bharatratna Dr. Babasaheb Ambedkar were aware of the political, social and economic inequalities, which existed in the country due to historical reasons. They were aware of the prevailing miserable and appalling conditions of the scheduled Tribes who had remained far behind and segregated from national life. It became imperative, therefore, to adopt a policy of protective discrimination as an equalizer to those who were too weak to compute with the advance section of the society in the race of life. The constitutional provisions set forth a program for the reconstruction and transformation of Indian society of a firm commitment to raise the sunken status of the pathetically neglected and disadvantaged sections of our society. The provisions visualized by founding fathers of our constitution reflected their anxiety and emotion to bring the poor tribals at par with the general social level and into the main stream of Indian political and socio – economic life.

UNDERSTANDING THE SCHEDULED TRIBES

The term, ‘Scheduled Tribes’ is of recent origin which came into being with the birth of the Republic constitution of India on Jan., 26,1950.¹⁹ Prior to that scheduled Tribes were variously termed as “Aboriginals,” “Adivasis,” “Forest tribes,” “Hill Tribes,” and “Primitive Tribes.” The term tribe came to be used in denotation of a particular stage of socio-political evolution of a community of people within a given territory and language area upto 1919, they were included along with other categories of backward classes under the head of “Depressed classes” should include-

- a) criminal and wandering tribes.
- b) aboriginal tribes.
- c) untouchables.

The need for separating ‘aboriginal tribes’ from ‘Depressed classes’ was badly realized by Indian French committee in 1919 and consequently tribals were accorded a separate

¹⁹ 26.01.1950 was the date of enactment of the Constitution of India.

nomenclature. In 1931 census, the term “Primitive Tribes” was used to specify the tribal population of India, who were till these termed ‘forest tribes’ or ‘hill tribes.’ The 1941 census just mentions “tribes” all adjectives for the first time being dropped to qualify the tribes. Today under the Constitution of India, the tribals are scheduled and are popularly termed “Scheduled Tribes.”²⁰

The term ‘Scheduled Tribes’ first appeared in the Constitution of India. Article 366 (25) defined Scheduled Tribes as, “Such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this constitution.”²¹ Article 342, which is reproduced below, prescribes procedure to be followed in the matter of specification of scheduled tribes. Article 11 of Constitution (1st Amendment) Act, 1951; S.29 and Schedule of Constitution (7th Amendment) Act, 1956.

The Article 342 of the Constitution of India reads as follows:

1) The president may, after consultation with the Governor or Rajpramukh of a State, by public notification, specify the tribes or 77 tribal communities or parts of or groups within tribes or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes in relation to that State.

2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save a aforesaid notification issued under the said clause shall not be varied by any subsequent notification.

Thus, the first specification of Scheduled Tribes in relation to a particular state/ union territory is by a notified order of the President, after consultation with the State Governments concerned. These orders can be modified subsequently only through an Act of Parliament.

The important Constitutional provisions and safeguards in favour of the Scheduled Tribes have been presented in the Chapter -1. However, it may be noted here that the constitutional safeguards and provisions have been grouped in consideration to the specific thematic areas concerning protection, socio-economic and political development of scheduled Tribes the Scheduled Tribes. While the Article 342 and 366 contain the provisions regarding definition and specification of Scheduled Tribes, the Articles 15, 16, 19, 46 and 335 contain safeguards related to educational, economic and public employment of STs providing prohibition of discrimination, equality of opportunity, protection of civil rights, promotion of educational and economic interests, claims of STs to certain posts. The political safeguards have been provided under Article 330, 332, 334, 243D, 243T and the Article 338A provides for monitoring the safeguards through National Commission for Scheduled Tribes.

²⁰ Constitutional Provisions and Scheduled Tribes, Chapter III, at pg. 76. Available at https://shodhganga.inflibnet.ac.in/bitstream/10603/79509/11/11_chapter-3.pdf as referred it Official Website of MOTA available at <http://tribal.nic.in/chapter1.html>.

²¹ Deogaonkar S. G., “Tribal Administration and Development,” Concept Publishing Company, New Delhi, (1994), P-24.

THE SCHEDULED AREAS IN INDIA

Scheduled Areas are areas in India with a preponderance of tribal population subject to a special governance mechanism wherein the central government plays a direct role in safeguarding cultural and economic interests of scheduled tribes in the area. In general, tribal areas are those areas which are culturally different from others and in past many decades there were no contact between them and other parts of the country. Scheduled areas are mentioned in 5th schedule of constitution while tribal areas of Nagaland, Mizoram, Meghalaya and Assam are mentioned in 6th schedule.

The constitution empowers the President to declare any areas as scheduled area. The president can increase or decrease its area or alter its boundaries. He can cancel such designation after consultation with the governor or can make fresh orders redefining the schedule areas. Subject to the provisions of this schedule, the executive power of state extends to the scheduled areas therein. The governor of each state having scheduled areas annually, or whenever required by the president, make a report to the president regarding the administration of the scheduled areas in that state. The executive power of the union extends to the giving of directions to the state as to the administration of such areas.

Each state having scheduled areas needs to establish tribes advisory council consisting of not more than twenty members of whom about three-fourth members should be the representatives of the scheduled tribes in the legislative assembly of the state.

The governor is empowered to direct that any particular act of parliament or of the legislature of the state does not apply to a scheduled area subject to such exceptions and modifications as he may specify in the notification.

In the Article 244(1) of the Constitution, expression Scheduled Areas means such areas as the President may by order declare to be Scheduled Areas.

The President may at any time by order

- Direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;
- Increase the area of any Scheduled Area in a State after consultation with the Governor of that State;
- Alter, but only by way of rectification of boundaries, any Scheduled Area;
- On any alteration of the boundaries of a State on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;
- Rescind, in relation to any State of States, any order or orders made under these provisions and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas.

a. Criteria for declaring Schedule Areas

The First Scheduled Areas and Scheduled Tribes Commission, also known as the Dhebar Commission (1960-61) laid down the following criteria for declaring any area as a 'Scheduled Area' under the Fifth Schedule²²:

- Preponderance of tribal population, which should not be less than 50 percent;
- Compactness and reasonable size of the area;
- Underdeveloped nature of the area; and
- Marked disparity in the economic standard of the people, as compared to the neighbouring areas.

More recently, a viable administrative entity such as a district, block or taluk, has been also identified as an important additional criteria.²³

According to the Ministry of Tribal Affairs, 'these criteria are not spelt out in the Constitution of India but have become well established. They embody the principles followed in declaring the 'Excluded' and 'Partially-Excluded Areas' under the Government of India Act, 1935, as well as those contained in Schedule 'B' of recommendations of the Excluded and Partially Excluded Areas Sub Committee of Constituent Assembly and those outlined by the Scheduled Areas and Scheduled Tribes Commission 1961.'²⁴

It has been held by one of the High Courts that if any guidelines regarding the areas to be included in the Fifth Schedule can be deduced from the provisions of the Constitution, it is that the areas should have a substantial concentration of tribal population.²⁵

b. Fifth schedule of constitution of India

- The Fifth Schedule of the Constitution deals with the administration and control of scheduled areas and scheduled tribes in any state except the four states of Assam, Meghalaya, Tripura and Mizoram.
- The president is empowered to declare an area to be a scheduled area. He can also increase or decrease its area, alter its boundary lines, rescind such designation or make fresh orders for such re-designation on an area in consultation with the governor of the state concerned.
- Each state having scheduled areas has to establish a tribes advisory council to advise on welfare and advancement of the scheduled tribes. It is to consist of 20 members, three-fourths of whom are to be the representatives of the scheduled tribes in the state legislative assembly.

²² As cited in the Fiftieth Report of the Standing Committee on Urban and Rural Development (2003) (Thirteenth Lok Sabha).

²³ Annual Report 2013-14, Ministry of Tribal Affairs, Government of India.

²⁴ Special Report: Good Governance for Tribal Development and Administration, National Commission for Scheduled Tribes May 2012.

²⁵ Amarendra Nath Dutta vs. State of Bihar AIR 1983 Patna 151. In this case the Presidential Order declaring Dhalbhum Sub Division as part of the Scheduled Areas in Bihar was challenged, and the challenge was rejected by the Patna High Court, stating that the exercise of power by the President is not ultra vires.

c. Special provisions for fifth schedule areas

- The Governor of each State having Scheduled Areas (SA) shall annually, or whenever so required by the President, make a report to the President regarding the administration of Scheduled Areas in that State.
- The Union Government shall have executive powers to give directions to the States as to the administration of the Scheduled Areas.
- Para 4 of the Fifth Schedule provides for establishment of a Tribes Advisory Council (TAC) in any State having Scheduled Areas. If the President so directs, there will be established a TAC in a State having Scheduled tribes but not Scheduled Areas therein, consisting of not more than twenty members of whom, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State. If the number of representatives of the STs in the Legislative Assembly of the State is less than the number of seats in the TAC to be filled by such representatives, the remaining seats shall be filled by other members of those Tribes.
- The TAC shall advise on such matters pertaining to the welfare and the advancement of the STs in the State as may be referred to them by the Governor.
- The Governor may make rules prescribing or regulating
 - the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof,
 - the conduct of its meetings and its procedure in general; and
 - all other incidental matters.
- The Governor may, by public notification, direct that any particular Act of Parliament or of the Legislature of the State shall or shall not apply to a SA or any part thereof in the State, subject to such exceptions and modifications, as specified. The Governor may make regulations for the peace and good government of any area in the State which is for the time being a SA. Such regulations may
 - prohibit or restrict the transfer of land by or among members of the Scheduled tribes in such area;
 - regulate the allotment of land to members of the STs in such area;
 - regulate the carrying on of business as money-lender by persons who lend money to members of the STs in such area.
- In making such regulations, the Governor may repeal or amend any Act of Parliament or of Legislature of the State or any existing law after obtaining assent of the President.
- No regulations shall be made unless the Governor, in case a TAC exists, consults such TAC.

At present, 10 States namely Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana come under Fifth Schedule Areas.

STATUTORY BODIES FOR SCHEDULED AREA ADMINISTRATION

ROLE OF GOVERNOR

In the constitutional design, just as the President is the head of the Executive at the Centre, the Governor is the head of state executive in a State government. He is appointed by the Central government, and under Article 163 of the Constitution, ordinarily the Governor is bound to exercise his/her powers with the ‘aid and advice’ of the Council of Ministers, i.e. the Cabinet of the elected State government. However, while exercising powers under the Fifth Schedule, there is considerable debate as well as litigation on whether or not the powers conferred upon the Governor by the Fifth Schedule can be exercised without explicit sanction from the State government, and whether he is, in fact, bound by the advice of the Central Government. It has been argued that the Governor, while exercising his powers under the Fifth Schedule, is not bound by the aid and advice of the Council of Ministers and must exercise the function independently. This position has received affirmation from the Courts as well.²⁶

Paragraph 5(1), which lies at the heart of the Fifth Schedule, gives the Governor the power to restrict the application of any Central or State legislation to the Scheduled Area, either completely, or subject to exceptions and modifications. It has been held by the Supreme Court that the power to make exceptions and modifications includes the power to amend these laws.²⁷ Be that as it may, the laws made under paragraph 5 by the Governor require prior consultation with the TAC, and the assent of the President is necessary for them to be brought into force.

In large part, the Governors have failed to use their powers. As an official committee found: “The Governors, on their part, remained oblivious about the state of the tribal people. Even the mandatory annual Reports by the Governors to the President regarding the administration of Scheduled Areas under Para 3 of the Fifth Schedule are irregular. They comprise largely stale narrative of departmental programmes without even an allusion to the crucial issues in administration, the main thrust of the Fifth Schedule.”²⁸

Governor’s report: Para 3 of the Fifth Schedule to the Constitution lays down that “*the Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the president regarding the administration of the Scheduled Areas in that State and the executive power of the union shall extend to the giving of directions to the State as to the Administration of the said areas*”. In accordance with the provisions enunciated in para 3 of the Fifth Schedule to the Constitution, the Governor(s) of State(s) having Scheduled Areas therein i.e. Andhra Pradesh, Chhattisgarh, Gujarat, Jharkhand,

²⁶ BK Manish & Ors. vs. State of Chhattisgarh & Ors. judgment and order dt. 12th March 2013 in WP (PIL) 23 of 2012, Bilaspur High Court.

²⁷ Edwingson Bareh vs. State of Assam (1966) 2 SCR 770

²⁸ Report of MPs and Experts to make recommendations on the salient features of the law for extending provisions of the Constitution (73rd) Amendment Act, 1992 to Scheduled Areas, 1994, p.14. Accessible at http://www.odi.org.uk/projects/00-03-livelihood-options/forum/sched-areas/about/bhuria_report.htm.

Himachal Pradesh, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana, require to submit the Governor's Report every year. In Odisha, the Governor's Report has been received for the years 2012-13 and since then the reports are awaited.

TRIBES ADVISORY COUNCIL (TAC)

The para 4 of the Fifth Schedule to the Constitution envisages as under:-

“4. Tribes Advisory Council.—(1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State:

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.”

Tribes Advisory Councils (TAC) have been constituted in Scheduled Area States of Andhra Pradesh, Chhattisgarh, Gujarat, Jharkhand, Himachal Pradesh, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana. Though Tamil Nadu, Uttarakhand and West Bengal do not have any scheduled area, they have also constituted TAC.

- The Tribal Advisory Council will be made of maximum 20 members out of which the three-fourth will be Scheduled Tribes MLAs in the state.
- It advises the Governor on matters pertaining to the welfare and advancement of the Scheduled Tribes in the State.
- The number of members of these councils, mode of their appointment, appointment of the chairman, officers and servants of these councils, conduct of its meeting and general business are controlled by the Governor of the state in question”.
- Governor also can make a notification that that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State.
- Governor can also make rules for the better management of peace and good governance in such areas.

Thus, article 244 confers plenary power on the Governor to bring independent legislations in respect of tribal affairs in consultation with the TAC. Due to this, the role of TAC is very crucial in the governance of Scheduled Areas. The negligence to constitute the TAC is equal to negating the rights of tribals and stalling the process of governance.

In exercise of power conferred by paragraph 3 of the Fifth Schedule of the Constitution of India the Governor of Odisha had made Tribes Advisory Council Rules, 1950.²⁹ It provided that the Tribes Advisory Council of India of Odisha shall consist of 20 members including the

²⁹ Memo No. 2899 (13) T.R.W. dated 25th June 1950.

Chairman, Deputy Chairman and 15 members shall be the persons representing the Scheduled Tribes in State Legislature.³⁰ These members to be nominated annually so that all representatives of Scheduled Tribes may represent to the council.³¹ The remaining three members shall be nominated on an annual rotation basis and shall be the persons representing the scheduled tribes of Odisha in the Parliament.³²

The Hon'ble Chief Minister of the State and the Minister in Charge of the Tribal and Rural Welfare Department of Odisha shall be its Chairman and Deputy-Chairman respectively. The appointment of the of the other members to be done as per the nomination of the Governor of the State. All the appointments so made to be notified in the Gazette.³³

The Council shall meet at least twice every year and the Chairman may from time to time summon the Council to meet at least once before commencement of every session of Legislative Assembly.³⁴

The term of the Council is for one year from the date of its constitution and shall be reconstituted in such a manner so that there may not be any gap intervening between the date of expiry and the date of reconstitution.³⁵

The Governor is entrusted with the power to dissolve the Council at any point of time as per his choice.³⁶

In Odisha, however, the Tribes Advisory Council (TAC) is not sitting regularly and the meetings are not happening in stipulated intervals. The available data on TAC meetings since 2012-13 till date is presented in Table-6. The irregularity in statutory meetings of TAC raises concern over monitoring of the implementation of provisions for the Scheduled Tribes.

It is worth mentioning here that the TAC meetings discuss and review the status of issues and development of Scheduled Tribes in the State. The Table -7 provides

an understanding on the key issues that are usually discussed or the variety of issues that are raised.

| Year | Meeting date |
|---------|---------------------------|
| 2012-13 | 28.09.2012 |
| 2013-14 | 27.07.2013 |
| 2014-15 | 18.12.2014 (MOTA website) |
| 2015-16 | 14.05.15 |
| 2016-17 | Did not take place |
| 2017-18 | Did not take place |
| 2018-19 | 28.06.2018 |
| 2019-20 | Did not take place |

³⁰ Section 3, Orissa Tribes Advisory Council Amended Rules, 1983.

³¹ First Provision to Section 3, Orissa Tribes Advisory Council Amended Rules, 1983.

³² Second Provision to Section 3, Orissa Tribes Advisory Council Amended Rules, 1983.

³³ Section 4, Orissa Tribes Advisory Council Amended Rules, 1983.

³⁴ Section 7, Orissa Tribes Advisory Council Amended Rules, 1983.

³⁵ Section 5, Orissa Tribes Advisory Council Amended Rules, 1983.

³⁶ Proviso to Section 7, Orissa Tribes Advisory Council Amended Rules, 1983.

Table -7: Summary of key development issues discussed in TAC

| SL.No | Particulars | Date |
|-------|---|------------|
| 1 | Development plan and programme for the Tribal | 09.10.1995 |
| 2 | Simplicity for Tribal plans and its implementations | 06.05.1997 |
| 3 | Inclusion of tribal, provide their rights | 26.06.2000 |
| 4 | Action taken note on proceedings of previous meeting. | 01.02.2001 |
| 5 | Follow-up action taken on the previous meeting. | 03.05.2002 |
| 6 | proceedings of previous meeting and Inclusion of tribal (Bhatara, Jhodia, Oram, Uraon, Dora, and Anti Dora) | 30.10.2002 |
| 7 | Evolution, proceedings of previous meeting, and Follow-up, and inclusion of (Muriya, Paika Bhuyan, Paharia and Oda) | 10.09.200 |
| 8 | Confirmation of the proceeding of pervious meeting and Follow up , Making suitable amendments in the existing rules for production of “Nativity Certificate” instead of ‘Residential Certificate’ for the purpose of seeking employment against a district cadre post in Scheduled Areas, Inclusion of the MURIA/ PAIKA BHUYAN/ PAIK BHUYAN/ PAHARIA (KAMAR) and ODO communities in the Constitution (ST) Order and other activities. | 29.07.2005 |
| 9 | Confirmation of the proceeding of pervious meeting and Follow up, Inclusion of the Muria/ Paika Bhuiyan/ Paik Bhuyan/ Paharia (Kamar) communities in the Constitution (ST) Order, Settlement of Govt. land with STs in the Scheduled Areas and other activities. | 29.07.2006 |
| 10 | Corrigendum of TAC proceedings. | 10.04.2007 |
| 11 | Confirmation of the pervious proceedings and follow up, Introduction of Santali in Oriya script in educational system of Primary Schools and use of tribal languages in primary education, Review of implementation of Panchayats and other activities. | 10.04.2007 |
| 12 | Confirmation of the pervious proceedings and follow up, Introduction of Santali in Oriya script in educational system of Primary Schools and use of tribal languages in primary education and other activities. | 28.12.2007 |
| 13 | Action taken note on proceedings of previous meeting. | 17.01.2009 |
| 14 | Confirmation of the pervious proceedings and follow up. | 11.06.2010 |
| 15 | Annual Administrative report Confirmation of the pervious proceedings. | 13.05.2011 |

| | | |
|----|--|------------|
| 16 | Annual Administrative report Confirmation of the pervious proceedings and other activities. | 28.09.2012 |
| 17 | Annual Administrative report Confirmation of the pervious proceedings and other activities. | 27.03.2013 |
| 18 | Status implementation of ORV, Annual Administrative report Confirmation of the pervious proceedings and other activities. | 27.07.2013 |
| 19 | Confirmation of the pervious proceedings, Discussion on Compliance Report on decisions taken in the last Tribes Advisory Council Meeting, Approval of Annual Report on Administration of Scheduled Areas of the State for 2012-13, Status of implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Amendment Rules, 2012, Claim for inclusion of Putiya Community in the ST List of Odisha, Claim for inclusion of Bhuiyan Community in the ST List of Odisha and other activities. | 14.05.2015 |
| 20 | Confirmation of the proceedings of the Tribes Advisory Council Meeting held on 14.05.2015, Compliance on the decisions taken in the last Tribes Advisory Council Meeting held on 14.05.2015, Implementation of the Scheduled Tribes and Other Traditional Forest Dwellers(Recognition of Forest Rights)Act 2006, Approval of Annual Report on Administration of Scheduled Areas of the State for 2013-14,2014-15 & 2015-16, Proposal for inclusion of RAJUAL RAJUAD communities in the ST list of Odisha as the phonetic variations of the listed community RAJUAR at 51.No.57, Identification of the Blocks where ST Population is more than 50% for its inclusion in the TSP Area, Rationalization of Scheduled Areas of Odisha, Framing of State Specific PESA Rules. | 28.06.2018 |

NATIONAL COMMISSION FOR SCHEDULED TRIBES

The National Commission for Scheduled Tribes (NCST) was established by amending Article 338 and inserting a new Article 338A in the Constitution through the Constitution (89th Amendment) Act, 2003. By this amendment, the erstwhile National Commission for Scheduled Castes and Scheduled Tribes was replaced by two separate Commissions namely- (i) the National Commission for Scheduled Castes (NCSC), and (ii) the National Commission for Scheduled Tribes (NCST) w.e.f. 19 February, 2004. The First commission was constituted on 2004. The National Commission for Scheduled Tribes functions from the Headquarters located at New Delhi.

The Commission comprises a Chairperson, a Vice-Chairperson and three full-time Members (including one female Member). The term of all the Members of the Commission is three years from the date of assumption of charge.

i. Functions and duties of the Commission

The following are the functions of the commission:

- To investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution.
- To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes.
- To participate and advise in the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State.
- To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.
- To make in such reports, recommendations as to the measures that should be taken by the Union or any State for effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes.
- To discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

ii. Power of Commission (Under Clause (8) of Art. 338A)

For Investigation and Inquiry, the Commission is vested with powers of a civil court having authority to:

- Summon and enforce attendance of any person and examine on oath.
- Discovery & production of any documents.
- Receive evidence on affidavits.
- Requisition any public record or copy thereof from any court or office.
- Issue Commissions for examination of witnesses and documents.
- Any matter which President, by rule, may determine.

iii. Procedure for inquiry

The Commission is required to inquire into specific complaints with respect to the deprivation of rights and violation of safeguards of Scheduled Tribes. In order to enable the Commission to perform this function within manageable limits, the Commission would like to appeal to members of Scheduled Tribes that before submitting any specific complaint to the Commission for redress of their grievances they should clearly state if and how there has been a violation of their rights and safeguards.

The following aspects are required to be kept in mind while filing complaints before the Commission:-

- a. The complaint should be directly addressed to the Chairman/Vice-Chairman/Secretary, National Commission for Scheduled Tribes, New Delhi. No action will be taken on which are addressed to other authorities.

- b. The complainants should disclose their full identity and give full address and should sign the representation. No action will be taken on an unsigned complaint.
- c. Complaints should be legibly written or typed and, where necessary, supported by authenticated documents.
- d. No action will be taken in cases which are subjudice or in which a court has already given its final verdict and, therefore, such cases need not be referred to the Commission.
- e. The Commission will also not intervene in vigilance and disciplinary cases as no safeguards have been provided to the employees belonging to Scheduled Tribes in such matters and also that the Commission is not an appellate authority in such cases and that there is an elaborate well-defined procedure prescribed in respective service rules for making an appeal for reconsideration by the competent authorities.
- f. The Commission will also not generally intervene in matters pertaining to merits of adverse remarks in the Annual Confidential Reports of the officers/officials as no safeguards have been provided to the employees belonging to Scheduled Tribes in the assessment of their performance and also that there is a prescribed procedure to represent against the adverse remarks to the competent authorities.
- g. No concessions in the matter of transfer and postings have been provided to the ST officers holding Group A and Group B posts and, therefore, the Commission will not entertain the petitions relating to grievances arising from transfer of such officers from one office to another office of the same organization in the same city or from one station to another station.
- h. Commission has No direct role in the case of inclusion or exclusion of a community as a scheduled tribe under the Article 342. The Government had in June 1999 approved, and revised on 25/06/2002, the Modalities for deciding the claims for inclusion in, exclusion from and other modifications in the Scheduled Tribe list. According to this modality the NCST has no direct role on the proposals or representations for inclusion into/ exclusion of a community from the list of Scheduled Tribes. Proposals received in the Ministry of Tribal Affairs, and concurred by the Registrar General of India, only are received in the Commission for comments.

As the per the judgment of the Hon'ble Supreme court dated 02/09/1994 in the case of *Kumari Madhuri Patil V. Additional Commissioner Tribal Development Department, Govt. of Maharashtra*, the State Level Scrutiny Committee/ District Level Scrutiny Committee is the only competent authority to investigate and validate a Scheduled Tribe Caste Certificate. Hence no action will normally be taken in the Commission on complaints/ applications relating to false ST caste certificate.

iv. Annual reports of Commission

As per provision of Clause 5(d) of 338A of the Constitution it is the duty of the Commission to present annually a report upon the working of Constitutional safeguards and measures taken by the Union and the States for the protection and welfare of the Scheduled Tribes. In this series the National Commission for Scheduled Tribes has presented Annual Reports to the President of India. All these three Reports are available on the Website of the National Commission for Scheduled Tribes (<http://ncst.nic.in>). These three reports are also available on the Website of

the Ministry of Tribal Affairs (<http://tribal.gov.in>). Those reports, which have not been laid in both Houses of Parliament, cannot be made public.

MINISTRY OF TRIBALS AFFAIRS, GOVERNMENT OF INDIA

The Ministry was set up in 1999 after the bifurcation of Ministry of Social Justice and Empowerment with the objective of providing a more focused approach towards the integrated socio-economic development of the Scheduled Tribes (the most underprivileged section of the Indian Society) in a coordinated and planned manner. Before the formation of the Ministry, tribal affairs were handled by different Ministries at different points in time.

The Ministry of Tribal Affairs is the Nodal Ministry for overall policy planning and coordination of programmes for development of STs. To this end, the Ministry has undertaken activities that follow under the subjects allocated in the Government of India (Allocation of Business) Rules, 1961 and amendment(s) thereafter. The subjects allocated to the Ministry of Tribal Affairs are as follows:

It covers all tribal people and all areas with tribal population across the country.

- Social security and social insurance to the Scheduled Tribes
 - Tribal Welfare: Planning, project formulation, research, evaluation, statistics and training
 - Promotion and development of voluntary efforts on tribal welfare
 - Development of Scheduled Tribes
 - Scheduled Areas
 - Monitoring of ST Welfare Grants, based on the framework and mechanism designed by NITI Ayog
 - The National Commission for Scheduled Tribes
- a. Commission to report on the administration of Scheduled Areas and the welfare of the Scheduled Tribes; and
 - b. Issue of directions regarding the drawing up and execution of schemes essential for the welfare of the Scheduled Tribes in any State.
 - Implementation of the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, excluding administration of criminal justice in regard to offences in so far as they relate to Scheduled Tribes.

Note: The Ministry of Tribal Affairs shall function as the umbrella unit for the overall development & well-being of the STs. However, the Sectoral programmes & Schemes for the development of these communities as well as their coordination will fall under the the ambit of the concerned Central Ministries / Dept., State Govt. and/ or Union Territary Administration, where each Ministry/ Dept. is responsible for its concerned sector.

i. Role of MoTA

The primary responsibility for promoting the interests of Scheduled Tribes rests with all the Central Ministries. The programmes and schemes of the Ministry are intended to support and

supplement the efforts, primarily of other Central Ministries, the State Governments and partly of voluntary organizations via financial assistance and to fill critical gaps within institutions and programmes, taking into account the situation of STs. The Ministry supplements their efforts by way of various developmental interventions in critical sectors through specially tailored schemes. These schemes comprising of economic, educational and social development through institution building are administered by the Ministry of Tribal Affairs and are implemented mainly by the State Governments/ Union Territory Administrations.

ii. Organization

The Ministry of Tribal Affairs is functioning under the overall guidance of the Union Minister of Tribal Affairs and assisted by a Minister of State. The administrative head of Ministry is Secretary who is assisted by two Joint Secretaries, one Deputy Director General and two Economic Advisors. Financial Advisor assists the Ministry in the internal finance and budget matters, where the Chief Controller of Accounts helps in budget/expenditure control. The Ministry is divided into Divisions/ Branches and Sections/units.

iii. Vigilance Activities

The Chief Vigilance Officer (CVO) in the Ministry provides assistance to the Secretary of the Ministry in all matters pertaining to vigilance and acts as a link between the Ministry and the Central Vigilance Commission (CVC). The CVO looks after the surveillance in addition to his normal duties as Joint Secretary (Administration) in the Ministry. One Deputy Secretary assists the CVO in executing his functions.

iv. Public Grievance Redressal Mechanism

The Deputy Director General Statistics is designated as the Director of Grievances in the Ministry. The Director of Grievances also holds regular meetings with Officers/staff and hear problems and grievances in person. The public grievances are also being monitored online (CPGRAMS). Public grievances received online through DARPG, President Secretariat etc. are also being attended/ monitored.

V. Parliamentary Committees and the Ministry

The Standing Committee on Social Justice and Empowerment takes evidence of the representatives of the Ministry every year, in connection with the examination of the Demands for Grants of the Ministry. In addition, Consultative Committee Meetings under chairmanship of Minister of Tribal Affairs are held once in a quarter on different subjects. The details of Director of Grievances such as Room Number, telephone number, etc. have been widely circulated.

Ministry of Tribal Affairs has been implementing several programmes/schemes for the benefit of scheduled tribe people. These, inter-alia, are:

- i. Scheme of Girls & Boys Hostels for STs: Under the scheme, Central assistance is given to States / UTs / Universities for construction of new hostel buildings and / or extension of existing hostels.

- ii. Scheme of Ashram Schools in Tribal Areas: The objective of the scheme is to provide residential schools for ST children to increase the literacy rate among the tribal students and to bring them at par with other population of the country.
- iii. Scheme for Strengthening Education among ST Girls in Low Literacy districts: This scheme is being implemented in 54 identified low literacy districts where the ST population is 25% or more, and ST female literacy rate is below 35%, or its fractions, as per 2001 census.
- iv. In order to maximize retention of ST students within various stages of school education and promoting higher learning, monetary incentives are provided by Ministry of Tribal Affairs in the form of scholarships such as Pre Matric Scholarship, Post Matric Scholarship, National Overseas Scholarship, Scholarship for Top Class Education and Rajiv Gandhi National Fellowship for ST students.
- v. Special Central Assistance to Tribal Sub Scheme (SCA to TSS) (hitherto known as SCA to Tribal Sub Plan (TSP)): It is 100% grant from Government of India. Its objective is to bridge the gap between Scheduled Tribes (ST) population and others by providing support for education, health, sanitation, water supply, livelihood, skill development, minor infrastructure etc. It is a flexible scheme and supplements the efforts of the line Ministries/Departments.
- vi. Grants under Article 275(1) of the Constitution: It is 100% grant from Government of India. Funding under this programme is to enable the State to meet the cost of such schemes of development as may be undertaken by the State for the purpose of promoting the welfare of Scheduled Tribes in that State or raising the level of administration of Scheduled Areas therein to that of the administration of the rest of the areas of that State. Funds are provided to States for various sectoral interventions.

A list of schemes / programmes administered by Ministry of Tribal Affairs are given below:-

Table – 8: Schemes being implemented by Ministry of Tribal Affairs for STs till 2020-21

| Sl. No. | Name of the Scheme |
|---------|---|
| 1. | Special Central Assistance (SCA) to Tribal Sub Scheme (TSS) (hitherto known as SCA to Tribal Sub Plan (TSP)). |
| 2. | Grants under Article 275 (1) of the Constitution of India. |
| 3. | National Fellowship and Scholarship for Higher Education of ST students. |
| 4. | National Overseas Scholarship for ST Students. |
| 5. | Pre-Matric Scholarship for ST students. |
| 6. | Post Matric Scholarship for ST students. |
| 7. | Girls & Boys Hostels for STs. |
| 8. | Ashram Schools in Tribal Sub-Plan Area. |
| 9. | Vocational Training in Tribal Areas. |

| | |
|-----|---|
| 10. | Equity Support to National /State Scheduled Tribe Finance and Development Corporations. |
| 11. | Institutional support for Development and Marketing of Tribal Products / Produce. |
| 12. | Support to Tribal Research Institutes. |
| 13. | Development of Particularly Vulnerable Tribal Groups (PVTGs). |
| 14. | Grants-in-Aid to Voluntary Organisations working for the welfare of STs. |
| 15. | Mechanism for Marketing of Minor Forest Produce (MFP) through Minimum Support Price (MSP) and Development of Value Chain for MFP. |
| 16. | Tribal Festival, Research, Information and Mass Education. |
| 17. | Development Programmes in the Tribal Areas(EAP) |
| 18. | Van Bandhu Kalyan Yojana |

PROVISION FOR GRANT FOR TRIBAL DEVELOPMENT UNDER CONSTITUTION OF INDIA

The Article 275 provides for grants from the Union to certain States for welfare of Scheduled Tribes —

(1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different states.

Provided that there shall be paid out of the consolidated fund of India as grants in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India 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 administration of the rest of the areas of that State."

Grants-in-aid under Provision to Article 275(1) of Constitution of India are 100% annual grant from Government of India to States. It is charged to Consolidated Fund of India (except grants for NE States, a voted item) and is an additive to State initiatives and efforts for Tribal Development.³⁷

³⁷ Clause 2, 'Guidelines for Inter-State Allocation of Funds and Implementation of Programmes/Activities under proviso to Article 275(1) of Constitution of India for the year 2016-17 and onwards', F No. 11015/1/2016 SG-1 dated 20.06.2016 available at <https://tribal.nic.in/DivisionsFiles/sg/201606220318460202092Guidelines.pdf>

a. Objective

Following are the objectives for programmes/activities funded with Grants in-aid under Provison to Art. 275(1) of Indian Constitution [Art. 275(1) Grants] to bridge gap between Scheduled Tribe (ST) population and others by accelerating development of STs by ensuring:

- Human resource development by enhancing their access to education and health services,
- Enhanced quality of life by raising the level of administration of the Scheduled Areas and also providing basic amenities in tribal areas / localities.
- Substantial reduction in poverty and unemployment through skill upgradation and other income generating opportunities, creation of backward and forward linkages and linkage with institutional finance for sustained income generation and creation of productive assets,
- Enhanced capacity to avail opportunities, gain rights & entitlements and improved facilities at par with other areas.

Art. 275(1) Grants is only an additive to State efforts for tribal development and it must address need of plugging critical gaps.

b. Coverage of the scheme under Article 275(1) and institutional structure

States having notified STs are eligible to receive grants under this Programme.³⁸ The State Government shall establish (most already have) following institutional structures and mechanism for effective formulation, implementation and monitoring the programme³⁹ through State Level Executive Committee comprising the Chief Secretary as Chairperson, Principal Secretary / Secretary-in-charge of all line Departments as Members, and Principal Secretary / Secretary-in-charge of Nodal Department as Member Secretary. Similarly, District Planning and Monitoring Committee (DPMC) shall be established comprising Dy. Commissioner / District Collector as Chairperson, Project Officer of ITDP / ITDA as Member Secretary and District level officers of concerned line departments as members. The DPMC may also have representation from local legislative and parliamentary constituencies.

Table – 9: Key Functions of institutional structures for implementation of Article 275 (1)

| Key Functions | |
|---|---|
| State Level Executive Committee | District Planning and Monitoring Committee |
| a. Appraisal of perspective document and finalization of Annual Plan. b. Monitoring and Evaluation / implementation of Annual Plan. c. Formulation of strategy for tackling development deficit of STs. | a. Formulate plan at the District level. b. Get it approved by the District Planning Committee. c. Review implementation of programmes / activities under Art. 275(1) Grants every month. |

³⁸ Ibid at Clause 3.1.

³⁹ Ibid at Clause 10.

| | |
|--|--|
| <p>The Executive Committee will hold its meetings once every three months.</p> | <p>d. Communicate Quarterly Performance Review Report to nodal Department for review by it and Executive Committee.</p> <p>Panchayati Raj Institutions: Zila Parishad / Panchayat Samiti Level Panchayati Raj Institutions should review implementation of ongoing development programmes / activities in different locations on a monthly / quarterly basis and forward their observations to DPMC.</p> |
|--|--|

ST & SC DEVELOPMENT, MINORITIES & BACKWARD CLASSES WELFARE DEPARTMENT, GOVERNMENT OF ODISHA

In exercise of powers conferred by sub-paragraph 6 of the Fifth Schedule to the Constitution of India, the revised Presidential Order titled " The Scheduled Areas (states of Bihar, Gujarat, Madhya Pradesh & Odisha) Order 1977" has declared. In Odisha, 7 districts fully and 6 districts partly are covered under the Scheduled Areas of the state.

i. Origin of the Department

To look after the welfare of Backward Classes, a small unit named Backward Classes Welfare Section was formed in the erstwhile Planning and Reconstruction Department in the year 1946-47. In order to provide concerted efforts to the problem of Scheduled Tribe, Schedule Caste and OBC, the Backward Classes Welfare Department was formed in 1948. In the year 1949, the subject 'Village Welfare' was entrusted to the Department and was renamed as "Rural Welfare Department".

Soon after the adoption of the Constitution of India in 1950, the name of the Department was changed and renamed as Tribal and Rural Welfare Department. This name continued for quite a long period after which the Department was renamed as Scheduled Castes & Tribal Welfare Department. Subsequently, the Department was bifurcated into Scheduled Castes Welfare & Tribal Welfare which again was merged to be named as Welfare Department. Welfare Department was rechristened as Scheduled Tribe and Scheduled Caste Development Department since 22nd February 1999 and continues as such.

ii. Mandate of the Department

The Constitution has imposed responsibilities on the Governments for the all round Development of the Scheduled Tribes and Scheduled Castes. The policies, Programmes and schemes of the Department have been designed in consonance with the overall goals and objectives as enshrined in Articles 46 (Part IV), 16, 17, 19, 164, 244, 275, 330, 332,335,338,339,341, 342 and 366 of the Constitution of India and aim at improving the quality of life of S.T. & S.C. communities.

iii. Core Facilities, Entitlements, Allowances and Compensations to STs and others

- Boarding facilities for students belonging to ST, SC, OBCs in State run Hostels.

- Scholarships to STs, SCs, OBCs & Minorities from Primary level right up to Ph.D Level.
- Educational Amenities to ST & SC students like NT Books, Reading & Writing Materials, School Uniforms.
- Cash compensation to 'next of kin' during unfortunate incidents of death of Boarder students.
- Monetary relief to SC & ST victims of atrocities.
- **Legal Aid to SCs & STs for establishing their right, title, interest and possession over the disputed land and also for cases under PCR Act,1955 & POA Act,1989**
- Insurance scheme for Particularly Vulnerable Tribal Groups (PVTGs) through Janshree Bima Yojana of LIC.
- Cash award to couples performing Inter-caste marriage.
- Margin Money Loan under Bankable Schemes to SCs & ST through the Odisha SC/ST Finance Dev. Corpn
- Minimum Support Price (MSP) to STs as primary gatherers for Minor Forest Produce (MFP).
- Reservation in Posts & Services as per provisions of the ORV Act,1975
- Pre-Examination/Pre-Recruitment Training for appearing at various competitive Exams through Implementing Agencies

iv. Compensation to Atrocity Victims

- Monetary Relief is being given to the SC & ST victims of atrocities as per the norms and scale prescribed in the scheduled annexed to Rule-12 (4) of the SCs and STs (POA) Rules,1995
- 25%, 50%, 75% at the first phase as per Rule and full amount of compensation wherever applicable at the first phase.
- The rest amount to be paid to the victims after conviction of the accused persons by the trial court.
- As per the (Amendment) Rules, 2011, 150 % increase in compensation/ monetary relief has been effected for the victims of atrocities with effect from 23.12.2011.

v. Councils, Boards and Standing Committees

a. Tribes Advisory Council (TAC)

The Tribes Advisory Council (TAC) is a statutory body established under sub-paragraph (i) of paragraph-4 of the Fifth Schedule [Article 244(I)] to the Constitution of India which mandates States having Scheduled Areas therein, to have a TAC consisting of not more than twenty members of whom, nearly as may be three-fourths shall be representatives of Scheduled Tribes in the State Legislative Assembly. TAC through its meetings & consultation advices on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State. The Principal Secretary or the Commissioner-cum-Secretary to Govt, ST & SC Development Department functions as the Secretary to the Council.

b. Scheduled Caste (SC) Welfare Advisory Board

The Odisha Scheduled Caste Welfare Advisory Board has been reconstituted by Govt. in ST & SC Dev. Department pursuant to Rule-3 & 5 of the Odisha Scheduled Caste Welfare Advisory Board Rules, 1957. The Board may generally advise the State Govt. in all matters pertaining to scheduled caste Welfare.

c. High Level Vigilance & Monitoring Committee

To ensure proper implementation of the Prevention of Atrocity Act (PoA), 1995, the State Level High Power Vigilance & Monitoring Committee has been functioning under the Chairmanship of Hon'ble Chief Minister, Odisha as per Rule 16 of the SC & ST (PoA) Rules, 1995.

d. District & Sub-Divisional Level Vigilance & Monitoring Committees

The district level Vigilance and Monitoring Committees have been established in all the 30 districts of the State as required under Rule 17 of the SCs. & STs (PoA) Rules, 1995. Following amendment of SC & ST (PoA) Amendment Rules, 2013, adding Rule 17A, all Dist Magistrates & Collectors have been instructed to constitute Sub-Divisional Level Vigilance and Monitoring Committees in terms of the said amendment & to hold regular meetings. Subsequent amendment through SC & ST.

d. Standing Committee on the Functioning of the Orissa Reservation of Vacancies (ORV) Act, 1975

To ensure proper implementation of the provisions of the ORV Act & Rules, a Standing Committee consisting of 9 Members under Chairmanship of Hon'ble Minister ST & SC Development including 5 members of the Orissa Legislative Assembly is functioning as per Rule 15 & 16 of the Act.

e. State Level Monitoring Committee (SLMC) on Implementation of the Forest Rights Act

To devise criteria and indicators for monitoring the process and recognition and vesting of forest rights as also to monitor the process of recognition, verification and vesting of forest rights in the State, a State Level Monitoring Committee consisting of 10 members is functioning under the Chairmanship of Chief Secretary as per Rule 9 of the Recognition of Forest Rights (Amendment Rules, 2012).

g. State Level Monitoring Committee (SLMC) on Ensuring Proper Flow to The Tribal Sub-Plan & SCc Component Plan

In order to effectively monitor & review the Tribal Sub-Plan and Special Component Plan as strategies to channelize the flow of funds under different sectoral schemes for SCs & STs at least in proportion to their population.

SCHEMES IMPLEMENTED BY THE ST & SC DEPARTMENT IN ODISHA

Broad Objectives

- The broad objectives of welfare of ST, SC, OBC and Minorities are as under:
- Raising socio- economic condition of the ST, SC, and OBC & Minorities.
- Reducing poverty.
- Bringing to mainstream ST, SC, OBC & Minorities, and enabling them to participate in the development process in an equitable manner.
- Developing critical infrastructure in Scheduled Areas.
Increasing their access to education, health, housing and other services.
Creating / increasing opportunities through self-employment / wage employment.
- Securing their rights over forests and lands.

Sectoral Strategy

Since the beginning of the 5th Five Year Plan (1974–75), formulation and implementation of Tribal Sub Plan has formed the core strategy for tribal development in the State. The TSP approach envisages integrated development of the Tribal Areas in which all developmental Programmes irrespective of their source of funding operate in unison for achieving the common goal of economically developing the area and improving the quality of life of tribal people living in the area.

EDUCATIONAL DEVELOPMENT OF ST & SC COMMUNITIES IN ODISHA

Educational development of the ST & SC communities & improving access to educational facilities through residential educational institutions has been an identified thrust area of the Department.

i. Residential Educational Institutions

Odisha was among the pioneers in setting up of Residential Educational Institutions since the initial years. Variety of schools and colleges have been established by the Department that includes 164 Boys High Schools, 173 Girls High Schools, 61 Higher secondary Schools, 766 Ashram Schools (elementary level), 505 Sevashram (primary level), 19 Educational complexes for students belonging to PVTGs, 2 Secondary Training Schools, 1 B.Ed. college and 13 Eklavya Model Residential Schools (EMRS).

ii. Pre-Matric & Post-Matric Scholarship to ST & SC students:

Payment of Scholarships to eligible ST& SC students is a major flagship programme of the Deptt. Under this scheme, Pre-matric Scholarship is paid to eligible ST & SC Boarders & Day Scholars of SC & SC Dev Deptt Schools as well as students of School & Mass Edn Deptt schools. The funds towards payment of Scholarship to SC/ST students (Day Scholars from VI-VIII & Boarders from Class I to X is fully borne by the State Govt. Post-Matric Scholarship is paid to eligible ST & SC students through the web-based Portal PRERANA directly into the Bank Account of student beneficiaries.

iii. ANWESHA – Urban Education Programme for ST SC children.

In consistent with the objective of providing best of educational opportunities to ST SC students, State Government has initiated a new scheme from 2015-16 named “ANWESHA” to provide quality education to ST & SC students in partnership with urban educational institutions of the State. The scheme is a pioneering initiative of the State Government to facilitate disadvantaged ST & SC students to receive quality education provided by public schools. Under this scheme, it is envisaged to admit 5,000 ST & SC students Class -I annually in different Private/ Aided/ Govt Schools of repute located in District headquarters/ Urban areas and to provide them education till their completion of Class X. The entire cost of their education, including tuition fee, uniform, books & study materials, transportation to schools and post-school tutoring is borne by the State Government. State Government has also created facilities for free accommodation and food for the students in different hostels with provision of full time Wardens and Cook-cum-Attendants. The Schools are selected & empanelled by the District Level Committee on the basis of criteria like recognition of school, availability of infrastructure, qualification of Teachers, PTR, academic performance etc. The beneficiary students are selected through a Lottery system by the District Level Committee under the Chairmanship of District Collector.

ANWESHA is currently operational in 17 tribal concentrated districts of the State. During the inaugural year i.e. 2015-16, 2708 tribal students were admitted in Class I of different Public Schools. The response during 2016-17 was even better with another 5489 students being admitted in Class I of different public schools. About 135 public schools across 17 districts have currently partnered in the programme. In the next 5 years about 25,000 students are envisaged to be covered under the ANWESHA programme. It is expected that the initiative will go a long way in nurturing the inherent talent among ST SC students and steer them to spirit of competitiveness and excellence thereby benefitting them in their student career.

iv. AKANSHYA – Urban Hostel Complex for Post-matric ST SC students

Over the years, the different interventions of the State Government have greatly contributed in increasing the progression of ST/SC students to Post-matric levels of education. However, the limited presence of higher educational institutions poses a hindrance to poor ST/SC students hailing from remote pockets to continue their higher studies as they have to incur additional expenses towards accommodation and other incidental expenses due to unavailability or limited availability of seats in the hostels of different Institutions in urban areas. Many of the ST/SC students although are able to secure admission in good educational institutions, but are often unable get appropriate seats in hostels. This situation forces them to either opt out of higher education or stay in rented accommodation which further aggravates their economic hardship.

Visualizing this problem faced by ST SC students, the Department has constructed 2 urban hostel complexes in Bhubaneswar- one at Pokhariput for Girl students and the other at Kalinga Vihar for Boys students in order to facilitate Higher Education for ST & SC students. These hostels having the capacity to accommodate 500 students in the ratio of 80% for STs and 20% for SCs provide accommodation free of cost to the students perusing post-matric Professional,

Technical, Degree and +2 courses in institutions located in Bhubaneswar. While the Urban Hostel at Pokhariput with 251 girl boarders have been made operational from the academic Year 2016-17; the Urban Hostel at Kalinga Vihar for Boy Students will be made operational from 2017-18.

Considering the importance of creating such residential facilities for ST SC students in other major urban education hubs in the State, steps have been initiated during 2016-17 to establish another six new Urban Hostels at Berhampur, Sambalpur & Rourkela; 2 in each location - one for Boys and one for Girls.

v. Other Activities - Special Provisions :

- Special Employment Exchange for Scheduled Castes and Scheduled Tribes.
- Pre-Examination Coaching and Training.
- Pre-Recruitment Training for entry into Armed and Para Military forces.
- **Provision of Legal Aid to Scheduled Castes and Scheduled Tribes persons**
- Monetary Relief to the victims of Atrocities belonging to Scheduled Castes and Scheduled Tribes as compensation.

CONSTITUTIONAL ISSUES DEALT BY SUPREME COURT OF INDIA

In. Re. 100% Reservation for ST Teachers in Scheduled Areas

In the case of *Chebrolu Leela Prasad Rao and Ors v State of AP and Ors*,⁴⁰ the Hon'ble Supreme Court struck down an Andhra Pradesh government order from 2000 providing 100% reservation for Scheduled Tribe teachers in Scheduled Areas of the state. The Andhra Pradesh G.O. of 2000 was aimed at promoting education in tribal areas and addressing the problem of rampant teacher absenteeism. It was argued that a big problem is language. Many non-tribals, including lower government officials, have lived for years in tribal areas without feeling the need to learn tribal languages. At the primary level, mutual incomprehension between non-tribal teachers and tribal students hampers the basic education of children.

It was held that "it is an obnoxious idea that tribals only should teach the tribals"⁴¹ (para 133), but for far too long, the really obnoxious idea that has pervaded the educational system and is reflected in judgments like this one is that only non-tribals should teach tribals, to "uplift and mainstream" them because "their language and their primitive way of life makes them unfit to put up with the mainstream and to be governed by the ordinary laws"⁴² it was also observed that "They are not supposed to be seen as a human zoo and source of enjoyment of primitive culture and for dance performances"⁴³

⁴⁰ CIVIL APPEAL NO.3609 OF 2002 with CIVIL APPEAL NO.7040 OF 2002, available at https://main.sci.gov.in/supremecourt/2002/8431/8431_2002_31_1501_21807_Judgement_22-Apr-2020.pdf

⁴¹ Para 133

⁴² Para 107

⁴³ Ibid.

In. Re. Recognition of Misuse of SC ST(POA) Act

The bench of Justices Arun Mishra, Justice Vineet Saran and Justice Ravindra Bhat, which was hearing a batch of pleas challenging the amendments to the Act particularly, Prithvi Raj Chauhan v. Union of India,⁴⁴ said the provisions related to anticipatory bail must be exercised sparingly and in exceptional cases where no prima facie case is made out.

The amendments to the Act, made in 2018, had said that the provision under Section 438 of the Criminal Procedure Code, which refers to pre-arrest bail, will not apply to the SC/ST (Prevention of Atrocities) Act.

On March 20, 2018, the Supreme Court had diluted the law's provisions and had said public servants cannot be arrested immediately after a complaint is filed against them under the law.

In Re. Special Constitutional Protections to Scheduled Tribes and Scheduled Areas

In the case of Samatha vs. State of Andhra Pradesh, (1997) 8 SCC 191⁴⁵ the Hon'ble Supreme Court was asked to rule on whether the grant of a mining lease, in a Scheduled Area to a non-tribal was in violation of laws preventing alienation of Adivasi lands. The specific context for the case was the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1 of 1970, which explicitly prohibits any person in a Scheduled Area from transferring lands to anyone other than a Scheduled Tribe. The premise of the regulation is that all land in Scheduled Area is presumed to have been Adivasi land; hence, not only should no land now pass into the hands of non-Adivasis, but any land presently owned by non-tribal should, if being transferred, come back to the hands of Scheduled Tribes. The question before the Court was whether the grant of a mining lease on government land to a non-tribal violated this principle. The Court did not rely purely on the specific clauses of the Regulation and instead held that the Constitution itself requires that land in Scheduled Areas should remain with the Adivasis to preserve their autonomy, culture and society. The Regulation, hence, should be interpreted 'expansively' in order to fulfill this mandate.

In numerous cases where the constitutional validity of land legislations which prohibit/restrict the transfer of land by tribals in Scheduled Areas was challenged, the Courts have held that the Fifth Schedule has been designed, in furtherance of Article 15(4) and Article 46, to protect tribals from social injustice and exploitation. Therefore, these special legislations cannot be held to be unconstitutional on the ground of violation of other fundamental rights, such as Article 14 and 19(1)(g).⁴⁶ There is, therefore, a constitutional duty on the state to take positive and stern measures for the survival and preservation of the integrity and dignity of tribals.⁴⁷

In Re. Panchayati Raj or Local Self-Governance

The PESA Act, 1996 mandates reservations for Scheduled Tribes at all levels in the Panchayats, and also provides for reservation of all posts of Chairperson of Panchayats at all levels in the

⁴⁴ W.P. (C) No. 1015/2018

⁴⁵ (1997) 8 SCC 191

⁴⁶ P. Rami Reddy vs. State of Andhra Pradesh (1988) 3 SCC 433. Article 19(1)(g) of the Constitution states: "All citizens have the right to practise any profession, or to carry on any occupation, trade or business."

⁴⁷ Lingappa Pochanna Appelwar vs. State of Maharashtra (1985) 1 SCC 479

Scheduled Areas for Scheduled Tribes.⁴⁸ This provision was the subject matter of a constitutional challenge in the Supreme Court of India, in a batch of petitions from the State of Jharkhand, on the ground that it violates the right to equality under Article 14.⁴⁹ The Supreme Court rejected the challenge and upheld the constitutional validity of this provision, stating as follows:

*“...Especially in the context of Scheduled Areas, there is a compelling need to safeguard the interests of tribal communities, with immediate effect, by giving them an effective voice in local self-government. The Bhuria Committee Report had clearly outlined the problems faced by Scheduled Tribes, and urged the importance of democratic decentralisation which would empower them to protect their own interests.”*⁵⁰

*“There is of course a rational basis for departing from the norms of ‘adequate representation’, as well as ‘proportionate representation’ in the present case. This was necessary because it was found that even in the areas where Scheduled Tribes are in a relative majority, they are under-represented in the government machinery and hence vulnerable to exploitation. Even in areas where persons belonging to the Scheduled Tribes held public positions, it is a distinct possibility that the non-tribal population will come to dominate the affairs. The relatively weaker position of the Scheduled Tribes is also manifested through problems such as land-grabbing by non-tribals, displacement on account of private as well as governmental developmental activities and the destruction of environmental resources. In order to tackle such social realities, the legislature thought it fit to depart from the norm of ‘proportional representation’. In this sense, it is not our job to second-guess policy choices....”*⁵¹

In Re. Forest Rights in Scheduled Areas

The constitutional scheme relating to Scheduled Areas and the statutory scheme under the Forest Rights Act was considered by the Supreme Court recently. In a detailed judgment passed by a three-judges bench in the Niyamgiri case,⁵² the Court unambiguously upheld the provisions of the Forest Rights Act and various government circulars issued under it which require prior decision of the Gram Sabha before their traditional habitats in forest areas are diverted for non-forest purposes. The Court was of the view that:

“Of late, we have realised that forests have the best chance to survive if communities participate in their conservation and regeneration measures. The Legislature also has addressed the long standing and genuine felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests and thereby strengthening

⁴⁸ The proviso to Section 4(g) of PESA states that the seat of Chairperson of Panchayats at all levels shall be reserved for the Scheduled Tribes.

⁴⁹ Union of India etc. vs. Rakesh Kumar & Ors etc. (2010) 4 SCC 50. Significantly, as a result of the pendency of this constitutional challenge, elections to Panchayati Raj institutions had not been held in Jharkhand since the formation of the State in 2000. As a result the Supreme Court in the above judgment also issued a direction to the State government and the State Election Commission to conduct elections to the Panchayati raj institutions as early as possible, which was done soon thereafter

⁵⁰ Ibid at para 34.

⁵¹ Ibid, at para 37.

⁵² Orissa Mining Corporation vs. Ministry of Environment and Forests (2013) 6 SCC 476

the entire conservation regime by giving a permanent stake to the STs dwelling in the forests for generations in symbiotic relationship with the entire ecosystem.”⁵³

⁵³ Ibid at para 42.

PROTECTION OF TRIBALS FROM ATROCITIES

In common parlance, the term ‘atrocities’ denotes an act of extreme heinous cruelty. The word “Atrocities” has not been defined in law. Even the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has not defined this term. In the absence of any legal definition, its meaning has been derived from various instruments issued by Government of India from time to time. The State have tended to apply their own interpretations about the term “Atrocities”. Ministry of Home Affairs, has clarified this term as “any offence under the Indian Penal Code committed against members of the Scheduled Castes by any non-Scheduled Caste person. Similarly, all offences under the Indian Penal Code committed by non-Scheduled Tribe against the member of Scheduled Tribe are atrocities. Caste consideration as a motive is not necessary to make such an offence in case of atrocities.

There are various aspect of atrocities and their impact on victims such as –

Personal aspect of Atrocities: On commission of atrocities, the victim suffers not only of bodily and mental pain but also imminent feeling of insecurity, which is not present in the victim of any other crime. He thinks himself a very pitiable person.

Physical aspect of Atrocities: In atrocities, where the victim suffers physical injuries on his body, he undergoes bodily pain according to the nature of injuries. Acuteness and period of bodily pain varies according to grievousness of hurt caused on the body.

Economic aspect of Atrocities: Commission of atrocities also affects the economic position of victim. In some kind of atrocities, such as destruction and damage of properties, etc., victim suffers direct financial losses. In some other kind of atrocities such as bodily injuries, he has to spend lot of money on his treatment. Besides, he loses his earnings during the period of his illness. In addition to this, his wealth is wasted in litigation. Thus, his wealth is minimized which shatters his economic position and he becomes poorer.

Social aspect of Atrocities: Not only the victim of atrocities but also society at large, particularly, the persons who are castemen of victim do suffer both by mental pain and sense of insecurity. The status and reputation of the victim is lowered in the society. His castemen also feel insulted and humiliated. Their reputation also goes down in the society. This generates caste feelings, which disintegrate the society and divide them on caste lines.

Grave aspect of Atrocities: Police is the protector of law and it is one of the duties of the police to save the SCs & STs from commission of atrocities upon them by others. But if police, instead of saving them from atrocities, commit atrocities on them, then the position of atrocities becomes grave.

In this context the study has attempted to understand the implementation of protective measures against atrocities to the Scheduled Tribes in Odisha by analysing the legal instruments. This

chapter studies the consequences leading to the enactment of this Act and analyses its provisions with a bird eye view. This chapter explores the intent of parliament for enactment of SCST (POA) Act, 1989 (including amendment Act of 2018) and SCST (POA) Rules, 1995 and further studies and records the the response of the Courts in upholding the provisions of this legislations. It ranges from the analysis of the legislations pertaining to protection of tribals from atrocities to case studies of the atrocities caused in sample districts and the compensation paid to them. Further, this chapter empirically checks the implementation of the provisions of the Act in the State of Odisha in general and in the sample districts in particular.

THE SC AND ST (PREVENTION OF ATROCITIES) ACT, 1989

The ‘Dalits’ (legally recognised as ‘Scheduled Castes’) and the ‘Tribals’ (legally recognised as ‘Scheduled Tribes’) are the most marginalized sections of Indian society. Many atrocities have been committed against them since time immemorial. The SC/ST (Prevention of Atrocities) Act, 1989 grants protection to the aforementioned segment of population against discrimination and atrocities.⁵⁴

Be that as it may, the impact and purpose of enactment of this legislation remains questionable as there is widespread concern over misuse of the provisions of this Act against innocent persons. As per the Supreme Court of India, the SC/ST act has become an instrument of “blackmail” and is being used by some to exact “vengeance” and satisfy vested interests.⁵⁵

Origin & Development

When all the provisions of the Constitution failed to implement the equality among the Indian society and also failed to remove the practice of untouchability, at that time a new law was needed and then came the Untouchability (Offences) Act 1955 but the lacunae and loopholes of this act impelled the government to project a major overhaul of this legal instrument. From 1976 onwards the Act was refurbished as the Protection of Civil Rights Act. Despite the various measures adopted by government to remove this gap between lower and upper caste and to protect the dalits from humiliation, disrespect, offences, indignities and harassment they still remained a vulnerable category. After being educated with their rights when they try to assert them and also when they speak against the practice of untouchability against them the vested interest cow them down and terrorize them

The normal provisions of the existing laws like the Protection of Civil Rights Act 1955 and Indian Penal Code have been found inadequate to check these atrocities continuing the gross indignities and offences against Schedule Caste and Schedule Tribes. Recognizing these

⁵⁴ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Bill No. 33 of 1989, Enacted on 11th September 1989. An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto. Commission of offences only by specified persons i.e. barbarity can be committed only by non-SCs and non-STs on members of the SC or ST communities fall under the purview of this Act.

⁵⁵ As observed by Hon’ble Supreme Court in the case of *Subhash Kashinath Mahajan v. State of Maharashtra & Ors*, 2018 (4) SCC 454.

existing problems, the Parliament passed “Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 and Rules, 1995.

Objective & Purpose

The objective and purpose of this more punitive piece of legislation was sharply outlined when the Bill was introduced in Lok Sabha:

“Despite various measures to improve the socio economic conditions of the SCs and STs, they remain vulnerable... They have, in several brutal incidents, been deprived of their life and property... Because of the awareness created, through spread of education, e.t.c, when they assert their rights and resist the practice of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labor, the vested interests try to cow them down and terrorize them. When the SCs and STs try to preserve their self-respect or honor of their women, they become irritants for the dominant and the mighty...

Under the circumstances, the existing laws like the Protection of Civil Rights Act 1955 and the normal provisions of the Indian Penal Code have been found to be inadequate to check and deter crimes against them committed by non-SCs and non-STs... It is considered necessary that not only the term ‘atrocities’ should be defined, but also stringent measures should be introduced to provide for higher punishment for committing such atrocities. It is also proposed to enjoin on the States and Union Territories to take specific preventive and punitive measures to protect SCs and STs from being victimized and, where atrocities are committed, to provide adequate relief and assistance to rehabilitate them.”⁵⁶

Therefore, the objective of the act is very clear which emphasize the intention of the Indian state to provide justice to the Dalit class and also abolish this ill practice of untouchability.

Salient Features of the Act

The rations of Atrocities Act and Rules is generally a division into three different categories, which covers a list of problems or issues related to atrocities against SC/ST people and their position in society.

- The first category contains provisions related to criminal law. This category in generally establishes criminal liability for a number of specifically defined crimes, and also extends the scope of certain categories of penalizations given in the Indian Penal Code (IPC).
- The second category contains provisions for relief and compensation for victims of atrocities.
- The third category contains provisions that set up special authorities for the exertion and monitoring of the Act.

The salient features of the act are as follows:

⁵⁶ National Commission for SCs, First Report 2004-05, New Delhi, 2006, pp.222-3

- Creation of new types of offences not in the Indian Penal Code (IPC) or in the Protection of Civil Rights Act 1955 (PCRA).
- Commission of offences only by specified persons i.e. barbarity can be committed only by non-SCs and non-STs on members of the SC or ST communities. Crimes among SCs and STs or between STs and SCs do not come under the purview of this Act.⁵⁷
- The Act lists 37 offences relating to various patterns or behaviours inflicting criminal offences and breaking the self-respect and esteem of the scheduled castes and tribes community. This includes denial of economic, democratic and social rights, discrimination, exploitation and abuse of the legal process.⁵⁸ Defines various types of atrocities against SCs/STs.
- Prescribes strict punishment for such atrocities.⁵⁹
- Enhanced the quality of punishment for some offences⁶⁰
- Enhanced minimum punishment for public servants⁶¹
- Penalty for delinquency of duties by a public servant⁶²
- Attachment and forfeiture of property⁶³
- Externment of potential offenders⁶⁴
- Creation of Special Courts⁶⁵
- Appointment of Special Public Prosecutors⁶⁶
- Empowers the government to impose collective fines⁶⁷
- Erasure of arms licenses in the areas labeled where an atrocity may take place or has taken place and clasp all illegal fire arms⁶⁸
- Grant arms licenses to SCs and STs⁶⁹

⁵⁷ *Kanubhai M. Parmar v. State of Gujarat*, that if the offence is committed by persons belonging to Scheduled Caste against Scheduled Caste member, they cannot be prosecuted and punished under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989

⁵⁸ Offences mentioned in Section 3 (1) and (2) of SC ST (POA) Act, 1989.

⁵⁹ Section 3(1) (i) to (xv) and 3(2) (i) to (vii) of SC ST (POA) Act, 1989

⁶⁰ Section 3(2) (i) to (vii) and Section 5 of SC ST (POA) Act, 1989

⁶¹ Section 3(2) (vii) of SC ST (POA) Act, 1989

⁶² Section 4 of SC ST (POA) Act, 1989

⁶³ Section 7 of SC ST (POA) Act, 1989

⁶⁴ (Section 10(1) and (3) of SC ST (POA) Act, 1989

⁶⁵ Section 14 of SC ST (POA) Act, 1989. In *Mangal Prasad v. Additional Session Judge* the court held that the Court below has been appointed as a special Judge within the meaning of Section 2(d) of the Act but unless the accused is sent to him by the Magistrate, he cannot take any cognizance of the offence under Section 14 of the said Act and he also cannot act as a Magistrate in exercising his power or in taking the cognizance of the Act like a Magistrate or to send that complaint petition to the concerned police station under Section 156 (3), Criminal Procedure

⁶⁶ Section 15 of SC ST (POA) Act, 1989

⁶⁷ Section 16 of SC ST (POA) Act, 1989

⁶⁸ Rule 3(iii) and Rule 3(iv) of SC ST (POA) Rules, 1995

⁶⁹ Rule 3(v) of SC ST (POA) Rules, 1995

- Denial of anticipatory bail⁷⁰
- Denial of probation to convict⁷¹
- Provides reimbursement, relief, and rehabilitation for victims of atrocities or their legal heirs⁷²
- Identification of atrocity prone areas⁷³
- Setting up hindrance to avoid committing of atrocities on the SCs amongst others⁷⁴
- Setting up a mandatory, periodic monitoring system at different levels⁷⁵

Along with the rules, the legislation pertaining to provide safeguard to tribals against atrocities provides a framework for monitoring the state response to the atrocities against Scheduled Castes and Scheduled Tribes. According to the Act and Rules, there are to be monthly reports (from the District Magistrates), quarterly review meetings at the district level by the District Monitoring and Vigilance Committee (DVMC) and half yearly reviews by a 25-member State Monitoring and Vigilance Committee (SVMC) the chaired by the Chief Minister. The pursuance of every Special Public Prosecutor (SPP) will also have to be reviewed by the Director of Public Prosecutions (DPP) every quarter. Annual reports have to be sent to the central government by 31 March every year.

Implementation of the Act

Section 21 of the said Act provides for duty of the government to ensure effective implementation of the Act. For this purpose, the state government shall take measures as per the Rules for effective implementation. Such measures may include:

- Provisions for adequate facilities including legal aid to the persons subject to atrocities to enable them to avail justice,
- Provisions for travelling and maintenance expenses to witnesses, including the victim of atrocities, during investigation and trial of offences under this Act,
- Provisions for the economic and social rehabilitation of the victims of the atrocities;
- The appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;
- The setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures;
- Provisions for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provision of this Act;
- The identification of the areas where the members of the Scheduled Castes and the Scheduled Tribes are likely to be subjected to atrocities and adoption of such measures so as to ensure safety for such members.

⁷⁰ Section 18 of SC ST (POA) Act, 1989

⁷¹ Section 19 of SC ST (POA) Act, 1989

⁷² Section 17(3), 21(2)(iii) of SC ST (POA) Act, 1989 and Rule 11 and 12(4) of SC ST (POA) Rules, 1995

⁷³ Section 17(1) and 21(2)(vii) of SC ST (POA) Act, 1989 and Rule 3(1) of SC ST (POA) Rules, 1995

⁷⁴ Rule 3(i) to 3(xi) of SC ST (POA) Rules, 1995

⁷⁵ Section 21(2)(v) of SC ST (POA) Act, 1989

Further, the Central Government, every year shall produce of a report in lower as well as the upper house of the Parliament pertaining to the measures taken by itself and by the state governments pursuant to the provisions of Section 21.

Process of Seeking Remedy under the Act

1. Complain of offence by victim to the nearest police station orally or in written form signed by the victim herself/himself or can be sent through registered post to the relevant police station.⁷⁶
2. The spot investigation should be carried out by any competent official not below the rank of Deputy Superintendent of Police. Thereafter a list of victims and the loss to person and damage to property is ascertained.⁷⁷
3. The investigating officer after preparing the report sends the same to the Superintendent of Police which is subsequently forwarded to the Director General or the Commissioner of Police. Thereafter, the Inspector in Charge of the Police Station having jurisdiction is asked to file the charge-sheet in Special Court within 60 days.⁷⁸
4. In case there is a delay in filing of charge-sheet beyond 60 days lime limit in the special court, then a reason for such delay should also be cited in its support.⁷⁹

Measures to be Taken by State Administration

1. The District Magistrate and the Superintendent of Police shall visit the place of atrocity to assess the loss of life and damage to property.
2. The Superintendent of Police shall ensure the lodging of FIR
3. The Superintendent of Police after the spot-investigation shall appoint an investigating officer and shall further deploy police force if required.
4. The District Magistrate or the Sub-District Magistrate shall make arrangement for payment of relief to the victim within 7 days of filing of FIR as per Schedule I.
5. The Special Court may order further socio-economic rehabilitation apart for the compensation provided in the schedule.

Provision of Rehabilitation

Section 21(2) of the Act seeks to ensure social & economic rehabilitation of the victims of the atrocities. It lays down measures to provide legal aid to victims & traveling & maintenance expenses to witnesses & victims during investigation & trial Rule 11 lays down that every victim of atrocity or of him/her dependents & witnesses shall be paid to & fro rail fare by second class in express/mail passenger train or actual bus or train fare from his/her place of residence to place of investigation The minor, women, old, disabled victims/witnesses shall be entitled to be accompanied by an attendant of his/her choice. There is provision to pay daily maintenance allowances not less than minimum wages and diet expenses. These allowances

⁷⁶ Rule 5 of SC ST (POA) Rules, 1995

⁷⁷ Rule 6 and 7(1) SC ST (POA) Rules, 1995

⁷⁸ Rule 7(2) SC ST (POA) Rules, 1995

⁷⁹ Rule 7(2A) SC ST (POA) Rules, 1995

are to be paid immediately or within three days. In case of offences under Section 3, the victim shall be reimbursed the medical expenses including blood transfusion, meals etc.

Rule 12 calls upon the District Magistrate to make arrangements for providing immediate relief in cash or in kind or both to the victims of atrocity, their family members & dependents, including food, water, clothing, shelter, medical and transport facilities & other essential items necessary for human beings. The norms & scale of relief is provided in the schedule to the Rules. The relief provided in respect of death, or injury to, or damage to property shall be in addition to any other right to claim compensation in respect thereof under any other law for the time being in force. Rule 13 feels necessity for the state government to take care in appointing persons with proper inclination and understanding of the problems of SCs and STs and further ensure that SCs and STs are adequately represented in the administration and police force. Rule 14 lays down a specific duty of the state to make necessary provisions in its annual budget for providing relief and rehabilitation facilities to the victims of atrocities.

Dispute Regarding Bar on Anticipatory Bail

The dispute regarding the order of bail by the court before arrest of the persons is persisting since the enactment of the Act particularly with regard to Section 18. In order to provide clarification pertaining to the interpretation of the said section the Hon'ble Supreme Court in March 2018 delivered its judgment. In *Subhash Kashinath Mahajan v. State of Maharashtra & Ors*⁸⁰, 2018 (4) SCC 454 a two judge bench of Supreme Court held that the exclusion of anticipatory bail provisions of the Code of Criminal Procedure (by Section 18 of the Act) did not constitute an absolute bar for the grant of bail, where it was discernable to the court that the allegations about atrocities or violation of the provisions of the Act were false. It was also held, more crucially, that public servants could be arrested only after approval by the appointing authority (of such public servant) and in other cases, after approval by the Senior Superintendent of Police. It was also directed that cases under the Act could be registered only after a preliminary enquiry into the complaint. These directions were seen to be contrary to the spirit of the Act and received considerable comment in the public domain; the Union of India too moved this court for their review. In the review proceedings, a three-judge bench of this court, in *Union of India v. State of Maharashtra* recalled and overruled those directions.

Directions given in this case are as follows:

“83. Our conclusions are as follows:

- (i) Proceedings in the present case are clear abuse of process of court and are quashed.*
- (ii) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in*

Pankaj D. Suthar (supra) and Dr. N.T. Desai (supra) and clarify the judgments of this Court in Balothia (supra) and Manju Devi (supra);

⁸⁰ *Subhash Kashinath Mahajan v. State of Maharashtra & Ors*, 2018 (4) SCC 454

(iii) *In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered*

necessary for reasons recorded. Such reasons must be scrutinised by the Magistrate for permitting further detention.

(iv) *To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.*

(v) *Any violation of directions (iii) and (iv) will be actionable by way of disciplinary action as well as contempt. The above directions are prospective.”*

The Union of India had filed review petitions, and the same have been allowed, and direction Nos (iii) to (v) have been recalled.

In the meanwhile, Parliament enacted the amendment of 2018 (by Act No. 27 of 2019).⁸¹ The clear intention of Parliament was to undo the effect of this court’s declaration in *Subhash Kashinath Mahajan* case. The provisions of the amendment expressly override the directions in *Subhash Kashinath Mahajan*, that a preliminary inquiry within seven days by the Deputy Superintendent of Police concerned, to find out whether the allegations make out a case under the Act, and that arrest in appropriate cases may be made only after approval by the Senior Superintendent of Police.

In the context of the aforementioned content, it is relevant to study the below mentioned case judgment delivered by Hon’ble Supreme Court while diluting the provision for anticipatory bail contradicting to the amended provision regarding no enquiry before lodging of FIR and non-applicability of Section 438 of CrPC (*anticipatory bail*).

Prathvi Raj Chauhan v. Union of India & Others⁸² Decided on 10.02.2020

The petitioners have questioned the provisions inserted by way of carving out section 18A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act of 1989). It was submitted that section 18A has been enacted to nullify the judgment of this Court in *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra & Anr.*, (2018) 6 SCC 454.

Held

- Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply.⁸³

⁸¹ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 (Bill No)

⁸² *Prathvi Raj Chauhan v. Union Of India & Others*⁸² Writ Petition (C) No. 1016 Of 2018

⁸³ *Ibid* para 10

- The court can, in exceptional cases, exercise power under section 482 Cr.PC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.⁸⁴

Majority Reasoning by J. Arun Mishra & J. Vineet Saran:

The right to a trial with all attendant safeguards is available to those accused of committing offences under the Act; they remain unchanged by the enactment of the amendment.⁸⁵

Reasoning in Concurrent Opinion By J. S. Ravindra Bhat:

1. As far as the provision of Section 18A and anticipatory bail is concerned, the judgment of Mishra, J, has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail.
2. While considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.

ADMINISTRATION IN STATE OF ODISHA

I. Committees Formed

1. **State Level Vigilance and Monitoring Committee:** A State Level High Power Vigilance and Monitoring Committee under the Chairpersonship of the Chief Minister reviews implementation of the PoA Act.
2. **District Level Vigilance and Monitoring Committee:** District Level Vigilance and Monitoring Committees have also been functioning under the Chairpersonship of District Magistrate in all the districts to review implementation of the PoA, Act. During the year 2016, 48 meetings were held in 36 districts.
3. **Sub Divisional Level Vigilance and Monitoring Committee:** All Collectors and Sub-Collectors have been requested to constitute the Sub Divisional Level Vigilance and Monitoring Committees vide STSC Development Department's letter dated 4.1.2014 as required under Rule 17A of the PoA Rules, 2013. Sub Divisional Level Vigilance

⁸⁴ *Ibid* para 11.

⁸⁵ *Ibid* para 18.

and Monitoring Committees have been constituted in most of the District and meetings were held in the concerned districts. During the year 2016, 12 meetings were held in 36 districts.

II. State Level SC and ST Protection Cell:

The Government of Odisha has constituted Scheduled Castes and Scheduled Tribes Protection Cell under the charge of Additional Director General of Police, Human Rights Protection Cell (HRPC) in the State Police Headquarters at Cuttack in accordance with Rule 8 of the PoA Rules. The State Government has also constituted District Human Right Protection Cells to deal with atrocities against members of Scheduled Castes and Scheduled Tribes.

III. Registration of Cases as per Provisions of the Amendment PoA Act

All Police Stations of Odisha have been suitably instructed to register the FIR in accordance with the provisions of Rule 7(2) of PoA Rules and Section 4(2) (e) of the PoA Amendment Act, 2015. Accordingly, registration of FIR is done. They have also been instructed to file charge sheet within stipulated period of sixty days as envisaged in said Rule and Act.

IV. Investigation and Filing of the Charge Sheet within Sixty-Days

Instructions have been issued to field level/officers linked to investigation of atrocity cases for filling charge sheet with stipulated period of sixty days in accordance with Rule 7 (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016.

V. Specification an Appropriate Scheme to Ensure Implementation of the Rights and Entitlements of Victims and Witnesses in Accessing Justice

Towards implementing provision of Section 15(A) (ii) of the PoA Act, following steps have been taken by the State Government.

- Copy of recorded FIR is being provided to the complaint in free of cost in all Police Stations of Odisha.
- District Magistrate/Collector looks into the matter for providing immediate relief in cash or kind to the atrocity victims or their dependents.
- Police is provided necessary protection to the atrocity victims and their dependents.
- Police is providing information about the rights of atrocity victim at the time of making complaint and registering FIR.
- Police is providing protection to the witnesses of victims from intimidation and harassment.
- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and PoA Rules, 2016 have been widely circulated with instruction to strictly implement of PoA Act.
- Necessary precautions are being taken at the time of medical examination.
- Information regarding relief amount are being provided to atrocity victim or their dependents and associates organization or individuals.

- Information in respect of dates, place of investigation and trial are being provided by police to atrocities victim or their dependent or associated organization or individuals.
- Adequate briefing on the case and preparation for trial to atrocity victim or their dependents or associates or individual are being given by police along with provision of legal aid for the said purpose.
- Necessary assistance for execution of rights of atrocity victims of their dependent or associated organizations or individuals are being provided by police at every stage of proceedings under the Act.

VI. Appointment of Officers

A. Nodal Officer: Secretary, Scheduled Tribes and Scheduled Castes Development Department has been nominated as a Nodal Officer as per Rule 9 of the PoA Rules.

B. Special Officer for Districts having Atrocity Prone Areas: The Additional District Magistrates of the concerned districts are the Special Officers as per Rule 10 of the PoA, Rules.

VI. Identification of Atrocity Prone Areas

The Home Department of the State has identified following atrocity prone areas in the State: -

Table – 10: Atrocity Prone Areas in Odisha

| Sl. No. | District | Atrocity Prone Area |
|---------|-----------|--|
| 1. | Anugul | Angul (Pallahara, Chhendipada, Jarapada Police Stations areas). |
| 2. | Bhadrak | Bhadrak (Bhadrak town, Rural (Sadar), Naikanidihi, Dhusuri, Bansada Police Station areas). |
| 3. | Boudh | Boudh (Boudh, Baunsuni, Manamudna, Kantamal, Purunakatak, Harbhanga, Police Stations areas). |
| 4. | Balasore | Balasore (Balasore Town, Khantapara, Industrial Areas, Oupada, Singla, Sadar Police stations areas). |
| 5. | Cuttack | Cuttack (Baramba, Niali, Govindpur Police Stations areas). |
| 6. | Dhenkanal | Dhenkanal (Sadar, Gondia Police Stations areas). |
| 7. | Deogarh | Deogarh (Entire Deogarh District in all the 4 Police Stations areas) |
| 8. | Kandhamal | Kandhamal (Entire Kandhamal District is the atrocity prone area as intimated by the S.P.Kandhamal). |
| 9. | Kalahandi | Kalahandi (Dharmagarh, Junagarh, Jaipatna, Koksara, Sadar, Kegaon and Bhawanipatna Town Police Stations areas). |
| 10. | Khurda | Khurda (badagada, Lingaraj, Balianta, Balugaon, Banapur, Jankia, Balipatna, Khandagiri Police Stations areas). |
| 11. | Keonjhar | Keonjhar (Keonjhar Town, Sadar, Patna, Ghasipura, Ghatagaon, Anandapur, Champua, Joda, Barbil Police Stations. Areas). |

| | | |
|-----|------------|---|
| 12. | Mayurbhanj | Mayurbhanj (Baripada Town, Bangripose, Khunta, Udala, Thakurmunda, Karanjia, Jharpokharia, Rasagovindapur, Barsahi, Police Stations areas) |
| 13. | Nuapada | Nuapada (Sinapali Block area) |
| 14. | Puri | Puri (Sadar, Town, Sea-Beach, Chandrapur, Satyabadi, Brahmagiri, Delang, Kanas, Pipili, Gop, Balanga, Nimapada-krushnaparsad Police Stations Areas) |
| 15. | Sonepur | Sonepur (Sonepur, Birmaharajpur Police Stations areas). |
| 16. | Sundergarh | Sundergarh (Sundergarh Town, Sadar, Lephripada, Hemgiri, Bisra, Rajgangpur and Sector-19 Police Stations areas) |

VII. Special Courts

Ninety-two District and Sessions Courts and Additional District and Sessions Courts have been designated as Special Courts, for the trial of the offences under the PoA, Act. Three Exclusive Special Courts at Cuttack, Bolangir and Balasore have also been set up.

VIII. Specification of Special Public Prosecutors

At present twenty-nine Special Public Prosecutors have specified in the ninety-two designated Special Courts and three Exclusive Special Public Prosecutors have also been specified in three Exclusive Special Courts, to conduct the cases of offence of atrocities under the PoA Act.

VIII. Publicity and Awareness Generation

The field Officers of the Scheduled Castes and the Scheduled Tribes Development Department usually contact the villagers in course of their field visits for creating awareness and gathering their problems if any. Sanjog Helpline No. 155335 (24x7) has also been installed in ST and SC Development Department to receive grievances members of SCs and STs. Besides, all the District Collectors have been instructed to set up awareness campaign with the help of NGOs by organizing workshop in identified areas in District. All District Magistrates/SPs have been instructed to display through hoardings. The salient features of PoA Act in Odia version at all the Police Stations and other important public places like Courts, District Headquarters etc for awareness of the general public and members of SCs and STs. The ST and SC Development Department through its Research and Training Institute (SCSTR&TI) has been entrusted to generate awareness among SCs and STs about their entitlements, if any atrocities are committed to them and various measures taken for them for better implementation of the Act to prevent them from atrocities. The Government has also been circulating IFC materials among different communities in villages to make them aware of the provisions of the PoA Act. The Government through NGOs has also been trying to generate awareness and sensitize SCs and STs communities about the provisions of the PoA Act and types of atrocities committed against them. The Government has translated the PoA Act and PoA Rules in all tribal languages and has circulated throughout the State. Further Radio jingles, short documentary film/ Audio

–visual spots have also been broadcasted/transmitted/telecasted to generate awareness among the general public.

During the year 2016, 76 training programmes were conducted by SCSTRTI. BPSPA Bhubaneswar, NGO and Audio-visual spots were shown in 13 TV Channels during Cart Festival-2016. 4665 participants had participated in training programmers. As per State HRPC, Odisha vide letter dated 24.9.2016, all range Inspector General of Police of Odisha and Commissioner of Police have been requested to organize quarterly training programme in their Range level for sensitizing the police and other personnel towards proper implementation of the amended PoA Act and PoA Rules. The district SPs also told steps to sensitize their field officers towards proper implementation of the Act.

IX. Legal Aid

Legal Aid is given to persons belonging to Scheduled Castes under the Legal Aid and Advice Scheme, 1981, which is administered by the Law Department. Besides that, the Scheduled Castes/Scheduled Tribes litigants are also given legal aid under a Scheme in operation by the Scheduled Tribes and Scheduled Castes Development Department to fight-out cases to establish their right, title, interest and possession over the disputed land.

In order to provide legal aid to SC and ST litigants, 390 Legal Aid Cells have been opened. So far 421 Legal Retainers/Advocates have been engaged in different Legal Aid Cells

X. Travelling and Maintenance Expenses to Witnesses and Victims of Atrocities

The Government of Odisha has revised maintenance expenses to the witnesses and victims of offences of atrocities from Rs.20/- to 100/- for Diet expenses and from Rs.50/- to Rs. 200/- for maintenance expenses.

XI. Implantation of Plan for Effectively Implementing Provision of The Act and its Notification in The State Gazette

- Copies of Gazette Notification of Government of India regarding the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (No. 1 of 2016) and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016 have been circulated to all concerned vide ST and ST Development Department letter dated 20.03.2016 and 18.06.2016 with a request for its proper implementation. These amended Act and Rules have also been republished in Odisha Gazette Notification dated 2.4.2016 and 09.08.2016 respectively and the said notifications have also been circulated to all concerned vide letter dated 29.11.2016 with instructions for its proper implementation.
- SCs and STs Protection Cell, HRPC, Odisha has issued letter dated 10.8.2016 addressed to all concerned District Superintendent of Police including DCP for strict implementation of amended PoA Act and Rules as well as spreading public awareness in the respective districts.

- SCs and STs Protection Cell, HRPC, Odisha vide letter dated 17.9.2016 has also issued to all SSP including DCP and SRP Roulkela with a request to prominently display the salient features in all Police Stations/prominent places and take steps to be sensitization of the Police Personnel for proper implementation of the said Act and Rules.
- SCs and STs Protection Cell, HRPC, Odisha vide letter dated 13.6.2016 issued to Commissioner of Police and all IGPs/ DIGs had requested for organizing one day training programme in their respective ranges.

PROCESS OF AVAILING FUND BY VICTIM

1. The joint enquiry of the spot of atrocity is conducted by the Asst. Commissioner of Police and Executive Magistrate.
2. The Joint enquiry report is submitted to the District Magistrate as per the prescribed performa.
3. The District Magistrate sends the same to the FA cum Addl. Secretary, SC ST Development Department for realization of funds.
4. The grant sought by the District Magistrate upon being realized to the District Treasury which can be drawn by the Drawing and Disbursing Officer of the District.
5. After receiving the grant amount is the District Treasury, the District Welfare Officer intimates the same to the victims and seeks for relevant document including bank account details.
6. Thereafter, the grants are disbursed as compensation to the victims as per Annexure I of SC & ST (POA) 1995 as amended by Amendment Rules, 2018.

DETAILS OF THE SCHEDULED TRIBES ATROCITIES CASES IN THE STATE OF ODISHA

Table – 11: Atrocities against STs in Odisha (2014-2016)

| SL.NO | Particulars | No of cases/Percentage/Rank |
|--------------|--|------------------------------------|
| 1 | Atrocities in 2014 | 533 |
| 2 | Atrocities in 2015 | 691 |
| 3 | Atrocities in 2016 | 681 |
| 4 | Percentage state share to all India Total 2016 | 10.04 |
| 5 | Rank based on incidence / percentage share | 3 |
| 6 | Population of STs in Lakhs | 95.9 |
| 7 | Rate of total cognizable crimes | 7.1 |
| 8 | Rank Based on crime rate | 9 |

Table – 12: Atrocities against STs in Odisha (2016)

| SL.NO | Particulars | SC/ST Prevention of Act r/w IPC Atrocities | | |
|-------|--|--|----|-----|
| | | I | V | R |
| 1 | Murder section 302 IPC | 12 | 12 | 0.1 |
| 2 | Attempt to commit murder section 307 IPC | 13 | 13 | 0.1 |
| 3 | Grievous hurt (325,326,326A & 326B) | 41 | 52 | 0.4 |

Table – 13: Police disposal of crime/atrocities against STs cases Odisha 2016

| SL.NO | Particulars | Remarks | |
|-------|--|----------------|-------|
| 1 | Cases pending investigation from previous year | 390 | |
| 2 | Cases reported during the year | 671 | |
| 3 | Total cases of investigation | 1071 | |
| 4 | Cases withdrawn by Govt. | 0 | |
| 5 | Cases transferred to other PS/ Magistrate | 0 | |
| 6 | Cases not investigated U/S 157 (1) (b) of Cr. PC | 0 | |
| 7 | True but insufficient evidence | 8 | |
| 8 | False | 41 | |
| 9 | Mistake of facts | 13 | |
| 10 | Final report | Non cognizable | Total |
| | | 0 | 62 |
| 11 | Cases which charge sheets submitted | 618 | |
| 12 | Total cases disposed off by police | 680 | |
| 13 | Cases pending investigation at the end of the year | 391 | |
| 14 | Charge sheeting rate | 90.9 | |
| 15 | Pendency percentage | 36.5 | |

Table – 14: Total Number of crime /atrocities against STs in Odisha (2012-2016)

| SL.NO | Particulars | Remarks | | | | | | | |
|-------|-------------|---------|-----|-----|-----|-----|-----|-----|-----|
| | | CR | CCS | CHR | CON | CVR | PAR | PCS | PCV |

| | | | | | | | | | |
|---|--------------------|-----|-----|------|----|-----|------|------|----|
| 1 | Atrocities in 2012 | 688 | 495 | 84.0 | 41 | 9.7 | 824 | 754 | 52 |
| 2 | Atrocities in 2013 | 791 | 680 | 82.0 | 28 | 7.3 | 1047 | 1100 | 36 |
| 3 | Atrocities in 2014 | 533 | 511 | 83.2 | 18 | 6.9 | 744 | 730 | 26 |
| 4 | Atrocities in 2015 | 691 | 506 | 85.9 | 32 | 7.7 | 728 | 739 | 39 |
| 5 | Atrocities in 2016 | 681 | 618 | 90.9 | 18 | 5.7 | 855 | 801 | 25 |

Table – 15: Total Number of crime /atrocities against STs in Odisha (2012-2016)

| SL.NO | Particulars | Remarks |
|-------|--|---------|
| 1 | Cases pending trial from previous year | 2487 |
| 2 | Cases sent for trial during the year | 618 |
| 3 | Total cases for trial during the year (Col.3+4) | 3105 |
| 4 | No of cases withdrawn by Govt. | 1 |
| 5 | No of cases disposed by plea Bargaining | 0 |
| 6 | Cases compounded | 0 |
| 7 | Cases in which trials were completed (Col.10 + 11) | 317 |
| 8 | Cases convicted | 18 |
| 9 | Cases acquitted /Discharged | 299 |

Table – 16: Payment of Compensation to the Victims as per the Annexure I of SC & ST (PoA) Rules 1995 as Amended by Amendment Rules, 2018

| Sl. No. | Name of Offence | Amount of Relief |
|---------|--|---|
| | Putting any inedible or obnoxious substance [Section 3(1)(a) of the Act] Dumping excreta, sewage, carcasses or any other obnoxious substance [Section 3(1)(b) of the Act] Dumping excreta, waste matter, carcasses with intent to cause injury, insult or annoyance [Section 3(1)(c) of the Act] Garlanding with footwear or parading naked or semi-naked [Section 3(1)(d) of the Act] Forcibly committing acts such as removing clothes, forcible | One lakh rupees to the victim. Payment to then victim be made as follows: (i) 10 per cent. at First Information Report (FIR) stage for serial numbers (2) and (3) and 25 percent at FIR stage for serial numbers (1), (4) and (5); (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 40 per cent. when the accused are convicted by the lower court for serial numbers (2) and (3) and likewise 25 percent for serial numbers (1), (4) and |

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| | <p>tonsuring of head, removing moustaches, painting face or body [Section 3(1)(e) of the Act]</p> | <p>(5).</p> |
| | <p>Wrongful occupation or cultivation of land [Section 3(1)(f) of the Act]</p> <p>Wrongful dispossession of land or premises or interfering with the rights, including forest rights. [Section 3(1) (g) of the Act]</p> | <p>One lakh rupees to the victim. The land or premises or water supply or irrigation facility shall be restored where necessary at Government cost by the concerned State Government or Union territory Administration. Payment to the victim be made as follows:</p> <ul style="list-style-type: none"> (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court. |
| | <p>Begar or other forms of forced or bonded labour [Section 3(1)(h) of the Act]</p> <p>Compelling to dispose or carry human or animal carcasses, or to dig graves [Section 3(1)(i) of the Act]</p> <p>Making a member of the Scheduled Castes or the Scheduled Tribes to do manual scavenging or employing him for such purpose [Section 3(1)(j) of the Act]</p> <p>Performing, or promoting dedication of a Scheduled Caste or a Scheduled Tribe woman as a devadasi [Section 3(1)(k) of the Act]</p> | <p>One lakh rupees to the victim. Payment to be made as follows:</p> <ul style="list-style-type: none"> (i) Payment of 25 per cent. First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court. |
| | <p>Prevention from voting, filing nomination [Section 3(1)(l) of the Act]</p> <p>Forcing, intimidating or obstructing a holder of office of Panchayat or Municipality from</p> | <p>Eighty-five thousand rupees to the victim. Payment to be made as follows:</p> <ul style="list-style-type: none"> (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court. |

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| | <p>performing duties [Section 3(1)(m) of the Act]</p> <p>14. After poll violence and imposition of social and economic boycott [Section 3(1)(n) of the Act]</p> <p>15. Committing any offence under this Act for having voted or not having voted for a particular candidate [Section 3(1)(o) of the Act]</p> | |
| | <p>Instituting false, malicious or vexatious legal proceedings [Section 3(1)(p) of the Act]</p> | <p>Eighty-five thousand rupees to the victim or reimbursement of actual legal expenses and damages, whichever is less. Payment to be made as follows:</p> <p>25 per cent. at First Information Report (FIR) stage;</p> <p>(i) 50 per cent. when the charge sheet is sent to the court;</p> <p>(ii) 25 per cent. When the accused are convicted by the lower court.</p> |
| | <p>Giving false and frivolous information to a public servant [Section 3(1)(q) of the Act]</p> | <p>One lakh rupees to the victim or reimbursement of actual legal expenses and damages, whichever is less. Payment to be made as follows:</p> <p>(i) 25 per cent. at First Information Report (FIR) stage;</p> <p>(ii) 50 per cent. when the charge sheet is sent to the court;</p> <p>(iii) 25 per cent. When the accused are convicted by the lower court.</p> |
| | <p>Intentional insult or intimidation to humiliate in any place within public view [Section 3(1)(r) of the Act]</p> <p>Abusing by caste name in any place within public view [Section 3(1)(s) of the Act]</p> <p>20. Destroying, damaging or defiling any object held sacred or in high esteem [Section 3(1)(t) of the Act]</p> | <p>One lakh rupees to the victim. Payment to be made as follows:</p> <p>(i) 25 per cent. at First Information Report (FIR) stage;</p> <p>(ii) 50 per cent. when the charge sheet is sent to the court;</p> <p>(iii) 25 per cent. When the accused are convicted by the lower court.</p> |

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| | <p>21. Promoting feelings of enmity, hatred or ill-will [Section 3(1)(u) of the Act]</p> <p>22. Disrespecting by words or any other means of any late person held in high esteem [Section 3(1)(v) of the Act]</p> | |
| | <p>Intentionally touching a Scheduled Caste or a Scheduled Tribe woman without consent, using acts or gestures, as an act of sexual nature, [Section 3(1)(w) of the Act]</p> | <p>Two lakh rupees to the victim. Payment to be made as follows:</p> <ul style="list-style-type: none"> (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court. |
| | <p>Section 326B of the Indian Penal Code (45 of 1860) --Voluntarily throwing or attempting to throw acid. [Section 3(2)(va) read with Schedule to the Act]</p> | <p>(a) Eight lakh and twenty-five thousand rupees to the victim with burns exceeding and 2 per cent and above burns on face or in case of functional impairment of eye, ear, nose and mouth and or burn injury on body exceeding 30 per cent;</p> <p>(b) four lakh and fifteen thousand rupees to the victim with burns between 10 per cent. to 30 per cent. on the body;</p> <p>(c) eighty-five thousand rupees to the victim with burns less than 10 per cent. on the body other than on face. In addition, the State Government or Union territory Administration shall take full responsibility for the treatment of the victim of acid attack.</p> <p>The payment in terms of items (a) to (c) are to be made as follows:</p> <ul style="list-style-type: none"> (i) 50 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. after receipt of medical report. |
| | <p>Section 354 of the Indian Penal Code (45 of 1860) -- Assault or criminal force to woman with intent to outrage her modesty. [Section</p> | <p>Two lakh rupees to the victim. Payment to be made as follows:</p> <ul style="list-style-type: none"> (i) 50 per cent. at First Information Report (FIR) stage; |

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| | 3(2) (va) read with Schedule to the Act] | <ul style="list-style-type: none"> (ii) 25 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. On conclusion of trial by the lower court. |
| | Section 354A of the Indian Penal Code (45 of 1860) --Sexual harassment and punishment for sexual harassment. [Section 32) (va) read with Schedule to the Act] | <p>Two lakh rupees to the victim. Payment to be made as follows:</p> <ul style="list-style-type: none"> (i) 50 per cent. at First Information Report (FIR) stage; (ii) 25 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. on conclusion of trial by the lower court. |
| | Section 354 B of the Indian Penal Code (45 of 1860) -- Assault or use of criminal force to woman with intent to disrobe [Section 3(2)(va) read with Schedule to the Act] | <p>Two lakh rupees to the victim. Payment to be made as follows:</p> <ul style="list-style-type: none"> (i) 50 per cent. at First Information Report (FIR) stage; (ii) 25 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. On conclusion of trial by the lower court. |
| | Section 354 C of the Indian Penal Code (45 of 1860)-- Voyeurism. [Section 3(2)(va) read with Schedule to the Act] | <p>Two lakh rupees to the victim. Payment to be made as follows:</p> <ul style="list-style-type: none"> (i) 10 per cent. at First Information Report (FIR) stage (ii) 50 per cent. when the charge sheet is sent to the court. (iii) 40 per cent. when the accused are convicted by the lower court. |
| | Section 354 D of the Indian Penal Code (45 of 1860) -- Stalking. [Section 3(2)(va) read with Schedule to the Act] | <p>Two lakh rupees to the victim. Payment to be made as follows:</p> <ul style="list-style-type: none"> (i) 10 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 40 per cent. When the accused are convicted by the lower court. |
| | Section 376B of the Indian Penal Code (45 of 1860) -- Sexual intercourse by husband upon his wife during separation. [Section | <p>Two lakh rupees to the victim. Payment to be made as follows: (i) 50 per cent. after medical examination and confirmatory medical report; (ii) 25 per cent. when the charge sheet is sent to the court; (iii) 25 per</p> |

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| | 3(2)(va) read with Schedule to the Act] | cent. when the accused are convicted by the lower court. |
| | Section 376C of the Indian Penal Code (45 of 1860) -- Sexual intercourse by a person in authority. [Section 3(2) (va) read with Schedule to the Act] | Four lakh rupees to the victim. Payment to be made as follows: (i) 50 per cent. after medical examination and confirmatory medical report; (ii) 25 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. on conclusion of trial by the lower court. |
| | Section 509 of the Indian Penal Code (45 of 1860) -- Word, gesture or act intended to insult the modesty of a woman. [Section 3(2)(va) read with Schedule to the Act] | Two lakh rupees to the victim. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court. |
| | Fouling or corrupting of water [Section 3(1)(x) of the Act] | Full cost of restoration of normal facility, including cleaning when the water is fouled, to be borne by the concerned State Government or Union territory Administration. In addition, an amount of eight lakh twenty-five thousand rupees shall be deposited with the District Magistrate for creating community assets of the nature to be decided by the District Authority in consultation with the Local Body. |
| | Denial of customary right of passage to a place of public resort or obstruction from using or accessing public resort [Section 3(1)(y) of the Act] | Four lakh twenty-five thousand rupees to the victim and cost of restoration of right of passage by the concerned State Government or Union territory Administration. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court. |
| | Forcing of causing to leave house, village, residence desert place of residence [Section 3(1)(z) of the Act] | Restoration of the site or right to stay in house, village or other place of residence by the concerned State Government or Union territory Administration and relief of one lakh rupees to the victim and reconstruction of the house at Government cost, if destroyed. Payment to be made as follows: |

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| | | <p>(i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court.</p> |
| | <p>Obstructing or preventing a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to—</p> <p>(A) using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage [Section 3(1)(za)(A) of the Act]</p> <p>(B) mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out wedding procession, or mounting a horse or any other vehicle during wedding processions [Section 3(1)(za) (B) of the Act]</p> <p>(C) entering any place of worship which is open to the public or other persons professing the same religion or taking part in, or taking out, any religious, social or cultural processions including jatras [Section 3(1)(za)(C) of the Act]</p> <p>(D) entering any educational institution, hospital, dispensary, primary health centre, shop or place of public entertainment or any other public place; or using any utensils or articles meant for public use in any place open to the</p> | <p>(A): Restoration of the right using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage equally with others, by the concerned State Government or Union Territory Administration and relief of one lakh rupees to the victim. Payment to be made as follows:</p> <p>(i) 25 per cent. at First Information Report (FIR) stage;</p> <p>(ii) 50 per cent. when the charge sheet is sent to the court;</p> <p>(iii) 25 per cent. when the accused are convicted by the lower court.</p> <p>(B): Restoration of the right of mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out wedding procession, or mounting a horse or any other vehicle during wedding processions, equally with others by the concerned State Government or Union territory Administration and relief of one lakh rupees to the victim. Payment to be made as follows:</p> <p>(i) Payment of 25 per cent. at First Information Report (FIR) stage;</p> <p>(ii) 50 per cent. when the charge sheet is sent to the court;</p> <p>(iii) 25 per cent. when the accused are convicted by the lower court;</p> <p>(C): Restoration of the right of entering any place of worship which is open to the public</p> |

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| | <p>public[Section 3(1) (za)(D) of the Act]</p> <p>(E) practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to [Section 3(1) (za)(E) of the Act]</p> | <p>or other persons professing the same religion or taking part in, or taking out any religious procession or jatras, as is open to the public or other persons professing the same religion, social or cultural processions including jatras, equally with other persons, by the concerned State Government or Union territory Administration and relief of one lakh rupees to the victim. Payment to be made as follows:</p> <p>(i) 25 per cent. at First Information Report (FIR) stage</p> <p>(ii) 50 per cent. when the charge sheet is sent to the court.</p> <p>(iii) 25 per cent. when the accused are convicted by the lower court.</p> <p>(D): Restoration of the right of entering any educational institution, hospital, dispensary, primary health centre, shop or place of public entertainment or any other public place; or using any utensils or articles meant for public use in any place open to the public, equally with other persons by the concerned State Government or Union territory Administration and relief of one lakh rupees to the victim. Payment to be made as follows:</p> <p>(i) 25 per cent. at First Information Report (FIR) stage;</p> <p>(ii) 50 per cent. when the charge sheet is sent to the court;</p> <p>(iii) 25 per cent. when the accused are convicted by the lower court.</p> <p>(E): Restoration of the right of practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to, by the concerned State Government/Union territory Administration</p> |
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| | | and relief of one lakh rupees to the victim. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court. |
| | Causing physical harm or mental agony on the allegation of being a witch or practicing witchcraft or being a witch [Section 3(1)(zb) of the Act] | One lakh rupees to the victim and also commensurate with the indignity, insult, injury and defamation suffered by the victim. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court. |
| | Imposing or threatening a social or economic boycott. [Section 3(1)(zc) of the Act] | Restoration of provision of all economic and social services equally with other persons, by the concerned State Government or Union territory Administration and relief of one lakh rupees to the victim. To be paid in full when charge sheet is sent to the lower court. |
| | Giving or fabricating false evidence [Section 3(2)(i) and (ii) of the Act] | Four lakh fifteen thousand rupees to the victim. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court. |
| | Committing offences under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more [Section 3(2) of the Act] | Four lakh rupees to the victim and or his dependents. The amount would vary, if specifically, otherwise provided in this Schedule. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; |

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| | | (iii) 25 per cent. when the accused are convicted by the lower court. |
| | Committing offences under the Indian Penal Code (45 of 1860) specified in the Schedule to the Act punishable with such punishment as specified under the Indian Penal Code for such offences [Section 3(2) (va) read with the Schedule to the Act] | Two lakh rupees to the victim and or his dependents. The amount would vary if specifically, otherwise provided in this Schedule. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court; |
| | Victimisation at the hands of a public servant[Section 3(2) (vii) of the Act] | Two lakh rupees to the victim and or his dependents. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court. |
| | Disability. Guidelines for evaluation of various disabilities and procedure for certification as contained in the Ministry of Social Justice and Empowerment Notification No. 16- 18/97-NI, dated the 1st June, 2001. (a) 100 per cent. incapacitation (b) where incapacitation is less than 100 per cent. but more than 50 per cent. (c) where incapacitation is less than 50 per cent. | Eight lakh and twenty-five thousand rupees to the victim. Payment to be made as follows: (i) 50 per cent. after medical examination and confirmatory medical report; (ii) 50 per cent. when the charge sheet is sent to the court; Four lakh and fifty thousand rupees to the victim. Payment to be made as follows: (i) 50 per cent. after medical examination and confirmatory medical report; (ii) 50 per cent. when the charge sheet is sent to the court; Two lakh and fifty thousand rupees to the victim. Payment to be made as follows: (i) 50 per cent. after medical examination and confirmatory medical report; (ii) 50 per cent. when the charge sheet is sent to the court. |

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| | <p>Rape or Gang rape.</p> <p>(i) Rape [Section 375 of the Indian Penal Code(45 of 1860)]</p> <p>(ii) Gang rape [Section 376D of the Indian Penal Code (45 of 1860)]</p> | <p>Five lakh rupees to the victim. Payment to be made as follows:</p> <ul style="list-style-type: none"> (i) 50 per cent. after medical examination and confirmatory medical report; (ii) 25 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. on conclusion of trial by the lower court. <p>Eight lakh and twenty-five thousand rupees to the victim. Payment to be made as follows:</p> <ul style="list-style-type: none"> (i) 50 per cent. after medical examination and confirmatory medical report; (ii) 25 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. on conclusion of trial by the lower court |
| | <p>Murder or Death.</p> | <p>Eight lakh and twenty-five thousand rupees to the victim. Payment to be made as follows:</p> <ul style="list-style-type: none"> (i) 50 per cent. after post mortem report; (ii) 50 per cent. when the charge sheet is sent to the court. |
| | <p>Additional relief to victims of murder, death, massacre, rape, gang rape, permanent incapacitation and dacoity.</p> | <p>In addition to relief amounts paid under above items, relief may be arranged within three months of date of atrocity as follows:-</p> <ul style="list-style-type: none"> (i) Basic Pension to the widow or other dependents of deceased persons belonging to a Scheduled Caste or a Scheduled Tribe amounting to five thousand rupees per month, as applicable to a Government servant of the concerned State Government or Union territory Administration, with admissible dearness allowance and employment to one member of the family of the deceased, and provision of agricultural land, an house, if necessary by outright purchase; |

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| | | <p>(ii) Full cost of the education up to graduation level and maintenance of the children of the victims. Children may be admitted to Ashram schools or residential schools, fully funded by the Government;</p> <p>(iii) Provision of utensils, rice, wheat, dals, pulses,</p> |
| | Complete destruction or burnt houses. | Brick or stone masonry house to be constructed or provided at Government cost where it has been burnt or destroyed.” |

IMPLEMENTATION OF THE SC & ST (PoA) ACT, 1989

As stated in the first part of this report, that this project considers four districts in Odisha for sampling purpose namely, Sundargarh, Mayurbhanj, Koraput and Kandhamal. Hence, in this section of the chapter, the implementation of the Act is analyzed by assessing case studies of atrocities against tribal population in the sample districts and conducting their follow-ups. Particularly, this section of the chapter checks whether the process of investigation and rehabilitation prescribed in the Act is appropriately followed in the state of Odisha by assessing the process in the aforementioned sample districts.

For this reason, Joint Enquiry Report of atrocity cases from the Sample Districts are selected pertaining to different crimes in the year 2018-2019 and 2019-2020; further, the process of payment of compensation as per the Annexure I of SC & ST (POA) Rules, 1995 are considered for assessment. It is pertinent to mention herein that cases of from all the four sample districts for the year 2018-19 and 2019-20 are considered for drawing observation regarding implementation of the Act. The cases studies from the district of Sundargarh is assessed in this chapter and the cases from other sample districts along with the details of compensation given are annexed hereto as **Annexure 1(Colly)**. The below listed are the case studies from the District of Sundargarh (including the investigation report as per the prescribed proforma and the compensation)

The case proceedings examined in sample study areas are as under:-

Table – 17: Case Proceedings – I

| Sl. No. | Particulars | Details |
|---------|---|---------|
| 1. | Name and Designation of the Enquiry Officer with contact no. i. Asst. Commissioner of Police Sub-Divisional Officer/DSP: | |

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| | ii. Executive Magistrate: | i. Sri Balabhadra Deep, OPS(I),JB SDPO Sadar Sundargarh ii. Sri Jogeswar Bhoi, OAS (I) JB Tahasildar Sundargarh Cum Executive Magistrate |
| 2. | Date of FIR, Name of PS with Case No. | Sadar PS case no. 18 Dated 2.2.2019 Sec. 376 (2) (n) IPC/6 of POCSO Act 2012 R/W Sec 3(2)(v) SC & ST (POA) Amendment Act 2015 |
| 3. | Date of Inquiry | 23.3.2019 |
| 4. | Name and Address of victim and Father | Neha @ Megha (17) S/o Sishudhar Gardia Vill. Rupabahal PS. Sadar Dist. Sundargarh |
| 5. | Date and Place of Occurrence | Since last 5-6 months from 2.2.2019 at vill. Rupabahal PS. Sadar Dist. Sundargarh |
| 6. | By whom FIR was first lodged | Deepamayee Gardia (40) Mother of the victim W/o Sishudhar Gardia (45) Vill. Rupabahal PS. Sadar Dist. Sundargarh. Mob No. 9437088741 |
| 7. | Community of the victim | SC "Ganda" by caste |
| 8. | By whom atrocity is committed along with father's name | Anil Khilei (24) S/o Muralidhar Khilei Vill. Rupabahal PS. Sundargarh Dist. Sundargarh. Gouda by Caste coming under SEBC Category |
| 9. | Nature of offence in brief extant of loss/ list of victim/ immediate relief, if any: i. Nature of Offence ii. Report in detail about the extent of atrocities; loss and damage to the property of victim iii. List of victim and their family members and dependants entitled for relief iv. Immediate relief provided to the victim | i. Accused Anil Khilei committed penetrative sexual assault on the minor victim repeatedly by promising marriage and made her pregnant. ii. No loss iii. Victim Neha @ Megha Gardia iv. No immediate relief provided expect medical examination |

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| 10. | Sub-Clause under Section 3 of the SC ST (POA) Act and other Acts that offence attracts | Sec 3(2)(v) SC & ST (POA) Amendment Act 2015 |
| 11. | Date of Medical Examination and Opinion of Doctor | 3.2.2019/4.2.2019 - No bodily injury, no recent sign and symptoms of sexual intercourse, victim is 15 week pregnant. |
| 12. | In case of Murder/ Death/ Disability inaction: | Not applicable |
| 13. | Whether the victim earning/ non-earning member | Not earning |
| 14. | In case of fire, damage value of property: | Not applicable |
| 15. | Submission of charge-sheet with CS No. and date, if no (give reasons) | CS being submitted shortly |
| 16. | Amount of relief recommended as per Rules 12(4) Annexure-1 of SCST (POA) Amendment Rules 2016 and stages of payment percentage/amount as per JER with full clarity of victim's father or husband | Rs. 5,00,000/- for relief to the victim Neha @ Megha Gardia (member of SC category) |
| 17. | Whether intensive police patrolling introduced in that area of occurrence | Yes |
| 18. | Whether, effective and necessary steps taken to provide protection of the witnesses and other sympathizers of the victim | Yes |
| 19. | Whether a report on the relief and rehabilitation facilities provide to the victim has been forwarded to the Special Court or Exclusive Special Court by the District Magistrate or the Sub-Divisional Magistrate or Superintendent of Police, as per Rules 12(7) of SCST (POA) Amendment Rules 2016 | Being Forwarded |
| 20. | Whether the information regarding the relief amount have been provided to the victims/ his dependents/ associated organisations and individuals, as per | Yes |

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| | sec. 15(A)(11)(k) of the SCST(POA) Amendment Act 2015 | |
| 21. | General Remarks of the Enquiring Officer | The victim Neha @ Megha Gardia is Ganda by caste and belongs to SC category and the accused Anil Khilei is Gouda Caste under Non-SC/ ST Category (SEBC). The accused committed penetrative sexual assaults on the minor victim repeatedly by promising marriage and made her pregnant of 4 months and subsequently he denied to accept her on caste aspersion. |

Table – 18: Case Study – II

| Sl. No. | Particulars | Details |
|---------|--|---|
| 1. | Name and Designation of the Enquiry Officer with contact no. i. Asst. Commissioner of Police Sub-Divisional Officer/DSP: ii. Executive Magistrate: | i. Sri Balabhadra Deep, OPS(I), JB SDPO Sadar Sundargarh ii. Sri Mohan Sahu, OAS (I) JB Tahasildar Hemgir Cum Executive Magistrate |
| 2. | Date of FIR, Name of PS with Case No. | Hemgir PS case no. 160 Dated 4.12.2018 Sec. 294/506 IPC R/W Sec3(1)(r)(s) SC & ST (POA) Act 2015 |
| 3. | Date of Inquiry | 12.12.2018 and on subsequent dates |
| 4. | Name and Address of victim and Father | Lambodhar Dandasena (40) S/o Late Chhala Dandasena (45) Vill. Bangurkela PS. Hemgir Dist. Sundargarh |
| 5. | Date and Place of Occurrence | 14.9.2018 at about 5.00 pm at vill. Bangurkela PS. Hemgir |
| 6. | By whom FIR was first lodged | Lambodhar Dandasena (40) S/o Late Chhala Dandasena (45) Vill. Bangurkela PS. Hemgir Dist. Sundargarh. Mob No. 8763112620 |

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| 7. | Community of the victim | ST " Bhuyan" by caste |
| 8. | By whom atrocity is committed along with father's name | Seshadev Patel (35) S/o Chakradhar Patel Vill. Kureumkel PS. Lefripada. Dist. Sundargarh |
| 9. | Nature of offence in brief extant of loss/ list of victim/ immediate relief, if any: i. Nature of Offence ii. Report in detail about the extent of atrocity; loss and damage to the property of victim iii. List of victim and their family members and dependants entitled for relief iv. Immediate relief provided to the victim | i. Accused abused the victim uttering obscene language and threatened with dire consequences in case he fails to pay him out of the compensation he has received from MCL. ii. No loss iii. Victim DharaniBagh iv. No immediate relief provided |
| 10. | Sub-Clause under Section 3 of the SC ST (POA) Act and other Acts that offence attracts | Sec 3(1)(r)(s) SC & ST (POA) Amendment Act 2015 |
| 11. | Date of Medical Examination and Opinion of Doctor | Not applicable |
| 12. | In case of Murder/ Death/Disability inaction: | Not applicable |
| 13. | Whether the victim earning/ non-earning member | Earning by cultivation |
| 14. | In case of fire, damage value of property: | Not applicable |
| 15. | Submission of charge-sheet with CS No. and date, if no (give reasons) | CS being submitted shortly awaiting Supervision of the case |
| 16. | Amount of relief recommended as per Rules 12(4) Annexure-1 of SCST (POA) Amendment Rules 2016and stages of payment percentage/amount as per JER with full clarity of victim's father or husband | Rs. 1,00000/-.(Rupee One Lakh only) Recommended for relief to the victim Dharani Bagh (member of SC category). |

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| 17. | Whether intensive police patrolling introduced in that area of occurrence | Yes |
| 18 | Whether, effective and necessary steps taken to provide protection of the witnesses and other sympathizers of the victim | Yes |
| 19. | Whether a report on the relief and rehabilitation facilities provide to the victim has been forwarded to the Special Court or Exclusive Special Court by the District Magistrate or the Sub-Divisional Magistrate or Superintendent of Police, as per Rules 12(7) of SCST (POA) Amendment Rules 2016 | Being Forwarded |
| 20. | Whether the information regarding the relief amount have been provided to the victims/ his dependents/ associated organisations and individuals, as per sec. 15(A)(11)(k) of the SCST(POA) Amendment Act 2015 | Yes |
| 21. | General Remarks of the Enquiring Officer | The victim Lambodhar Dandasena is Bhuyan by caste and belongs to ST category and the accused is Agharia by Caste under Non-SC/ ST Category. The accused abused the victim in obscene language aspersion his caste and threatened to kill him and his family members. |

Table – 19: Case Study – III

| Sl. No. | Particulars | Details |
|---------|--|---|
| 1. | Name and Designation of the Enquiry Officer with contact no. i. Asst. Commissioner of Police Sub-Divisional Officer/DSP: ii. Executive Magistrate: | i. Sri Balabhadra Deep, OPS(I), SDPO Sadar, Sundargarh ii. Sri Jogeswar Bhoi, OAS (I) JB Tahasildar, Sundargarh Cum Executive Magistrate, Sundargarh |

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| 2. | Date of FIR, Name of PS with Case No. | Dharuadihi PS case No. 23 Dated 11.4.2019 Sec. 341/323/294/34 IPC R/W Sec3 (1)(r)(s) SC/ ST (POA) Act 2015 (SR Case No. 49/2019) |
| 3. | Date of Inquiry | 6.2019 and on subsequent dates |
| 4. | Name and Address of victim and Father | 1. Ramakanta Pradhan (45) S/o Late Ananda Pradhan Vill. Amasaranga PS. Dharuadihi Dist. Sundargarh |
| 5. | Date and Place of Occurrence | 1.4.2019 at about 7 pm at vill. Amasaranga PS. Dharuadihi |
| 6. | By whom FIR was first lodged | Ramakanta Pradhan (45) S/o Late Ananda Pradhan Vill. Amasaranga PS. Dharuadihi Dist. Sundargarh Mob. 9556438920 |
| 7. | Community of the victim | ST " Bhuyan" by caste |
| 8. | By whom atrocity is committed along with father's name | Reportedly accused Haresh Pruseth (20) S/o Danardan Pruseth Vill. Amasaranga PS. Dharuadihi Dist. Sundargarh TELI by caste OBC category committed the offence on caste aspersion. |
| 9. | Nature of offence in brief extant of loss/ list of victim/ immediate relief, if any: i. Nature of Offence ii. Report in detail about the extent of atrocity; loss and damage to the property of victim iii. List of victim and their family members and dependants entitled for relief iv. Immediate relief provided to the victim | i. Reportedly Accused wrongfully restrained the complainant and assaulted and abused in filthy language the victim by uttering his caste. ii. No loss iii. Nill iv. No immediate relief provided |
| 10. | Sub-Clause under Section 3 of the SC ST (POA) Act and other Acts that offence attracts | The accused abused and threatened the victim on caste aspersion coming under |

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| | | Atrocity Act committed against the complainant. |
| 11. | Date of Medical Examination and Opinion of Doctor | Nil |
| 12. | In case of Murder/ Death/Disability inaction: | Not applicable |
| 13. | Whether the victim earning/ non-earning member | Earning by meagre cultivation |
| 14. | In case of fire, damage value of property: | Not applicable |
| 15. | Submission of charge-sheet with CS No. and date, if no (give reasons) | CS being submitted under Sec 341/323/294/506 IPC and Sec 3 (1)(r)(s)/3(2) (va) SC/ST POA Act against accused Haresh Pruseth (member of OBC community). |
| 16. | Amount of relief recommended as per Rules 12(4) Annexure-1 of SCST (POA) Amendment Rules 2016 and stages of payment percentage/amount as per JER with full clarity of victim's father or husband | Rs. 2,00000/- (Rupees Two Lakh) only recommended. |
| 17. | Whether intensive police patrolling introduced in that area of occurrence | Yes |
| 18. | Whether, effective and necessary steps taken to provide protection of the witnesses and other sympathizers of the victim | Yes |
| 19. | Whether a report on the relief and rehabilitation facilities provide to the victim has been forwarded to the Special Court or Exclusive Special Court by the District Magistrate or the Sub-Divisional Magistrate or Superintendent of Police, as per Rules 12(7) of SCST (POA) Amendment Rules 2016 | Being submitted |
| 20. | Whether the information regarding the relief amount have been provided to the victims/ his dependents/ | Yes |

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| | associated organisations and individuals, as per sec. 15(A)(11)(k) of the SCST(POA) Amendment Act 2015 | |
| 21. | General Remarks of the Enquiring Officer | During the enquiry the case is found to be true U/s 341/323/294/506 IPC Sec 3 (1)(r)(s)/3(2) (va) SC/ST PA Act against accused Haresh Pruseth (member of OBC community). No evidence came out against other FIR named accused Danardan Pruseth and Ukia Pruseth. |

Table – 20: Case Study – IV

| Sl. No. | Particulars | Details |
|---------|--|---|
| 1. | Name and Designation of the Enquiry Officer with contact no. i. Asst. Commissioner of Police Sub-Divisional Officer/DSP: ii. Executive Magistrate: | i. Sri P.K. Patra, OPS, SDPO, Birmitrapur, Dist. Sundargarh, Phone No.9437137571 ii. Sri Anshuman Dash,OAS, Tahasildar, Birmitrapur Dist. Sundargarh. Phone No. 9439100056 |
| 2. | Date of FIR, Name of PS with Case No. | Birmitrapur P.S Case No. 154 dt. 27.12.2018 U/s 341/294/323/506/34 IPC/3 (1)(r)(s)/3(2)(va) SC/ST (PA) Act 1989 (SR No. 284/2018). |
| 3. | Date of Inquiry | On 13.5.2019 |
| 4. | Name and Address of victim and Father | Ugri Sagar S/o Bihari Sagar At- Routia Pada PS. Birmitrapur Dist. Sundargarh. |
| 5. | Date and Place of Occurrence | On 20.12.2018 and on 27.12.2018 in front of Bhagirathi Jha Bettle shop and Mela ground Birmitrapur. |
| 6. | By whom FIR was first lodged | Complt. Ugri Sagar S/o Bihari Sagar At. Routia Pada PS. Birmitrapur Dist. Sundargarh. |
| 7. | Community of the victim | PAN (SC) |

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| 8. | By whom atrocity is committed along with father's name | Sri. Biki Gupta @ Agarwal S/o Muna Gupta @ Ashok Agarwal of Gol Bazar PS. Birmitrapur Dist. Sundargarh. Caste. General Category. |
| 9. | <p>Nature of offence in brief extant of loss/ list of victim/ immediate relief, if any:</p> <p>i. Nature of Offence</p> <p>ii. Report in detail about the extent of atrocity; loss and damage to the property of victim</p> <p>iii. List of victim and their family members and dependants entitled for relief</p> <p>iv. Immediate relief provided to the victim</p> | <p>On 20.12.2018 at about 10 PM he along with his friend arrived at Chaina Town Birmitrapur after completion of their duty at Bajaranga Plant. Complt Ugri Sagar while purchasing bettel in the bettel shop of Bhagirathi Jha, Raju Mallick was standing with his motor cycle in front of the shop on road. At that time accused Biki Gupta @ Agarwal S/o Muna Gupta @ Ashok Agarwal of Gol Bazar P.S Birmitrapur arrived there and without any discussion gave a push blow to complt and told (HATO). When Complt asked about his behavior accused abused him in the filthy language uttering and insulting his caste. Seeing this Raju Mallick intervened to separate accused but he assaulted to him. Again on 27.12.2018 at about 8 AM while complt was going to attend his duty on the way i.e at Mela ground near Jaganath temple Birmitrapur accused Biki abused him in the filthy language uttering and insulting his caste and threatened to withdraw the allegation made against him at Police Station.</p> <p>-</p> <p>-</p> <p>-</p> |
| 10. | Sub-Clause under Section 3 of the SC ST (POA) Act and other Acts that offence attracts | U/s 341/294/323/506 IPC/3(1)(r)(s)/3(2)(va) SC/ST (PA) Act |
| 11. | Date of Medical Examination and Opinion of Doctor | - |

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| 12. | In case of Murder/Death/Disability inaction: | - |
| 13. | Whether the victim earning/ non-earning member | Earning member. |
| 14. | In case of fire, damage value of property: | - |
| 15. | Submission of charge-sheet with CS No. and date, if no (give reasons) | CS will be submitted very soon U/s 341/294/323/506 IPC/3 (1)(r)(s)/3(2)(va) SC/ST (PA) Act against accused Biki Gupta @ Bikash Agarwal S/o Muna Gupta @ Ashok Agarwal of Gol Bazar, Birmitrapur P.S Birmitrapur Dist. Sundargarh. |
| 16. | Amount of relief recommended as per Rules 12(4) Annexure-1 of SCST (POA) Amendment Rules 2016 and stages of payment percentage/amount as per JER with full clarity of victim's father or husband | Recommended monetary compensation Rs. 2 Lakh (Rupees Two Lakh only) may be given to victim/Complt Ugri Sagar S/o Bihari Sagar At- Routia Pada PS. Birmitrapur Dist. Sundargarh. |
| 17. | Whether intensive police patrolling introduced in that area of occurrence | Yes |
| 18. | Whether, effective and necessary steps taken to provide protection of the witnesses and other sympathizers of the victim | Yes |
| 19. | Whether a report on the relief and rehabilitation facilities provide to the victim has been forwarded to the Special Court or Exclusive Special Court by the District Magistrate or the Sub-Divisional Magistrate or Superintendent of Police, as per Rules 12(7) of SCST (POA) Amendment Rules 2016 | - |
| 20. | Whether the information regarding the relief amount have been provided to the victims/ his dependents/ associated organisations and individuals, as per sec. 15(A)(11)(k) | Not received yet |

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| | of the SCST(POA) Amendment Act 2015 | |
| 21. | General Remarks of the Enquiring Officer | There is sufficient evidence U/s 341/294/323/506 IPC/3(1)(r)(s)/ 3(2)(va) SC/ST (PA) Act against accused Biki Gupta @ Bikash Agarwal S/o Muna Gupta @ Ashok Agarwal of Gol Bazar, Birmitrapur PS. Birmitrapur Dist. Sundargarh |

Table – 21: Case Study – V

| Sl. No. | Particulars | Details |
|---------|--|--|
| 1. | Name and Designation of the Enquiry Officer with contact no. i. Asst. Commissioner of Police Sub-Divisional Officer/DSP: ii. Executive Magistrate: | I. Sri P.K. Mishra, OPS, Dy. S.P, Zone-III. Rourkela. ii. Sri Biswaranjan Ratha, OAS-1, S.B. Tahasildar, Rourkela & Executive Magistrate. |
| 2. | Date of FIR, Name of PS with Case No. | Uditnagar P.S. Case No. 37 dt. 25.02.2017 U/s 341/294/323/34 IPC/3(1)(r)(s)(2)(Va) SC & ST (POA) Act-2015 (SR No. 12/2017) |
| 3. | Date of Inquiry | Dt. 20.02.2019 |
| 4. | Name and Address of victim and Father | Santosh Oram (30), S/o Fagua Oram of Vill - Nuagaon, PO/PS - Lathikata, Dist-Sundargarh Ph- 9937440928 |
| 5. | Date and Place of Occurrence | Dt. 25.02.2017 at 12:30 P.M. Uditnagar Parade Ground, Uditnagar, Rourkela |
| 6. | By whom FIR was first lodged | Santosh Oram (30), S/o Fagua Oram of Vill- Nuagaon, PO/PS- Lathikata, Dist-Sundargarh Ph- 9937440928 |
| 7. | Community of the victim | Caste - Schedule Tribe Sub Caste - Oraon |
| 8. | By whom atrocity is committed along with father's name | (1) Samir Narayan Mohanty (30), S/o - Late Rabindra Lal Mohanty of Qts. No. BM-42, Basanti colony, PS- Uditnagar, Rourkela. Caste - General, Sub-Caste - |

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| | | <p>Karan (2) Pritish Kumar Nayak, S/o- Pramod Kumar Nayak of Vill- Aragal Sasan, PS- Aul, Dist- Kendrapara, A/P- LCR- 113, Chhend, PS- Chhend, Dist- Sundargarh Caste - S.E.B.C, Sub-Caste- Khandayat (3) Sunny Talwar (31) S/o- Vinod Talwar Bisra Dahar road, Near Saraswati Vidya Mandir, Rourkela, PS- Uditnagar, Rourkela, Dist- Sundargarh. Caste- General, Sub-Caste- Khatriya</p> |
| 9. | <p>Nature of offence in brief extant of loss/ list of victim/ immediate relief, if any:</p> <p>i. Nature of Offence</p> | <p>Point wise as follows</p> <p>On dt. 25.02.2017 Complt. Santosh Oram (30) S/o- Fagu Oram of Nuagaon. PS- Lathikata, Dist- Sundargarh had come to Uditnagar for personal work. After completing the work he had to return Lathikata. Before availing the Bus to Lathikata he wanted to have some telephonic conversation. Hence at about 01.00 P.M. he had gone to Uditnagar Parade Ground and sat on the dais and was involved in Telephonic conversation. On the same day the marriage procession of one Subodh Kumar Sahu of Uditnagar was to commence from Uditnagar chowk. The three accused persons namely Samir Narayan Mohanty, Pritish Nayak and Sunny Talwar being invited in the procession wanted to take liquor and went to Uditnagar Parade Ground by Bullet No. OD-14G-3313. The above three accused persons were under the influence of alcohol. Finding the complt. sitting on the dais they felt awkward to consume liquor in presence of the complt. and wanted to vacate him from the place but the complt. did not listen to them. Hence they came to him and abused him in slang languages "Maghiya, Madarchod, Lauda Adivasi" and when he asked them why they are using such slang language on him without any reason further they abused " Tu Kya Kar Lega Be Madarchod</p> |

| | | |
|-----|---|--|
| | <p>ii. Report in detail about the extent of atrocity; loss and damage to the property of victim</p> <p>iii. List of victim and their family members and dependants entitled for relief</p> <p>iv. Immediate relief provided to the victim</p> | <p>Adivasi" and pushed him. While he was noting the number of the bullet motorcycle, they came near him and further abused saying " Bike Number Kyun Le Raha Be Madarchod And Also Told " Kisko Bolna Hai Bol Be Madarchod Adivasi Ham Log Kisiko Nahi Darte". Hence he informed his nears and dears over phone and after discussing the matter with them went to Uditnagar P.S. to report the matter at P.S. During submission of report the names of the accused persons was not known to the Complt. but he could give the registration number of the Bullet used by the accused persons. During investigation the name of the accused persons could be ascertained.</p> <p>ii. The victim was manhandled and abused in filthy language in public place by aspersing his caste.</p> <p>iii. Only victim is entitled for relief</p> <p>iv. The victim was not provided immediate relief as the caste of the victim and accused persons were ascertained in late.</p> |
| 10. | Sub-Clause under Section 3 of the SC ST (POA) Act and other Acts that offence attracts | 3(1)(r)(s)(2)(Va) SC & ST (POA) Act-2015. |
| 11. | Date of Medical Examination and Opinion of Doctor | Dt. 26.02.2017. Dr. Durga Ch. Majhi, MO, RGH, Rourkela who examined the Complt. Santosh Oram found no external injury and opined accordingly. |
| 12. | In case of Murder/Death/Disability inaction: | NIL |
| 13. | Whether the victim earning/ non-earning member | Unemployed |
| 14. | In case of fire, damage value of property: | NIL |

| | | |
|-----|--|---|
| 15. | Submission of charge-sheet with CS No. and date, if no (give reasons) | Investigation is continuing |
| 16. | Amount of relief recommended as per Rules 12(4) Annexure-1 of SCST (POA) Amendment Rules 2016 and stages of payment percentage/amount as per JER with full clarity of victim's father or husband | Rs. 1,00,000/- (One Lakh) to be sanctioned in favour of the victim out of which 25% to be sanctioned on conviction by the Hon'ble trial court. |
| 17. | Whether intensive police patrolling introduced in that area of occurrence | Yes |
| 18. | Whether, effective and necessary steps taken to provide protection of the witnesses and other sympathizers of the victim | Yes |
| 19. | Whether a report on the relief and rehabilitation facilities provide to the victim has been forwarded to the Special Court or Exclusive Special Court by the District Magistrate or the Sub-Divisional Magistrate or Superintendent of Police, as per Rules 12(7) of SCST (POA) Amendment Rules 2016 | Process of sanction of relief is on. |
| 20. | Whether the information regarding the relief amount have been provided to the victims/ his dependents/ associated organisations and individuals, as per sec. 15(A)(11)(k) of the SCST(POA) Amendment Act 2015 | Yes |
| 21. | General Remarks of the Enquiring Officer | During joint enquiry it is proved that on 25.02.2017 at about 1:00 P.M. the complt. Santosh Oram was manhandled by 03 accused persons namely Samir Narayan Mohanty, Pritish Nayak and Sunny Talwar at Uditnagar Parade Ground and abused in filthy languages by aspersing his caste without any reason. During the enquiry the Complt. Victim was found to be Oraon by caste which come under ST category and the accused |

| | | |
|--|--|--|
| | | persons were found to be General Caste. The Complt. was subjected to atrocity by the accused persons knowing that he belongs to a member of ST. During investigation the case was found to be true u/s 341/294/323/34 IPC/3(1)(r)(s)(2)(Va) SC & ST (POA) Act-2015. Hence the Complt./victim is entitled to get financial compensation/relief as envisaged under SC/ST (POA) Act/Rule. |
|--|--|--|

INFORMATION REQUIRED DURING SUBMISSION OF PROPOSAL FOR RELEASE OF MONETARY RELIEF TO SC & ST ATROCITY VICTIMS

Table – 22: Information required for release of monetary relief

| Sl. No. | Name & Case Details | Section under IPC & (PoA) SC/ST Act | Name of the offence | Amount recommended by JER | Proposed amount for Sanction (Min. amount of relief) | | | Remarks (if any) |
|---------|---|---|---|---------------------------|--|-----------------------|-----------------------|------------------|
| | | | | | 1 st Stage | 2 nd Stage | 3 rd Stage | |
| 01 | Dharani Bagh Hemgir PS Case No.157 Dt. 29.11.2018 | Sec. 294/323/307/506 IPC R/W Sec3(1)(r)(s) SC/ST POA Act-2015 | Accused assaulted the victim by lathi on his head causing grievous bleeding injuries. | Rs.1,00,000/- | 25 % = Rs. 25,000/- | | | |
| 02 | Jaya Chandra Tandia Sadar PS | U/S 34/323/294/34 IPC/3(1)(s)/3(2)(Va) SC/ST POA Act | Abused in obscene language | Rs.1,00,000/- | | | | |

| | | | | | | | | |
|--------|---|---|---|--|---|--|--|--|
| | Case No. 21 Dt.09.02. 2018 | | e outrage the modesty of the victim's wife, threaten ed and assaulte d the victim on his leg and waist by bamboo stick. | | 25%= Rs. 25,000/- | | | |
| 0 3 | 1.Tulsi Sabar 2. Aruna Dandase na. Lephripa ra PS Case No. 135 Dt.08.09. 2018 | U/S 363 IPC turned to Sec 363/370(5)/34 IPC/Sec 3(2)(v) SC/ST POA Act | Child trafficki ng | 1. Rs.4,00,0 00/- 2. Rs.4,00,0 00/- | 1. 25% = Rs.1,00, 000/- 2. 25%= Rs. 1,00,000 /- | | | |
| 0 4 | Rajani Behera Birimtrap ur PS Case No. 28 Dt. 25.02.20 18 | U/S 354A IPC/3(1)(W)(i) SC/ST POA Amendment Act 2015 | Twisted the victim's ear and extende d his hand over the victim's chest | Rs.2,00,0 00/- | 25%= Rs.50,00 0/- | | | |
| 0 5 | Neha@ Megha Gardia Sadar PS | Sec 376(2)(n)IPC/6 of POCSO Act 2012 R/W Sec 3(2)(v) SC/ST | Penetrat ive sexual assault | Rs.5,00,0 00/- | 25% = Rs. | | | |

| | | | | | | | | |
|----|--|--|---|---------------|---------------------|--|--|--|
| | Case No. 18 Dt. 02.02.2019 | POA Amendment Act 2015 | by promising marriage and made her pregnant of 4 months | | 1,25,000/- | | | |
| 06 | Ramesh Kumar Bag Rajgangpur PS Case No. 33 Dt. 09.02.2018 | U/S 341/323/294/506/452/34 IPC R/W Sec 3(2)(va) SC/ST POA Act, 1989 | Abused obscene language, slapped and threatened the victim | Rs.2,00,000/- | 25%=Rs. 50,000/- | | | |
| 07 | Lambodhar Dandase na Hemgir PS case No. 160 Dt. 04.12.2018 | Sec.294/506 IPC R/W Sec 3(1)(r)(s) SC/ST POA Act 2015 | Abused in obscene language and threatened him | Rs.1,00,000/- | 25%=Rs. 25,000/- | | | |
| 08 | Maheswari Pradhan Talsara PS Case No. 68 Dt. 25.04.2019 | Sec. 363/376(3)/34 IPC/Sec.6 of POCSO Act/Sec 3(2)(v) SC/ST POA Act 2015 | Kidnapped and committed penetrative sexual assault repeatedly | Rs.5,00,000/- | 25%=Rs . 1,25,000/- | | | |
| 09 | Ramakantha Pradhan | Sec 341/323/294/34 IPC R/W Sec | Wrongfully restrained | | | | | |

| | | | | | | | | |
|---------|---|--|--|-------------------|-------------------------|--|--|--|
| | Dharuadi hi PS Case No. 23 Dt.11.04. 2019 | 3(1)(r)(s) SC/ST POA Act 2015 | d, assaulte d and abused the victim in filthy languag e by uttering his case | Rs.2,00,0 00/- | 25%=Rs .50,000/- | | | |
| 1 0 | Ugri Sagar Birimtrap ur PS Case No. 154 Dt. 27.12.20 18 | U/S 341/294/323/506/3 4 IPC/3(2)(r)(s)/3(2)(va) SC/ST POA Act 1989 | Assaulte d, abused, insulted and threaten ed the victim | Rs.2,00,0 00/- | 25%= Rs. 50,000/- | | | |
| 1 1. | Biraj Majhi Rajgangp ur PS Case No.14 Dt. 21.01.20 15 | U/S 341/355 IPC/3(1)(x)SC/ST POA Act | The accused Jayasmit a Sa, class teacher of the victim brought one scissor and cut some portion of their hair and slapped him | Rs.1,00,0 00/- | 25%=Rs .25,000/- | | | |
| 1 2 | Amisha Hemrom Rajgangp ur PS Case No. | U/S 341/354(D)/323/50 6 IPC/8 POCSO Act/3(1)(w)2(va) SC/ST POA | Manhan dled, assaulte d and threaten | Rs.2,00,0 00/- | 25%=Rs .50,000/- | | | |

| | | | | | | | | |
|--------|--|--|--|-------------------|-------------------------|--|--|--|
| | 81 Dt. 19.03.20 19 | Amendment Act 2015 | ed the victim | | | | | |
| 1 3 | Simai Jagat Bargaon PS Case No.58 Dt.08.04. 2019 | U/S 341/342/323/294/5 06/34 IPC/3(1)(r)(s)(va) SC/ST Amendment Act 2015 | Abused, aspersio n on his caste, threaten ed and assaulte d the victim by fists blow and kicks at Tudalag a Bus stand | Rs.2,00,0 00/- | 25%= Rs. 50,000/- | | | |
| 1 4 | Chandra mani Majhi Rajgangp ur PS Case No.139 Dt. 12.05.20 19 | U/S 341/323/294/506/3 4 IPC/3(2)(va) SC/ST POA Act | Abused in obscene languag e, assaulte d him and threaten ed the victim | Rs.2,00,0 00/- | 25%= Rs. 50,000/- | | | |
| 1 5 | Santosh Oram Uditnaga r PS Case No.37 Dt.25.02. 2017 | U/S 341/294/323/34 IPC/3(1)(r)(s)(2)(v a) SC/ST POA Act, 2015 | Abused the victim by aspiring his caste and pushed him | Rs.1,00,0 00/- | 25%=Rs .25,000/- | | | |

| | | | | | | | | |
|--------|--|--|--|--|--|--|--|--|
| 1 6 | 1.Manual Joja 2. Sumanti Joja Hatibari PS Case No.22/ Dt.01.04. 2019 | U/S 341/294/323/354/5 06/34 IPC/3(1)(w)(i)(ii)(s)3(2)(va) SC/ST POA Act 1989 | Detaine d the victim no.1, abused in filthy languag e, assaulte d | 1.Rs.1,00, 000/- 2.Rs.1,00, 000/- | 1. 25%= Rs.25,00 0/- 2. 25%= Rs.25,00 0/- | | | |
| | | Total | | Rs.39,00, 000/- | Rs.9,75, 000/- | | | |

OBSERVATIONS

From the aforementioned case studies especially the joint enquiry report and the payment of compensation is made to the victims of atrocities in the district of Sundargarh and also in the other other sample districts annexed hereto as Annexure – I, the following observations can be made:

1. The inquiry is conducted as prescribed by the SC & ST (POA) Act
2. The performa is prepared citing all the mandatory requirements prescribed by the SC & ST (POA) Rules 2018
3. The process of rehabilitation is followed as prescribed in Annexure I of the SC & ST (POA) Rules 2018.
4. Out of the aforementioned performas, only in Case Study no. 3 and 4, the charge-sheet is submitted whereas the rest three cases the charge sheet is not submitted despite lapse of 8 months of enquiry and no reason is cited for non-submission of charge-sheet in Column No. 15 of every Performa.

Chapter – 4

POCSO ACT IN THE CONTEXT OF SCHEDULED TRIBES

Child Sexual Abuse (CSA) is a form of child abuse. Child Sexual Abuse happens when a person uses a child for his/her sexual gratification. Child Sexual Abuse is mostly committed by someone who is in a position of power and/or authority, and sometimes, even in a position of trust. The very nature of abuse implies a relationship, and thus it is much easier for such a person to take advantage of the child's helplessness and vulnerability. CSA may be physical, visual or verbal in nature. Child Sexual Abuse is a violation of the child's body as well as of the child's trust and is against the law.

The World Health Organization (WHO) defines Child Sexual Abuse (CSA) as “*the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society...*”⁸⁶.

Child sexual offences is an ongoing trend throughout the world. Different Nations have framed legal measures to protect children from sexual offences. In India, The Protection of Children from Sexual Offences (POCSO) Act, 2012 was enacted to provide a robust legal framework for the protection of children from offences of sexual assault, sexual harassment and pornography, while safeguarding the interest of the child at every stage of the judicial process.

There were some legal arrangements in India to protect children from child abuse before the POCSO was enacted. For example, the Goa Children's Act, 2003, was the only specific piece of child abuse legislation before the POCSO 2012 Act. Child sexual abuse was prosecuted under the following sections of Indian Penal Code:

- I.P.C. (1860) 375- Rape
- I.P.C. (1860) 354- Outraging the modesty of a woman
- I.P.C. (1860) 377- Unnatural offences

However, the IPC could not effectively protect the child due to various loopholes like:

- IPC 375 doesn't protect male victims or anyone from sexual acts of penetration other than "traditional" peno-vaginal intercourse.
- IPC 354 lacks a statutory definition of "modesty". It carries a weak penalty and is a compoundable offence. Further, it does not protect the "modesty" of a male child.
- In IPC 377, the term "unnatural offences" is not defined. It only applies to victims penetrated by their attacker's sex act, and is not designed to criminalize sexual abuse of children.

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT 2012

The very inadequacy of Indian Penal Code and absence of any stringent legislation for effectively addressing and tackling heinous crimes such as sexual exploitation and sexual abuse of children birthed the commencement of POCSO ACT as the very intention of Government establishments was to protect

⁸⁶ World Health Organisation. Report of the consultation on child abuse prevention (WHO/HSC/PVI/99.1). Geneva (Switzerland): World Health Organisation, 1999. [[Google Scholar](#)]

the children from offences of sexual assault, sexual harassment and pornography and to facilitate adequate legal machinery by establishing special courts for trial of such offences and matters incidental connected with child sexual abuse crimes. This was in due compliance of Article 15 of Constitution of India which mandates the states to protect the children of this nation and in lieu of United Nations Conventions on the Rights of the Child which prescribes the set of standards to be followed by state parties in securing the best interest of the child.

Though this legislation is general in nature and applies to everyone irrespective of their caste, creed, gender, religion etc. but forms an important part of this project as it punishes the offenders committing crimes against the children in tribal areas.

Overview of The Act

To deal with child sexual abuse cases, the Government has brought in a special law, namely, The Protection of Children from Sexual Offences (POCSO) Act, 2012. The Act has come into force with effect from 14th November, 2012 along with the Rules framed thereunder.

The POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

The said Act defines a child as any person below eighteen years of age, and defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis the child, like a family member, police officer, teacher, or doctor. People who traffick children for sexual purposes are also punishable under the provisions relating to abetment in the said Act. The said Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.

In keeping with the best international child protection standards, the said Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months’ imprisonment and/ or a fine.

The said Act also casts the police in the role of child protectors during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child.

The said Act makes provisions for the medical examination of the child in a manner designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of a female child, by a female doctor.

The said Act provides for Special Courts that conduct the trial in-camera and without revealing the identity of the child, in a child-friendly manner. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator,

or other professional while giving evidence; further, the child is not to be called repeatedly to testify in court and may testify through video-link rather than in a courtroom. Above all, the said Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported. It also provides for the Special Court to determine the amount of compensation to be paid to a child who has been sexually abused, so that this money can then be used for the child's medical treatment and rehabilitation.

The said Act recognises almost every known form of sexual abuse against children as punishable offences, and makes the different agencies of the State, such as the police, judiciary and child protection machinery, collaborators in securing justice for a sexually abused child. Further, by providing for a child-friendly judicial process, the said Act encourages children who have been victims of sexual abuse to report the offence and seek redress for their suffering, as well as to obtain assistance in overcoming their trauma. In time, the said Act will provide a means not only to report and punish those who abuse and exploit the innocence of children, but also prove an effective deterrent in curbing the occurrence of these offences.

The said Act is to be implemented with the active participation of the State Governments. Under Section 39 of the said Act, the State Government is required to frame guidelines for the use of persons including non-governmental organisations, professionals and experts or persons trained in and having knowledge of psychology, social work, physical health, mental health and child development to assist the child at the trial and pre-trial stage.

Important Provisions of the Act

- POCSO Act defines child as any person below 18 years of age,⁸⁷
- There are five types of sexual offences against children under POCSO Act. These are: penetrative sexual assault; aggravated penetrative sexual assault; sexual assault; aggravated sexual assault; and sexual harassment,⁸⁸
- Abetment of an offence or an attempt to commit an offence is also punishable under the Act,⁸⁹
- Using a child for pornographic purposes such as representation of the sexual organ of a child, usage of a child engaged in real or stimulated sexual acts, the indecent or obscene representation of a child is an offence under POCSO Act and is punishable,⁹⁰
- A Special Court is a court to be set up under section 28 of the POCSO Act for providing speedy trial and to try the case in a child friendly atmosphere.⁹¹
- The Special Court shall complete the trial within a period of one year from the date of taking cognizance of the offence.⁹²

⁸⁷ Section 2 of POCSO Act, 2012

⁸⁸ Sections 3, 5, 7, 9 & 11 of POCSO Act, 2012

⁸⁹ Section 16 of POCSO Act, 2012

⁹⁰ Section 13 of POCSO Act, 2012

⁹¹ Section 28 of POCSO Act, 2012

⁹² Section 35 of POCSO Act, 2012

The Sexual Offences Recognized under the Act and Punishments

Penetrative and aggravated penetrative sexual assault, sexual and aggravated sexual assault, sexual harassment, and using a child for pornographic purposes are the five offences against children that are covered by this act. This act envisages punishing even abetment or an attempt to commit the offences defined in the act. It recognizes that the intent to commit an offence, even when unsuccessful needs to be penalized. The punishment for the attempt to commit is up to half the punishment prescribed for the commission of the offence

Table -23: Offences recognised under the Act and level of punishment

| Sl. No. | Offences | Punishment sections under POCSO | Imprisonment for a term which shall not be less than | Which may extend to |
|---------|---------------------------------------|---------------------------------|--|-----------------------|
| 1. | Aggravated Penetrative Sexual Assault | Section 4 | 7 | Imprisonment for life |
| 2. | Aggravated Penetrative Sexual Assault | Section 6 | 10 | Imprisonment for life |
| 3. | Sexual Assault | Section 8 | 3 | 5 years |
| 4. | Aggravated Sexual Assault | Section 10 | 5 | 7 years |
| 5. | Sexual Harassment | Section 12 | | 3 years |

Note

- All the above offences shall be punished with imprisonment for either description but aggregative penetrative sexual assault shall be punished with rigorous imprisonment.
- Imprisonment for life is always rigorous imprisonment.
- All the above offences shall also be liable to fine.

Penetrative Sexual Assault (Section 3)

A person is said to commit "penetrative sexual assault" if—

- he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or
- he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

Sexual Assault (Section 7)

Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault

Sexual Harassment of the Child (Section 11)

11. A person is said to commit sexual harassment upon a child when such person with sexual intent, —
- i. utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
 - ii. makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
 - iii. shows any object to a child in any form or media for pornographic purposes; or
 - iv. repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
 - v. threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
 - vi. entices a child for pornographic purposes or gives gratification there for.

Explanation.— Any question which involves "sexual intent" shall be a question of fact.

Use of Child for Pornographic Purposes (Section 13)

13. Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—

- i. representation of the sexual organs of a child;
- ii. usage of a child engaged in real or simulated sexual acts (with or without penetration);
- iii. the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes.

Explanation:— For the purposes of this section, the expression "use a child" shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.

Procedure for Reporting of Cases Under the Act

- Reporting of offence to the SJPU or the local police⁹³

⁹³ Section 19 of POCSO Act, 2012

- In case, child is in need of care and protection, SJPU/ local police to provide such care within 24 hours of the report⁹⁴
- SJPU/ local police to report the matter to CWC and Special Court within 24 hours⁹⁵
- Obligation of media, studio and photographic facilities report cases to SJPU/ local police⁹⁶
- Failure to report commission of offence punishable with imprisonment of six months or with fine or both⁹⁷
- Failure to record an offence also punishable with imprisonment of six months or with fine or both⁹⁸
- Failure to report by a person, who is in charge of any company or an institution, in respect of offence committed by subordinate under his control, also punishable with imprisonment of one year and fine⁹⁹
- Failure to report not punishable in case of a child¹⁰⁰
- False complaint against any person with malicious intent punishable with imprisonment of 6 months or with fine or both¹⁰¹
- False complaint against child, punishable with imprisonment of one year or with fine or with both¹⁰²
- No civil or criminal liability for giving information in good faith¹⁰³
- Media not to disclose the identity of the child, except when permitted by the Special Court¹⁰⁴
- Identity includes: name, address, photograph, family details, school, neighborhood or any other particulars which may lead to disclosure of identity of the child
- Punishment in case of contravention is imprisonment for not less than 6 months which may extend to one year

MEDICAL EXAMINATION UNDER SECTION 27 OF POCSO ACT

As per section 164A of CrPC:

In case of girl child, medical examination by lady doctor

Medical examination in the presence of parents

In case parent of the child cannot be present, medical examination to be conducted in the presence of a woman nominated by the head of the medical institution

Section-164 A of Cr.P.C.- Medical examination of the victim of rape.

⁹⁴ Section 19(5) of POCSO Act, 2012

⁹⁵ Section 19(6) of POCSO Act, 2012

⁹⁶ Section 20) of POCSO Act, 2012

⁹⁷ Section 21(1) of POCSO Act, 2012

⁹⁸ Section 21(1) of POCSO Act, 2012

⁹⁹ Section 21(2) of POCSO Act, 2012

¹⁰⁰ Section 21(3) of POCSO Act, 2012

¹⁰¹ Section 22(1) of POCSO Act, 2012

¹⁰² Section 22(3) of POCSO Act, 2012

¹⁰³ Section 19(7) of POCSO Act, 2012

¹⁰⁴ Section 23 of POCSO Act, 2012

The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of his examination giving the following particulars, namely:-

- i. the name and address of the woman and of the person by whom she was brought;
- ii. the age of the woman;
- iii. the description of material taken from the person of the woman for DNA profiling;
- iv. marks of injury, if any, on the person of the woman;
- v. general mental condition of the woman; and
- vi. other material particulars in reasonable detail..
- vii. The report shall state precisely the reasons for each conclusion arrived at.
- viii. The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.
- ix. The exact time of commencement and completion of the examination shall also be noted in the report.
- x. The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section

INTRODUCTION OF DEATH PENALTY

While introducing the The Protection of Children from Sexual Offences (Amendment) Bill, 2019¹⁰⁵ in the Lok Sabha, it was noted in the statement and object of the Bill that

“in the recent past incidences of child sexual abuse cases demonstrating the inhumane mind-set of the abusers who have been barbaric in their approach towards young victims is rising in the country. Children are becoming easy prey because of their tender age, physical vulnerabilities and inexperience of life and society. The unequal balance of power leading to the gruesome act may also detriment the mind of the child to believe that might is right and reported studies establish that children who have been victims of sexual violence in their childhood become more abusive later in their life. The report of the National Crime Records Bureau for the year 2016 indicate increase in the number of cases registered under the said Act from 44.7 per cent. in 2013 over 2012 and 178.6 per cent. in 2014 over 2013 and no decline in the number of cases thereafter.”¹⁰⁶

Be that as it may, the Supreme Court, in the matter of ***Machhi Singh vs. State of Punjab***¹⁰⁷, held that when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so in rarest of rare cases when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The same analogy has been reiterated by the Supreme Court in the matter of ***Devender Pal Singh vs. State (NCT of Delhi)***¹⁰⁸

¹⁰⁵ The Protection of Children from Sexual Offences (Amendment) Bill, 2019, Bill No. 1 of 2019 as introduced in Lok Sabha. Available at: http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/1_2019_LS_Eng.pdf.

¹⁰⁶ Ibid at ‘Statement of Objects and Reasons’.

¹⁰⁷ *Machhi Singh vs. State of Punjab* [1983 (3) SCC 470]

¹⁰⁸ *Devender Pal Singh vs. State (NCT of Delhi)* [AIR 2002 SC 1661]

wherein it was held that when the collective conscience of the community is so shocked, the court must award death sentence.

In the above backdrop, a strong need was stated and sought to take stringent measures to deter the rising trend of child sex abuse in the country, the proposed amendments to the said Act make provisions for enhancement of punishments for various offences. Hence, Section 6 of the Principal Act was substituted introducing 'death penalty' with new section vide Clause 4 of the Bill ,2019 which reads as follows:

“Sec. 6.(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.”¹⁰⁹

PROVISION FOR SPECIAL COURTS

- The POCSO Act provided provisions and guidelines for the establishment of Special Courts for speedy trial of cases exclusively related to sexual offences against children.
- The Special Courts or child-friendly courts as they are called, have been created keeping in mind the best interests of the children. A Special Court is a court to be set up under section 28 of the POCSO Act and Special Courts are vested with special powers to decide only cases under the POCSO Act.
- To try the offences under POCSO Act, the State Government shall in consultation with the Chief Justice of the High Court designate for each district a Court of Session to be a Special Court. Further if a court of session is notified as a children's court under commission of protection of child right act or
- Special court designated for similar purposes under any other law such court shall be deemed to be a special court
- May take cognizance of any offence, without accuse being committed to it for trial, without the accuse being to it for trial upon receiving a complain of facts which constitute such offence or upon a police report of such fact. (sec-33(1))
- Section 32 of the POCSO Act says that the State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases under the Act.
- He shall be deemed to be a public servant and he had been in practice for not less than 7-years as an advocate

Measures to be taken by Special Court during trial

- The identity of the child should not be disclosed.
- Frequent breaks during trial should be permitted to the child
- Create a child-friendly atmosphere by allowing a family member or any person the child trust to be present
- Ensure that the child is not summoned to testify time and again

¹⁰⁹ Section 6 – Punishment for aggravated penetrative sexual assault. (Amended provision of the Act)

- Ensure that the dignity of the child is maintained by disallowing aggressive questioning or character assassination of the child.
- Ensure that the child victims should not be brought through the common corridor and from the same entrance as the abuser into the Courtroom which undermines the dignity of the child victim
- Ensure the identity of the child is not disclosed during the investigation or trial As far as possible, ensure that the trial is completed within one year from the date of taking cognizance of the offence.
- The trial at the Special Court must be conducted in-camera and in the presence of the child's parents or any other person of the child's choice.
- During the course of the trial, all questions that the Special Public Prosecutor or the counsel for the accused, have for the child should be communicated to the Special Court, who in turn will put the questions to the child.
- Under Section 35 of the Act, the evidence of the child should be recorded within a period of thirty days of the Special Court taking cognizance of the offence. Any reasons for delay in doing so, should be recorded.
- The Special Court should ensure that the child is not exposed to the accused, and arrange for the accused to hear the child's statement and communicate with his lawyer. This is typically done by recording the evidence through video-conferencing or by using single visibility mirrors or curtains.
- While recording the evidence of a child with mental or physical disability, the assistance of a qualified special educator or a person familiar with the manner of communication of the child or an expert in that field, can be sought as stated in Section 26 of the Act.

Though the Act has envisaged the provision for compensation of victims under the Act but there were no such fixed parameter/scale of award. Hence, it was at the discretion of the courts or were forwarded to the District Legal Service Authority wherein the compensation is disbursed as per victim compensation fund. Due to this ambiguity, the courts have faced dilemma. Below mentioned are few important judgments wherein compensation to the victim under the Act is discussed in details.

The Hon'ble Supreme Court in the case of *Ankush Shivaji Gaikwad v. State of Maharashtra* AIR 2013 SC 2454 held that

"...unless Section 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision."

"...compensation is not ancillary to other sentences but is in addition to other sentences."

In Re: Indian Woman says gang-raped on orders of Village Court published in Business & Financial News dated 23.01.2014 (2014) 4 SCC 786, the Hon'ble Supreme Court held that

"There is a statutory duty upon the State, under Section 357A of CrPC, to award compensation to victims of crime. A new Section 357A was introduced to the Criminal Procedure Code in order to cast a responsibility on the State Governments to formulate Schemes for compensation to the victims of crime in coordination with the Central Government. Unlike Section 357, the

onus was not simply on the offender to pay the compensation, but had been put on the District Legal Service Authority or State Legal Service Authority to determine the quantum of compensation in each case.”

It is noteworthy to mention that the Supreme Court in the case of *Suresh & Anr. v. State of Haryana* (Crl) No. 420 of 2012 held that:

“The object and purpose of the provision of Section 357A CrPC is to enable the Court to direct the State to pay compensation to the victim where the compensation under Section 357 was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated.”

Due to the prevailing ambiguity in providing assistance to the victims wherein the courts faced dilemma for ordering compensation from relevant authority, the Central Government enacted the POCSO Rules, 2020. Following are the heads under which the Pocso Rules, 2020 have been laid down are as follows:

- Awareness generation and capacity building
- Procedure regarding care and protection of child
- Interpreters, translators, special educators, experts and support persons
- Medical aid and care
- Legal aid and assistance
- Special relief
- Compensation
- Procedure for imposition of fine and payment thereof
- Reporting of pornographic material involving a child
- Monitoring of implementation of the Act

Protection of Children from Sexual Offences Rules, 2012 are hereby repealed, except as respects things done or omitted to be done before such repeal.

IMPLEMENTATION OF POCSO ACT IN ODISHA

Although there was a dilemma in national level for making payment of compensation to the victims under the Act which was only clear after enactment of POCSO Rules, 2020. The Odisha Victim Compensation Scheme was enacted by the Govt. of Odisha since 2012 and is amended time and again in order to provide adequate compensation to the victims. Apart from enactment of victim compensation scheme, the courts entrusted with the powers of Special Courts under the provisions of this Act have rightfully exercised their judicial power to punish the offenders under the provisions of POCSO Act. In Odisha, in exercise of the powers conferred by sub-section (1) of Section 28 of the POCSO Act, the State Government in consultation with the Chief Justice of High Court of Orissa, designated 24 special courts in the Court of Sessions to be special Court to try the offences under the said Act which have been established vide notification No. 9816 dated the 20th September, 2019 of the Government of Odisha in Law Department published in the Extraordinary issue of the Odisha Gazette bearing No. 1807, dated the 21st September, 2019.¹¹⁰

¹¹⁰ Odisha Gazette bearing No. 1807, dated the 21st September, 2019, available at: <http://govtpress.odisha.gov.in/pdf/2019/1826.pdf>

This section of the chapter analyses the victim compensation fund enacted by Odisha and few cases wherein the POCSO Court has rightly exercised their power. It is pertinent to mention herein that case studies below provide a glimpse of the response of judiciary in dealing with POCSO cases in Sample Districts. Apart from the cases analyzed from sample district, this section also lists few cases from Odisha other than sample district wherein capital punishment is ordered by POCSO court.

Apart from the cases analyzed in this section below, the details of the compensation provided to victims under POCSO Act in the sample districts is attached hereto as **Annexure – II (Colly)**.

Table – 24: Details of the cases under POCSO Act in the Sample Districts

| Sl. No. | Sample Districts | Pending Cases | Disposed Cases | Total Cases |
|---------|------------------|---------------|----------------|-------------|
| 1. | Koraput | 428 | 349 | |
| 2. | Mayurbhanj | 656 | 231 | |
| 3. | Sundargarh | 486 | 112 | |
| 4. | Kandhamal | 345 | 138 | |

ODISHA VICTIM COMPENSATION SCHEME

In pursuance to Section 357-A of the Code of Criminal Procedure, 1973, the State Govt. in coordination with Central Government notified a scheme for providing funds for the purpose of compensation to the victims who have suffered loss or injury as a result of the crime and require rehabilitation. The said scheme is called as ‘The Odisha Victim Compensation Scheme 2012.’ The scheme aims at providing financial assistance to the victims and to provide support services such as shelter, counselling, medical aid, legal assistance, education, vocational training depending upon the needs of the victim.

For the purpose of implementing the said Scheme a fund was created which shall be operated by the Secretary, State Legal Services Authority. This Fund shall be credited with the money out of budget provisions made by the State Government for the purpose of the Scheme, all grants, subscriptions, donations and gifts made by the Central Government or any local authority and from all other sums received by or on behalf of the victim’s compensation from any source whatsoever including in compliance to any court order.

This Scheme shall cover the victims in case of death of the victim, his/her dependents or the members of the family of the victim who has suffered the atrocity resulting from the crime and the members who have been visited with a scar would be eligible for compensation as per the compensation order. Under the Scheme, the victim shall be entitled to financial assistance and restorative support services. Assistance under the Scheme shall be available in respect of each of the cases where the FIR is lodged.

ELIGIBILITY FOR COMPENSATION

The victims satisfying the following criteria shall be eligible for compensation-

- i. The victim has not been compensated for the loss or injury under any other scheme of the Central or State Govt. or Insurance Company or any other institution. [the victim shall be free to choose another scheme of government if

the same is more beneficial to the victim but cannot claim under multiple schemes simultaneously]

- ii. The loss or injury sustained by the victim have caused substantial loss to the income of the family making it difficult to live as before without the financial aid or has affected the dignity or personality or the medical treatment of the mental/physical injury should have caused financial stress for the family.
- iii. The victim shall cooperate with the police and prosecution from the stage of investigation till conclusion of trial of the case.

AUTHORITIES RESPONSIBLE UNDER THE SCHEME

1. **DISTRICT LEGAL SERVICES AUTHORITY (DSLAs)** shall perform the following functions:
 - i. To consider claims and provide financial assistance and support services as prescribed in the Scheme
 - ii. To arrange for psychological, medical and legal assistance to the affected persons.
 - iii. To arrange for counselling support to the affected woman including counselling for the spouse in case the affected woman is married
 - iv. To arrange shelter for affected woman for such period as may be required
 - v. To arrange for education or vocational/professional training for the affected woman under the ongoing schemes
 - vi. Issue direction to the appropriate authorities to provide protection to the affected persons whenever deemed necessary
 - vii. To arrange for education or vocational/professional training for the affected woman under the ongoing schemes
 - viii. To issue directions to the appropriate authorities to provide protection to the affected persons whenever deemed necessary
 - ix. Whenever a recommendation is made to the court or an application is made by any victim under sub-section 4 of section 357A of CrPC to the District Legal Service Authority, thereafter, it shall examine the case and shall verify the content of the claim with regard to the loss or injury caused to the claimant
 - x. DSLA may decide the quantum of compensation to be awarded to the victims on the basis of the loss caused including medical expense for treatment, minimum sustenance amount required for rehabilitation including such incidental charges such as funeral expenses.
 - xi. The quantum of compensation shall not exceed the maximum limit as per schedule.

ODISHA STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS

Given the mandate under POCSO Act, OSCPCR has initiated the following activities:

1. Follow-up with States/UTs on implementation status of the POCSO Act;
2. Follow-up with States/UTs on implementation of victim compensation schemes;

3. Information sought from State/UT Police through Questionnaire on cases booked under POCSO Act and cases being reported to district CWCs, as required U/S 19 (6) of POCSO Act CWCs;
4. Questionnaire administered to State/UT Secretaries of WCD/Social Welfare/ Social Defense seeking details of cases registered with CWCs under POCSO Act;
5. Circulation of the following basic informative documents among SCPCRs:
 - Advisory to Police
 - Child Friendly Procedures for implementing POCSO Act, 2012
 - Child Victim Charter
 - Pamphlet on POCSO
 - Guidelines for responding to CSA (child sexual abuse) Complaints.
6. Preparation of Guidelines with Lawyers Collective and UNICEF:
 - Guidelines for Police,
 - Guidelines for Special Courts,
 - Guidelines for Special Prosecutors,
 - Guidelines for CWCs, and
 - Guidelines for Health professionals.
7. Preparation of IEC material;
8. Review of IEC material for preventing child sexual abuse prepared by State/UT and NGOs initiated to identify best practices and to disseminate same among other States/UTs.

INDICATIVE CASES ON IMPLEMENTATION OF THE ACT

Table – 25: POCSO CASE STUDY – I

State v. Keshab Pattnaik, T.R. CASE NO. 73/2019

| SL. NO. | PARTICULARS | REMARKS |
|----------------|--------------------|---------------------------------|
| 1. | Date of Offence | 03.08.2019 |
| 2. | Date of Judgement | 17.02.2020 |
| 3. | Place | Kantabedi, Koraput |
| 4. | Criminal Charges | U/S 354 IPC, U/S 8 of POCSO Act |
| 5. | No. of Victims | 1 |
| 6. | Nature of Disposal | Contested-Acquitted |

BACKGROUND FACT

- The accused was working as the Headmaster of the Tentuliguda U.P. School. The victim was a student of Class VIII in that school. On 03.08.2019 he called the victim girl, aged about 13 years old, abruptly touched her private parts. The victim intimated the fact to her parents and thereafter, her grand father reported the matter at the P.S.
- After registration of the case, the Inspector-in-Charge himself took up the charge of investigation. During investigation, the I.O. visited the spot, and examined the witnesses.
- He sent the victim for medical examination and after completion of investigation, he submitted the charge-sheet.

HELD BY POCSO COURT

- It was observed that the informant has not whispered a single word to involve the accused in this case. Similarly, the other witnesses deposed in the same lines as deposed by the victim. All the witnesses were declared hostile.
- The accused Keshab Pattanaik not guilty of the offences punishable under Sec. 354-A of the I.P.C. and under sec. 8 of the POCSO Act and for which he is hereby acquitted therefrom under Sec. 235(i) of the Cr.P.C. He be set at liberty forthwith.

Table – 26: POCSO CASE STUDY – II

State v. Bandu Tadingi, T.R. CASE NO. 62/2018

| SL. NO. | PARTICULARS | REMARKS |
|---------|--------------------|---|
| 1. | Date of Offence | 20.12.2018 |
| 2. | Date of Judgement | 13.11.2019 |
| 3. | Place | Narayanpatna, Koraput |
| 4. | Criminal Charges | U/S 458, 376(2)(f)(n), 506 I.P.C. and under Sec. 6 POCSO Act. |
| 5. | No. of Victims | 1 |
| 6. | Nature of Disposal | Contested-Acquitted |

BACKGROUND FACTS

- On 20.12.2017 around 10.00 A.M. the victim who was aged about 14 years old by then was alone inside her house at village Talagumandi under Narayanpatna P.S. Finding her alone, the accused who happens to be her paternal uncle forcibly entered into the house.
- While the victim asked the accused about the reason for coming, the accused caught hold of the victim and dragged her to inside house.

- The accused again threatened her not to open her mouth. Thereafter, the accused laid the victim on the floor and forcibly committed rape on her.
- Out of fear, the victim did not disclose the fact to anybody else. Subsequent to such incident, the accused started visiting the victim while she was alone and repeatedly committed rape on her. The victim became pregnant and the matter was ultimately conveyed to her parents.

HELD BY POCSO COURT

- It was observed that the informant in her cross-examination has clearly stated that her marriage with the accused is likely to be solemnized after his release from custody. So, there would not be any doubt that only because of a settlement, the family members are not supporting their own case.
- It was observed that there is a mismatch between the facts mentioned in FIR story and medical report. FIR story stated that the victim was pregnant while lodging of FIR but the medical report stated that the victim was not pregnant.
- Hence, the accused was not held guilty.

Table – 27: POCSO CASE STUDY – III

State v. Dama (Siba Mahanta) & Others. C.T. CASE NO. 51/2014

| SL. NO. | PARTICULARS | REMARKS |
|---------|--------------------|---|
| 1. | Date of Offence | 27.06.2013 |
| 2. | Date of Judgement | 27.02.2017 |
| 3. | Place | Bagidiha, Mayurbhanj |
| 4. | Criminal Charges | persons U/s 363/366/376/34 of the I.P.C and U/s 6 of the POCSO Act. |
| 5. | No. of Victims | 1 |
| 6. | Nature of Disposal | Contested-Acquitted |

BACKGROUND FACT

- On 27.6.13, night at Bagidhia, the accused persons kidnapped the victim who was aged about 14 years without her consent. After 3 days of searching the daughter, the father came to know that one Doma Mohanta, S/o Samal Mohanta of Vill-Bagdiha, the present accused took away his daughter along with the co-accused persons in order to marry her. On the report of the informant, the I.I.C., Baripada Town P.S registered P.S. case No. 203, dtd. 30.06.13, U/s 363/366- A/ 109 of I.P.C and later on the case turned to Sec. 366/366- A/109/376 I.P.C and Sec.4/6/8 of the POCSO Act and took up investigation.
- On 28.5.14 rescued the victim girl along with her baby and the accused Dama @ Shiba Mohanta from his house in Nelore, Andhra Pradesh. After interrogation, the accused Dama @ Shiba

Mohanta, confessed his guilt. The I.O also arrested the accused, seized the wearing apparels of both the victim and the accused, sent them for their medical examination to D.H.H., Baripada. The victim girl denied to be medically examined

- The I.O., submitted charge sheet against the accused persons U/s 363/366/376/34 of the I.P.C and U/s 6 of the POCSO Act.

HELD BY POCSO COURT

- The victim was declared hostile by the prosecution on being cross-examined U/s 154 of the Indian Evidence Act. nothing could be elicited to corroborate the prosecution stand in any manner whatsoever. Even she has gone to the extent of denying about her medical examination or seizure of her wearing apparels. Hence, the accused was not held guilty.

Table – 28: POCSO CASE STUDY – IV

State v. Rajesh Kumar Tudu, C.T. CASE NO. 87/2018

| SL. NO. | PARTICULARS | REMARKS |
|----------------|--------------------|--|
| 1. | Date of Offence | 14.07.2018 |
| 2. | Date of Judgement | 28.08.2019 |
| 3. | Place | Kuliana, Mayurbhanj |
| 4. | Criminal Charges | U/s. 376(3)(n) of IPC and Sec.6 POCSO Act. |
| 5. | No. of Victims | 1 |
| 6. | Nature of Disposal | Contested-Acquitted |

BACKGROUND FACTS

- The accused was engaged as a labour in the house of one Lagen Tudu of village Bijabani and stayed there. As Lagen Tudu is the neighbour of the informant, the accused was in visiting terms to the house of the informant and thereby came in contact with his minor daughter aged 16 years.
- Taking undue advantage of such acquaintance, the accused committed sexual assault on her resulting in her pregnancy. Basing on the aforesaid information, Kuliana P.S. case no.55 dtd.14.07.2018 was registered U/s.376(3)(n) read with Section 6 of POCSO Act and investigation commenced.

HELD BY POCSO COURT

- All the witness examined including the father and mother of the victim and the victim herself turned hostile and rather expressed their ignorance. Hence, the accused was not found guilty and acquitted.

Table – 29: POCSO CASE STUDY – V

State v. Dayasagar Barla, G.R. CASE NO. 44/2016

| SL. NO. | PARTICULARS | REMARKS |
|---------|--------------------|---|
| 1. | Date of Offence | 07.07.2016 |
| 2. | Date of Judgement | 09.08.2017 |
| 3. | Place | Kinjirkela, Sundargarh |
| 4. | Criminal Charges | U/s.366/376(2)(i)(m)/506 IPC and Sec.6 POCSO Act. |
| 5. | No. of Victims | 1 |
| 6. | Nature of Disposal | Contested-Acquitted |

BACKGROUND FACTS

- On 7.7.2016, at about 7.30 p.m in the evening while the victim was returning home attending call of nature, the accused told her over phone to take wages of her father coming to one Mitu's shop. On arrival of the victim there, the accused threatened her and took her into the jungle where he committed rape on her twice. The accused who had kept his motor cycle in a room inside the jungle took the victim on that motor cycle at about 1 a.m in the night to a room of Govt. girls High School where he also forcibly raped her.
- When the victim cried, the accused assured her not to cry as he will marry her. In the early morning, the accused brought the victim to the road running from Topatangar to Sundergarh, where the victim told the accused to leave her at home but the accused purchased one Chuni from Kinjirkela and gave the same to the victim. Telling to leave her at home , took her to Budatangar school and left there giving further threatening not to disclose the fact to any body else.
- But subsequently on 9.7.2016 at about 4 p.m the accused abused the family members of the victim in filthy language. On presentation of the written report on 10.7.206 at about 4.30 p.m, Kinjirkela P.S.case no.44 of 2016 U/s.366/376(2)(i)(m)/506 IPC read with Section 6 of Protection of Children from Sexual Offences Act, was registered and investigation was taken up.

HELD BY POCSO COURT

- During course of investigation, the I.O examined the victim, her father, mother and sent the victim for medical examination. The I.O visited the spot, examined other witnesses. He arrested the accused, seized his wearing apparels with the wearing apparels of the victim, seized the motor cycle used by the accused in committing the crime ,forwarded him to court. On receipt of medical examination report and after completion of due investigation, the I.O submitted charge sheet u/s 366/376(2)(i)(m) of the IPC read with Section 6 of POCSO Act. Subsequently,

charges were framed against the accused and the contents of the charges were read over and explained to him.

- The evidence of the victim discloses that there was a quarrel for payment of wages when the victim had been to the accused for wages. Thus, the evidence of the victim and other material witnesses i.e. of her parents do not disclose any incriminating material as regards facts of the prosecution case.
- The victim had re-siled from her earlier statement during her evidence in the court. Hence, the accused was not found guilty and acquitted.

Table – 30: POCSO CASE STUDY – VI

State v. Hemanta Kanhar, G.R. CASE NO. 84/2015

| SL. NO. | PARTICULARS | REMARKS |
|---------|--------------------|---|
| 1. | Date of Offence | 21.05.2015 |
| 2. | Date of Judgement | 24.04.20191 |
| 3. | Place | Phulbani Sadar, Kandhamal |
| 4. | Criminal Charges | U/s.366/376(2)(i)(m)/506 IPC and Sec.6 POCSO Act. |
| 5. | No. of Victims | 1 |
| 6. | Nature of Disposal | Contested-Acquitted |

BACKGROUND FACTS

- On 21.05.2015, in the evening hour the daughter of the informant had gone to attend call of nature, but she did not return to her house. The informant searched her and did not trace out her. He came to know that, the accused had kidnapped his daughter. Thereafter he reported the matter to the police. The police registered the case and took up investigation, on completion of investigation, submitted Charge Sheet against the accused U/s-363/366/376(2)(n) of IPC and R/w Sec 06 of POCSO Act.
- On 21.07.2015 the medical officer in Gunjibadi CHC examined the accused and found he is capable of sexual intercourse.

HELD BY POCSO COURT

- The victim daughter was 19 years on the date of occurrence and the informant (father of victim), victim herself and her mother did not say anything against the accused that the accused kidnapped the victim and committed forcibly sexual intercourse with the victim. Hence, the accused is held not guilty and acquitted.

Table – 31: POCSO CASE STUDY – VII

| Sl. No. | Particulars | Remarks |
|---------|-------------------|---|
| 1. | Date of Offence | 20.01.2019 |
| 2. | Date of Judgement | 26.07.2019 |
| 3. | Place | Banarpal, Anugul |
| 4. | Criminal Charges | U/S 376 (3), 302, 201 of IPC and U/S 6 of POCSO Act |
| 5. | No. of Victims | 1 |
| 6. | Punishment | Death Sentence |

BACKGROUND FACTS

- An incident took place near Kangula village on 20th January 2019 that had shaken the State of Odisha. The 13-year-old girl was carrying lunch for her father to his shop at Lingarakata nullah, one km from their home, at around 2 pm when Dehuri accosted her.
- The man professed love for the girl and when she rejected his overture, he abducted her to a forested area near the village. The girl tried to resist but he attacked her with a stone. As she fell down unconscious, he raped her. After some time, when the girl regained consciousness, fearing that she might disclose the matter to the villagers, he again hit her with the stone and killed her.
- He, then, dragged and ditched the body in a big shrub and fled from the spot with the help of interstate trucks to Kolkata. When the girl did not reach the shop, her father began frantically searching for her.
- He was shocked to find her mutilated body in a bush at Lingarakata nullah and filed a case at the police station. Following investigation, police nabbed Anam from Kolkata. The stone along with other material evidence was recovered and DNA profiling of the accused was also done.
- Investigation of the case was completed within 30 days and charge sheet was submitted under section 376 (3), 302, 201 of IPC and section 6 of POCSO Act, 2012.

HELD BY POCSO COURT

- Holding the accused Anam Dehuri of the same village guilty of the barbaric crime, the Special Judge of POCSO court Suresh Chandra Pradhan pronounced sentences after examining 36 witnesses awarded death sentence to Anam mainly on three counts - Capital punishment for rape of minor girl, rigorous imprisonment for life for murder and seven year imprisonment for destruction of evidence.
- The victim's case has been recommended to the District Legal Service Authority for compensation under Victim Compensation Scheme.

CURRENT STATUS

- The death sentence was referred to the High Court of Odisha at Cuttack for confirmation.
- The accused also filed a criminal appeal against the trial court judgment on August 20, 2019.
- A Government lawyer was appointed as his defence counsel after the Angul District Bar Association resolved that none of its members would represent the accused in the trial.
- Was listed before the division bench of Justice SK Mishra and Justice AK Mishra on 04.09.2019 but it was adjourned as the High Court was suspended after a full-court reference over the death of a member of the Bar.

Table – 32: POCSO CASE STUDY – VIII

| Sl. No. | Particulars | Remarks |
|---------|-------------------|---|
| 1. | Date of Offence | 15.06.2018 |
| 2. | Date of Judgement | 28.08.2018 |
| 3. | Place | Betanati, Mayurbhanj |
| 4. | Criminal Charges | U/S 376 (3), 302 IPC and U/S 6 of POCSO Act |
| 5. | No. of Victims | 1 |
| 6. | Punishment | Death Sentence |

BACKGROUND FACTS

- The ghastly incident occurred in June 15, 2018 at Garudabasa village under Betanati police limits in Mayurbhanj District. A man accused in this case was identified as Jamini Mohnata who allegedly raped an eight-year-old girl and later stoned her to death. The victim's family was provided with a financial relief of Rs 5 lakh from the Chief Minister's Relief Fund.

HELD BY POCSO COURT

- The Additional District and Sessions Judge exercising the power of POCSO Court awarded capital punishment to a man to the accused in charge of raping and murdering a minor girl in June 2018.
- The trial was completed in 14 weeks.
- The victim's case has been recommended to the District Legal Service Authority for compensation under Victim Compensation Scheme.

Table – 33: POCSO CASE STUDY – IX

| SL. NO. | PARTICULARS | REMARKS |
|---------|-------------|---------|
|---------|-------------|---------|

| | | |
|----|-------------------|---|
| 1. | Date of Offence | 20.03.2019 |
| 2. | Date of Judgement | 10.09.2019 |
| 3. | Place | Erasama, Jagatsinghpur |
| 4. | Criminal Charges | U/S 376 (3), 302 IPC and U/S 6 of POCSO Act |
| 5. | No. of Victims | 1 |
| 6. | Punishment | Death Sentence |

BACKGROUND FACTS

- On 20th of March, 2018 accused Laba Manna had raped and murdered the minor girl in the cashew field of Tapan Gahan in Gadaharishpur under Erasama police limits. The accused had raped and murdered the nine-year-old girl after forcibly lifting her while she was playing.

HELD BY POCSO COURT

- The POCSO Court of Judge Dr Moonrani Mishra convicted and awarded death sentence to Laba based on the depositions of 25 witnesses for committing rape and murder of minor under IPC and POCSO Act.
- The victim's case has been recommended to the District Legal Service Authority for compensation under Victim Compensation Scheme.

OBSERVATIONS

- The implementation of POCSO Act is prompt and rigorous
- The cases that are reported have been dealt with strongly
- The state government has been proactive in implementing the mandates of the POCSO Act in the State.
- 24 special courts have been designated as POCSO court in Odisha and are designated in tribal areas of the state as well.
- In almost all the POCSO cases in the sample districts, it is observed that the medical report along with the statement of victim recorded by the police states that the offence is committed by the accused but they turn hostile in the court and step back from their own statement.
- There are cases where the investigation of the police had faults resulting in wrongly incriminating the accused persons.
- There are very few cases of POCSO in case of Scheduled Tribes. Although cases happen, yet they are not reported and most of the cases are addressed through cultural and traditional socio-political norms or in simple terms, by the usage of their customary law.
- Details of the payment of compensation to the victims under the POCSO Act is notified. It can be noticed that the victims are duly compensated as provided in the Odisha Victim Compensation Scheme.

- The Odisha Victim Compensation Scheme was notified under Section 357A of Cr.P.C. since the enactment of the Act in 2012 and prescribed adequate compensations to the victims. The same has been amended with time to increase the amount of compensation.
- There is no ambiguity regarding to the payment of compensation from a designated fund Odisha Victim Compensation Scheme i.e. as was the situation in other states and also the dilemma raised before the supreme court as the said Scheme enumerates that the victims under the POCSO Act are eligible to seek compensation directly from the Scheme by making application to the appropriate authority i.e. District Legal Services Authority (DSLAs) of the District or by the order of the Court to the DSLA to provide compensation to the victim.
- The Amendment Act of 2019 provides enhanced punishments for the prescribed offences. One among such punishment is the Capital Punishment. The Special Courts in Odisha have duly exercised their power to provide justice to the victims and have at times ordered capital punishment to the accused which are currently under appeal before the High Court of Odisha.

Chapter – 5

RECOGNITION OF FOREST RIGHTS OF SCHEDULED TRIBES

Commonly perceived as rights of local forest dwellers over forest products and forest land, forest rights have been a major area of concern as well as debate in India. In colonial and independent India, although a large tract of land would be recorded as “unclassed” forest in Government records, ownership was unclear, and because most of these forests were home to a large number of tribals, the land was acquired by the Forest Department without settling their rights over them. After Independence, supported by improper survey and settlement, large tracts of land were declared as “reserve forests,” meaning no rights either existed there or would exist later and all who either resided or claimed rights would be termed as encroachers.

Since the primary intention of colonial laws was to take over lands and deny the rights of communities, the “settlement” process initiated during the late nineteenth and early twentieth centuries was hardly effective. Surveys were often incomplete or not done. Where the claims process did occur, the rights of socially weaker communities—particularly tribals—were rarely recorded. The problem became worse particularly after Independence, when the lands declared “forests” by the Princely States, the zamindars, and the private owners were transferred to the Forest Department through blanket notifications. In short, what the Government records called “forests” often included large areas of land that were not and never were forest at all. Moreover, those areas that were in fact forest included the traditional homelands of communities. As such consolidation of Government forests did not settle existing claims on land; all people, mostly tribals, who lived in these forests, were subsequently declared “encroachers,” as they did not have recognized rights and claims to their ancestral homelands.

The Supreme Court of India in an important case held that the tribals have a definite right over the forests and any sort of forest diversion or eviction should have their informed consent. Following suit, in an affidavit to the Apex Court, in June 2004, the Government of India made a significant admission by holding that “historical injustice” had been done to the tribal forest dwellers of the country, which needed to be immediately addressed by recognizing their traditional rights over forests and forest land. What made this admission particularly crucial was its acceptance that colonial perspective on forest management had failed and alienated a large chunk of the forest dwellers, especially tribals from forests and forest-based livelihood options. Besides, it could not have come at a better time—just months after the eviction of about 168,000 families from over 150,000 hectares effected by the May 2002 Government order of eviction of forest encroachers. This led the Government of India to introduce the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 in Parliament on 13 December 2005. This legislation is now widely accepted and revered as a major step towards achieving social justice and a milestone in the tribal empowerment process.

HISTORICAL DEVELOPMENT OF FOREST RIGHTS

The history of centralized control of forests can be traced to the enactment of the Forest Act of 1864, which empowered the colonial government to declare any forest land as government forest; a process strengthened in the 1878 Act, which classified forests into 'protected forests', 'reserved forests' and 'village forests'; the National Forest Policy of 1894, which re-iterated the regulation of rights and restriction of privileges of 'users' in forest areas for the public good; the Land Acquisition Act of 1894, which permits compulsory acquisition of land for a 'public purpose'; and the 1927 Act, which remains the main legal basis for depriving forest dwellers of their user rights to forest resources. Under the banner of scientific management of forests, the intended objective of these policy formulations was to maximize profits, encourage conservation and discourage forest dwellers from 'exploiting' forest resources. The formal and 'legal' appropriation and enclosure of forests inevitably led to the 'criminalisation' of normal livelihood activities of millions of forest-dependent people, conferring on them the legal status of 'encroachers',

With Independence, the expectation of the forest dwellers increased for restoration of their rights so was the legislative intent of independent India. In the process of reformation few issues emerged such as in the process of amalgamation of princely states and abolition of zamindari system the unsurvey non-private lands were declared as government property either as forest or revenue wastelands. Though the state government proclaimed such forest lands as deemed reserve forest or deemed protected forest, few effective steps for settlement of rights were taken. Due to the improper survey and settlement process, the locals inhabiting these lands started being treated as 'encroachers' on their their ancestral homelands as they did not recorded rights over them. this historical injustice was further accentuated by the Wildlife (Protection) Act 1972 and the Forest Conservation Act 1980 which made environmental protection and recognition of the rights of tribal communities as mutually irreconcilable objectives.

On emerging of such issues in 1990s, the Ministry of Environment and Forest (MoEF) made efforts to resolve the aforementioned land issues and issued series of guidelines for resolving disputed lands between the tribal people and the state. In 2002, the said Ministry instructed state governments to evict the ineligible encroachers and all post 1980 encroachers from forest lands. Further in 2004, the MoEF issued two circulars one relating to 'regularization of rights of tribals on the forest lands'. The date of regularization of the encroachments was extended to 31st December 1993. The other circular was titled 'stepping up of process of conversion of forest villages into revenue villages'. Both these circulars were stayed by the Apex Court in the case of *T.N. Godavarman case* (W.P. (C) 202/1995) and the *I.A. No. 703* filed by the Amicus Currie. While praying for vacation of the stay, the government admitted that during consolidation of forests, the rural people particularly the tribals who have been living in forests since time immemorial were deprived of their traditional rights and livelihood and consequently have become encroachers in the eyes of law.

In 2005, the ministry of tribal affairs mandated to formulate a comprehensive legislation to redress the historical injustice done to tribal community. Accordingly, the Forest Rights Bill was introduced in the Parliament. Due to protest both from environmentalists and wildlife

groups the Bill was referred to the Joint Parliamentary Committee (JPC). As many tribal forest dwellers had been served with eviction notices in May 2002 for being encroachers and they could not produce residential evidence in forest, the JPC recommended that a caught up date for the settlement of rights' be extended to 13th December 2005. It also recommended inclusion of on scheduled tribe 'traditional' forest dwellers (OTFDs) living in the forest for three generations within its ambit. It also recommended multiple uses for shifting cultivators and removed the land ceiling of 2.5 hectares for land rights. The other recommendation of JPC included ensuring of minimum support price (MSP) for minor forest produces (MFP) and the Gram Sabha as the final authority for settlement of rights. The Gram Sabha was recommended to be the center stage with PESA as a reference point. But when the Bill was introduced in the Parliament, the pre-eminence position of PESA in relation to Gram Sabha was ignored.

Finally, in 2006, The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (or simply Forest Rights Act - FRA), was enacted with the notification of its administrative rules. The Act inherently recognises that a healthy ecosystem is compatible with social justice technically holds precedence over all other forest and wildlife-related laws. It provides for restitution of traditional forest rights to forest dwellers across India, including individual rights to cultivated land in forested landscapes and collective rights to control, manage and use forests and its resources as common property. It also stipulates the conditions for relocation of forest dwellers from 'critical wildlife habitations' with their 'free informed consent' and their rehabilitation in alternative land.

IMPORTANCE OF FOREST RIGHTS ACT (FRA)

- The acts looks to right the wrongs of government policies in both colonial and independent India toward forest-dwelling communities, whose claims over their resources were taken away during 1850s.
- The act also has potential of sustainably protecting forest through traditional ways along with providing tribes means of livelihood.
- It expands the mandate of the Fifth and the Sixth Schedules of the Constitution that protect the claims of indigenous communities over tracts of land or forests they inhabit.
- For the first time Forest Rights Act recognises and secures the following rights
 - Community Rights or rights over common property resources of the communities in addition to their individual rights
 - Rights in and over disputed land Rights of settlement and conversion of all forest villages, old habitation, un-surveyed villages and other villages in forests into revenue villages
 - Right to protect, regenerate or conserve or manage any community forest resource which the communities have been traditionally protecting and conserving for sustainable use.
 - Right to intellectual property and traditional knowledge related to biodiversity and cultural diversity

- Rights of displaced communities
- Rights over developmental activities

RIGHTS RECOGNISED UNDER FRA

The FRA recognized the following four types of rights of the STs and other Traditional Forest Dwellers.

Land Rights: A claimant gets rights to any land occupied by him prior to 15 December 2005. Those who occupy land without having documents can claim up to 4.00 hectares, so long they are occupying the land for livelihood. Those who have patta or government lease but whose land is legally taken by the forest department or whose land is subject to a dispute between the forest and revenue departments, can claim those land. The land recognized under FRA cannot be sold or transferred except by inheritance.

Use of Resources Rights: FRA provides for rights to be given to collect and use minor forest produce (kendu leaf, herbs, medicinal plants, arise but excluding timber). Besides community rights of uses or entitlements like for fish and other products of water bodies, grazing and traditional seasonal resources access of nomadic or pastoralist communities.

Rights to development facilities: The Act is mandated to provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy five trees per hectare namely- (a) Schools;(b) Dispensary or hospital;(c) Anganwadis; (d) Fair price shops; (e) Electric and telecommunication lines;(f) Tanks and other minor water bodies;(g) Drinking water supply and water pipelines;(h) Water or rain water harvesting structures; (i) Minor irrigation canals;(j) Non-conventional source of energy;(k) Skill up gradation or vocational training centres;(l) Roads and; (m)Community Centers;

DETERMINATION & RECOGNITION OF INDIVIDUAL FOREST RIGHTS

Individual forest under FRA include “rights to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Schedule Tribes or other traditional forest dwellers” enumerated under section 3(1)(a) of the Act.

Table – 34: Steps for Recognition of Individual Claim

| Stages | Subject | Contents |
|---------------|--|--|
| Step – 1 | Intimation to FRC Members for Preparatory Meeting for Claim Verification | <ol style="list-style-type: none"> 1. Secretary of FRC in consultation with the President, FRC would fix a date for FRC meeting. 2. Due intimation to all FRC members for the meeting needs to be given (‘due intimation’ includes issuance of notices to each member) |

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| | | <ol style="list-style-type: none"> 3. The purpose of the meeting, date, time and venue needs to be specified while intimating the FRC members. 4. Signature's from each member needs to be taken after intimation. |
| Step – 2 | Preparation of Record of Claims and Evidence by the Forest Rights Committee | <ol style="list-style-type: none"> 1. This consolidation of claims can only take place after the expiry of the last date of the submission of claim forms as fixed by the Gram Sabha/ Palli Sabha. 2. Before the preparation of a consolidated report of claims received, FRC should ensure that all the claimants have submitted their claim forms. 3. FRC should prepare a tabular format for consolidation of information provided by the claimants in the form. 4. During the preparation of the Consolidated Report, if it is found that some of the claimants have not signed/ not duly filled up the claim form/not annexed the documents/evidence as required under the Act/Rule, please intimate the claimant and ask him/her to furnish all the required information/document or you can help him/her in filling up the form or in collecting requisite information/document. 5. FRC should collect the village map, RoR, forest map (RF, DPF, PF), which would help in identifying the forest land or status of land for which the claimants have applied. The village map and RoR are available in the Tehsil Office and the forest map is available in the Divisional Forest Office (DFO). |
| Step – 3 | Forest Rights Committee Meeting for Fixing of Date and Time for Claim Verification | <ol style="list-style-type: none"> 1. Ensure attendance of all the members of FRC. 2. Share the purpose of the meeting 3. Share the consolidated report prepared prior to the meeting 4. If there are some conflicting claims or cases, please share it with the members, |

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| | | <p>which would help in strategizing the verification process</p> <ol style="list-style-type: none"> 5. Ensure participation of all members in the meeting 6. Fix date and time for claim verification <ul style="list-style-type: none"> • While fixing date and time for claim verification, please ensure that the date and time suits all claimants • Ensure that there is at least a ten to fifteen day gap between the date of issuance of notice and date of verification (for both the claimant and FD/Revenue) • It is not necessary to complete the verification process in a day. • If the number of claimants is more, you can make a group and accordingly fix a date and time for each group • During the consolidation of the claims, if you find conflicting cases like, for a single patch of land more than one person has applied, either you fix same date for those claimants or fix separate dates and listen to their view separately and try to resolve it. 7. Before conclusion of the meeting, please share the decisions taken in the meeting and ensure that all the members who have attended the meeting have signed the register (attendance register/proceedings book). |
| Step – 4 | Due Intimation to Claimants and the Forest Department | <ol style="list-style-type: none"> 1. Intimate all the claimants regarding the decision taken in the FRC meeting 2. Share the purpose of verification and intimate them about the date and time fixed for verification 3. Take signature in the notice book after intimating the person 4. Intimate the DFO and SDLC with due process (such as through a letter) and send a copy to the SDLC. |

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| | | 5. Keep a copy of the letter sent to the SDLC in the record file. |
| Step – 5 | Site Visit, Physical Verification of Claims and Preparation of Maps | <ol style="list-style-type: none"> 1. Before moving for field verification, please ensure all records like claim forms, consolidated report, village map, forest map, RoR, white paper/ note book, are with the verification team. 2. Ensure attendance of all the claimants to whom notices have been served including FD and Revenue Department 3. Before moving for field verification and demarcation, share the purpose with the claimants and representatives of the authorities concerned (FD/Revenue) 4. Visit each site and verify the nature of the claim. With help of cadastral village map/RoR / forest map assess whether the claim made is on forest land or not 5. If the land is forestland, then record the extent of total area claimed; if the land is not forestland, please intimate the claimant and record the finding. 6. If the area claimed does not match with the area as mentioned in the claim form, please inform the claimant and make the necessary changes. 7. During physical verification, collect further evidence or record from the claimant and witnesses. 8. Prepare the map delineating the area of each claim indicating identifiable marks (such as East, West, South and North, location of the land etc) 9. After the preparation of the map, either write the name of the claimant or give a number and mention that number on the claimant form, which would later help in identifying the land, or tag the sketch map with the claim form. 10. While carrying out physical verification, record findings/field observations, such as physical attributes of the claims like improvements made to the land including |

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| | | <p>levelling, bunds, check dams and the like, traditional structures like wells, burial grounds, sacred places etc.. This is most essential as these observations would also act as evidence for the claimant.</p> <ol style="list-style-type: none"> 11. Before moving for the next verification, please write the details in the note book or white paper or in the claimant register. 12. Complete the physical verification of all claimants as per the process cited above |
| Step – 6 | Preparation of Final Maps Delineating the Area of Each Claim Indicating Recognizable Landmarks and Verification Report | <ol style="list-style-type: none"> 1. After the field verifications complete, please prepare a rough sketch map, indicating the area claimed by each claimant - its location, total area, name of the claimant etc. 2. If the maps are available, then write the plot number in each claimed area if the forestland is located inside the village boundary; if the forest land is with the Forest Department, then please write the name (both local and legal name)and number of the 3. In the index, please mention the name of claimant against the plot number as mentioned in the sketch map 4. Finalize the observation made during the field verification and record the findings properly. 5. Either the observation/findings can be written in the remark column of consolidation report or in a separate note or in the claimant register. 6. Prepare a final verification report on the findings |

CORRECTION OF Record of Rights (ROR) AND MAP

Rule 8(f) of the aforesaid rules provides that the District Level Committee shall issue directions for incorporation of the forest rights in the relevant government records including record of rights. Rule 8(g) further provides that the Committee shall ensure publication of the record of forest rights as may be finalized.

1. Manner of Correction of R.O.R. and Map:

In the view of the above provisions of law, the Tahasildar who maintains the records of right shall on receipt of copies of title for forest land under individual tenure in Annexure – II issued under rule 8(h) of the ST & OTFD (RFR) Rules, 2007 and the sketch map of the said land from the District Level Committee in respect of revenue village, proceed to incorporate the contents of the title in the Record of rights of the Revenue village and correct the R.O.R. and Map accordingly. Wherever necessary, bata plots shall be carved out of original plots as is done during correction of records of rights to give effects to orders in mutation cases and such bata plots given bata numbers in the manner provided in paragraph 81 of the Orissa Mutation Manual.

2. Joint records in the name of both Spouses:

The record shall be prepared jointly in the name of both the spouses in case of married person and in the name of single head in the case of a household headed by a single person as required under subsection (4) of section of the Act.

3. Status of the land:

In view of the peculiar status of land, new Khatians shall have to be prepared for such land covered under forest rights after the existing Government Khatas of the village and allotted new numbers following the last in serial of Government Khata. The status column of the R.O.R. in respect of such forest land under individual tenure shall record the status as “Forest right recognized under the ST & OTFD (RFR) Act, 2006”

4. Non –transferability of the land:

The forest right conferred under the act is heritable but not alienable or transferable as mentioned earlier. The special incidence column of the R.O.R. should, therefore, contain the note that the right is heritable but not transferable or alienable.

5. Kissam:

Sub-section (7) of section 4 of the Act of 2006 provides that the forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the ‘net present value’ and compensatory afforestation’ for diversion of forest land, except those specified in this Act. The jungle kissam of such forest land over which the forest right of individual occupants is recognized will remain unchanged.

6. Supply of certified copy of ROR to the claimant:

Rule 8(h) of the Rules of 2007 provides that the District Level Committees is to ensure that a certified copy of the record of forest rights is provided to the concerned claimant. A certified copy of the records of right newly created shall, therefore, be provided to the occupants.

7. Correction of records maintained by the Revenue Inspector (RI):

The records maintained by the Revenue inspector shall be similarly corrected for which intimation slip and sketch map may be sent to the Revenue inspector in duplicate of

which one copy will be returned by the R.I. with an endorsement that he has retained one copy with him.

PROVISIONS FOR COMMUNITY RIGHTS IN FRA

The FRA recognises and vests secure community tenure on ‘community forest resources’, which are defined as common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in case of pastoral communities, including reserved forests, protected forests and protected areas such as sanctuaries and national parks to which the community had traditional access.

- It covers community rights such as usufruct (nistar), or by whatever name it is called, including those used in erstwhile princely states, zamindari or such intermediary regimes. It confers the right of ownership and access to collect, use and dispose of MFPs traditionally collected within or outside the village boundary.¹¹¹
- It defines MFPs to include all non-timber forest produce of plant origin, including bamboo, brushwood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like.¹¹²
- It covers local-level processing, value addition and transportation of MFPs in forest areas by head-loads, bicycle and handcarts for use or sale by the gatherer or community for their livelihood. The use of motor vehicles is regulated by existing transit rules.¹¹³
- It covers other community rights for use or entitlements, such as fish and other products of water bodies, grazing and access to traditional seasonal resources by nomadic or pastoral communities.¹¹⁴
- It covers rights of primitive tribal groups (PTGs) and pre-agricultural communities to community tenures for habitat and habitation.¹¹⁵
- It covers rights in or over disputed lands under any nomenclature in any state where claims are disputed.¹¹⁶
- It covers rights to convert pattas, leases or grants of forest lands issued by a local authority or state government into titles.¹¹⁷

¹¹¹ Sub-Section 1 (b) of Section 3 of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act.

¹¹² Section 2 (i) of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act.

¹¹³ Sub-Section 1 (c) of Section 3 of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act further clarified under Rule 2 (d) of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012

¹¹⁴ Sub-Section 1 (d) of Section 3 of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act.

¹¹⁵ Sub-Section 1 (e) of Section 3

¹¹⁶ Sub-Section 1 (f) of Section 3 of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act

¹¹⁷ Sub-Section 1 (g) of Section 3 of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act

- It covers the right to protect, regenerate, conserve or manage any community forest resource that forest dwellers have been traditionally protecting and conserving for sustainable use.¹¹⁸
- It covers the right of access to biodiversity and community rights to intellectual property and traditional knowledge related to biodiversity and cultural diversity.¹¹⁹
- It covers any other traditional rights customarily enjoyed by STs or other traditional forest dwellers that are not mentioned in the earlier clauses, excluding the traditional right to hunt, trap or extract a part of the body of any species of wild animal.¹²⁰

OTHER IMPORTANT PROVISIONS RELATING TO COMMUNITY RIGHTS

The Government of India reserves the right, regardless of the FCA provisions, to divert forest land for the following government-managed facilities: schools, dispensaries or hospitals, anganwadis, fair price (PDS) shops, electricity and telecommunication lines, tanks and other minor water bodies, drinking water supply systems and water pipelines, water or rain water harvesting structures, minor irrigation canals, non-conventional sources of energy, skill up-gradation or vocational training centres, roads, and community centres.

However, such diversion for developing common infrastructural resources, which was not permissible earlier, will be allowed only if the forest land to be diverted is less than one hectare in each case and not more than 75 trees per hectare are required to be felled. Also, recommendation of the Gram Sabha is required to clear the project.

The Government of India reserves the right to modify forest rights and resettle forest dwellers to create inviolate areas for wildlife conservation in critical wildlife habitats (national parks and sanctuaries) subject to the following conditions:

- The process of recognising and vesting rights of forest dwellers in the areas under consideration is completed in accordance with the specifications in section 6.
- The concerned agencies of the state government establish, in exercise of their powers under the Wild Life (Protection) Act, 1972, that the activities or presence of the forest dwellers can cause irreversible damage and threaten the existence of the animal species and their habitat.
- The state government concludes that other reasonable options, such as co-existence are not available.
- A resettlement or alternative package to provide a secure livelihood for the affected individuals and communities that fulfills their requirements under the relevant laws and policies has been prepared and communicated.

¹¹⁸ Sub-Section 1 (i) of Section 3 of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act.

¹¹⁹ Sub-Section 1 (k) of Section 3 of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act.

¹²⁰ Sub-Section 1 (l) of Section 3 of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act.

- The free and informed consent of the Gram Sabhas in the area for the proposed resettlement package has been obtained in writing. No resettlement can take place until facilities and land allocation at the resettlement location are complete as per the promised package.
- The critical wildlife habitats from which the rights holders are being relocated are not subsequently diverted by the state or central government or any other entity for other uses.

TYPES OF FOREST RESOURCES USED BY THE COMMUNITY

The study team conducted a PRA exercise in the sample villages to identify the range of forest assets and resources used by communities and map claims that could be made for community and individual user rights to these resources. The facilitators also made field visits during which they interacted with the village communities and identified several other resources that could potentially be claimed under the FRA. Some of the important community resources and which could potentially be claimed as Community Forest Resources are listed below:¹²¹

Places of worship: The community has several places of worship that are visited and used regularly, especially for organising seasonal festivals throughout the year.

Forests for Usufruct (Nistar) Rights: The community depends on forests for fuel-wood for cooking and wooden beams, pillars and rafters for constructing huts. Animals are also let loose in the forests to graze.

MFP collection: Tribals and other forest dwellers collect a wide range of MFPs from forests, such as gond (gum), khair, sal seeds, harra, baheda, chota phool, bilaiya hana, arjun, nokha, murli etc. Two key MFPs are kendu patta, which they collect in large quantities for earning a cash income, and mahua, which they pluck for personal use.

Water bodies: There are several water bodies in forests - such as large and small ponds, rivulets and seasonal rivers - that are accessed by the community on a regular basis for water, fisheries and other water-based resources.

Quarries: The community also depends on small quarries in the forests for materials like sand and sandstone, which they use for constructing their houses. These quarries are used for self-consumption, not for commercial purposes.

Cremation/burial grounds: A key use of forest land by the community is for cremation/burial purposes. Different tribes have their designated cremation/burial grounds in the forest.

Connecting and approach roads: There are many connecting roads between villages and approach roads from the village to the highway. Pathways are also commonly used to access public utility spaces like ponds, burial ground and temples.

Community halls and other government infrastructure: The government has created

¹²¹ Training Manual – 1, Forest Rights Act Training Manual for Government Functionaries, SCSTRTI. Available at <https://tribal.nic.in/FRA/data/FRATrainingManual.pdf>.

several community assets to render services to the people, such as PDS shops, schools, PHCs, anganwadis, Panchayat bhawans, etc. Many of these facilities are on forest land and are regularly accessed by village communities.

PROCESS & PROCEDURE FOR IMPLEMENTATION OF FRA

1. Sub-Section (1) of Section 6 of the FRA designates the Gram Sabha as the authority to initiate the process for determining the nature and extent of individual and community rights to be given to STs and other traditional forest dwellers within the limits of its jurisdiction. It shall receive claims, consolidate and verify them and prepare a map delineating the area where each recommended claim can be exercised. The Gram Sabha shall then pass a resolution to this effect and also forward the copy to SDLC. The list of claims for community rights shall be prepared by the Forest Rights Committee (FRC), on behalf of the Gram Sabha, in accordance with Rule 11 (4) of the Rules.

The evidence to be furnished to back up the claims includes:

- Details of community rights such as usufruct (nistar) or by whatever name it may be called¹²²
 - Details of traditional grazing grounds; areas for collecting roots and tubers, fodder, wild edible fruits and other MFPs; fishing grounds; irrigation systems; water sources for human or livestock use; territories for herbal practitioners to collect medicinal plants¹²³
 - Details of structures or their remnants built by the local community, sacred trees, groves and ponds or river areas, burial or cremation grounds¹²⁴
2. The FRC will verify the claims of pastoral and nomadic tribes to determine their rights, either individual or community or traditional community institution, in the presence of these individuals, communities or their representatives¹²⁵
 3. Similarly, it will verify the claims of Primitive Tribal Groups or pre-agricultural communities to determine their rights to habitat, either through their community or traditional community institution, in the presence of these communities or their representatives¹²⁶
 4. If there are conflicting claims from another village in respect of traditional or customary boundaries, or if a forest area is used by more than one Gram Sabha, then the FRCs of the Gram Sabhas of the concerned villages will meet to jointly consider the true status of enjoyment of such claims and submit their findings to the respective Gram Sabhas

¹²² Rule 13 (2) (a) of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012

¹²³ Rule 13 (2) (b) of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012

¹²⁴ Rule 13 (2) (c) of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012

¹²⁵ Rule 12 (c) of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012

¹²⁶ Rule 12 (d) of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012

in writing¹²⁷

5. If the Gram Sabhas are unable to resolve the conflicting claims, they will refer the matter to the SDLC for resolution.
6. Once it receives the findings of the FRC {clause (v) of sub-rule (2)}, the Gram Sabha will meet, after giving the required notice, to consider the findings, pass appropriate resolutions and forward these resolutions to the SDLC¹²⁸
7. The decision of the DLC on claims for user rights to forest resources will be final and binding¹²⁹
8. The state government will constitute a state-level monitoring committee to ensure recognition of forest rights as well as monitor the process in accordance with the Rules (2008) framed to implement the FRA¹³⁰

INSTITUTIONAL MECHANISMS UNDER FRA

Gram Sabha under Section 6 (1) of FRA is the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.

GRAM SABHA

(1) The Gram Sabhas shall be convened by the Gram Panchayat and in its first meeting it shall elect from amongst its members, a committee of not less than ten but not exceeding fifteen persons as members of the Forest Rights Committee, wherein at least two-third members shall be the Scheduled Tribes: Provided that not less than one-third of such members shall be women; Provided further that where there are no Scheduled Tribes, at least one third of such members shall be women.

(2) The Forest Rights Committee shall decide on a chairperson and a secretary and intimate it to the Sub-Divisional Level Committee.

(3) When a member of the Forest Rights Committee is also a claimant of individual forest right, he shall inform the Committee and shall not participate in the verification proceedings when his claim is considered.

¹²⁷ Rule 12 (3) of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012

¹²⁸ Rule 11 (1) (5) of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012

¹²⁹ Sub-section 6 of Section 6 of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012

¹³⁰ Rule 9 of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012

(4) The Forest Rights Committee shall not reopen the forest rights recognized or the process of verification of the claims already initiated before the date of coming into force of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendments Rules, 2012.]

Functions of the Gram Sabha: (Rule 3, 4):

(1) The Gram Sabha shall –

- a) initiate the process of determining the nature and extent of forest rights, receive and hear the claims relating thereto;
- b) prepare a list of claimants of forests rights and maintain a register containing such details of claimants and their claims as the Central Government may by order determine;
- c) pass a resolution on claims on forest rights after giving reasonable opportunity to interested persons and authorities concerned and forward the same to the Sub-Divisional Level Committee; 7
- d) Consider resettlement packages under clause (e) of sub section (2) of section 4 of the Act and pass appropriate resolutions; and
- e) Constitute Committees for the protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of section 5 of the Act.
- f) monitor and control the committee constituted under clause (e) which shall prepare a conservation and management plan for community forest resources in order to sustainably and equitably manage such community forest resources for the benefit of forest dwelling Scheduled Tribes and other Traditional Forest Dwellers and integrate such conservation and management plan with the micro plans or working plans or management plans of the forest department with such modifications as may be considered necessary by the committee.]
- g) approve all decisions of the committee pertaining to issue of transit permits, use of income from sale of produce, or modification of management plans.

(2) The quorum of the Gram Sabha meeting shall be not less than one-half of all members of such Gram Sabha:

Provided that at least one-third of the members present shall be women;

Provided further that where any resolutions in respect of claims to forest rights are to be passed, at least fifty per cent of the claimants to forest rights or their representatives shall be present;

Provided also that such resolutions shall be passed by a simple majority of those present and voting.

SUB-DIVISIONAL LEVEL COMMITTEE

The Sub-Divisional Level Committee is constituted by the State government with the following members:

- a) Sub-Divisional Officer or equivalent officer - Chairperson;
- b) Forest Officer in charge of a Sub-division or equivalent officer - member;

- c) Three members of the Block or Tehsil level Panchayats to be nominated by the District Panchayat of whom at least two shall be the Scheduled Tribes preferably those who are forest dwellers, or who belong to the primitive tribal groups and where there are no Scheduled Tribes, two members who are preferably other traditional forest dwellers, and one shall be a woman member; or in areas covered under the Sixth Schedule to the Constitution, three members nominated by the Autonomous District Council or Regional Council or other appropriate zonal level, of whom at least one shall be a woman member;
- d) An officer of the Tribal Welfare Department in-charge of the Sub-division or where such officer is not available the officer in-charge of the tribal affairs.

Functions of the Sub-Divisional Level Committee

Raise awareness among forest dwellers about the objectives and procedures laid down under the Act and in the rules ;

- Provide such information and records as has been asked by the Gram Sabha or the FRC and to facilitate clarification of the same through an authorized officer, if required.
- Provide forest and revenue maps and electoral rolls to the Gram Sabha or the Forest Rights Committee; y Ensure that the Gram Sabha meetings are conducted in free, open and fair manner with requisite quorum.
- Ensure easy and free availability of proforma of claims to the claimants as provided in Annexure I (Forms A, B & C) of these rules;
- Collate all the resolutions of the concerned Gram Sabhas;
- Consolidate maps and details provided by the Gram Sabhas;
- Examine the resolutions and the maps of the Gram Sabhas to ascertain the veracity of the claims; y Hear and adjudicate disputes between Gram Sabhas on the nature and extent of any forest rights;
- Co-ordinate with other Sub-Divisional Level Committees for inter su-bdivisional claims ;
- Prepare block or tehsil-wise draft record of proposed forest rights after reconciliation of government records;
- Forward the claims with the draft record of proposed forest rights through the Sub-Divisional Officer to the District Level Committee for final decision;

DISTRICT LEVEL COMMITTEE

The District Level Committee is constituted by the State Government with the following members:

- District Collector or Deputy Commissioner - Chairperson;
- Concerned Divisional Forest Officer or concerned Deputy Conservator of Forest - member;
- Three members of the district panchayat to be nominated by the district panchayat, of whom at least two shall be the Scheduled Tribes preferably those who are forest dwellers, or who belong to members of the primitive tribal groups, and where there are

no Scheduled Tribes, two members who are preferably other traditional forest dwellers, and one shall be a woman member; or in areas covered under the Sixth Schedule to the Constitution, three members nominated by the Autonomous District Council or Regional Council of whom at least one shall be a woman member; and

- An officer of the Tribal Welfare Department in-charge of the district or where such officer is not available, the officer in charge of the tribal affairs.

Functions of District Level Committee

- Ensure that the requisite information under clause (b) of rule 6 has been provided to Gram Sabha or Forest Rights Committee;
- Examine whether all claims, especially those of primitive tribal groups, pastoralists and nomadic tribes, have been addressed keeping in mind the objectives of the Act;
- Consider and finally approve the claims and record of forest rights prepared by the Sub-Divisional Level Committee;
- Co-ordinate with other districts regarding inter-district claims;
- Issue directions for incorporation of the forest rights in the relevant government records including record of rights;
- Ensure publication of the record of forest rights as may be finalized;
- Ensure that a certified copy of the record of forest rights and title under the Act, as specified in Annexures II and III to these rules, is provided to the concerned claimant and the Gram Sabha respectively ;
- Ensure that a certified copy of the record of the right to community forest resource and title under the Act, as specified in Annexure IV to these rules, is provided to the concerned Gram Sabha or the community whose rights over community forest resource have been recognized under clause (i) of sub-section (1) of section 3.

STATE LEVEL MONITORING COMMITTEE (SLMC)

The State Level Monitoring Committee is constituted by the State Level Monitoring Committee with the following members,

- a) Chief Secretary - Chairperson;
- b) Secretary, Revenue Department - member;
- c) Secretary, Tribal or Social Welfare Department - member;
- d) Secretary, Forest Department - member;
- e) Secretary, Panchayati Raj - member;
- f) Principal Chief Conservator of Forests - member;
- g) Three Scheduled Tribes member of the Tribes Advisory Council, to be nominated by the Chairperson of the Tribes Advisory Council and where there is no Tribes Advisory Council, three Scheduled Tribes members to be nominated by the State Government;
- h) Commissioner, Tribal Welfare or equivalent who shall be the Member- Secretary.

Functions of the State Level Monitoring Committee

- Devise criteria and indicators for monitoring the process of recognition and vesting of forest rights;
- Monitor the process of recognition, verification and vesting of forest rights in the State;

- Meet at least once in three months to monitor the process of recognition, verification and vesting of forest rights, consider and address the field level verification and vesting of forest rights, consider and address the field level problems, and furnish a quarterly report in the format appended as Annexure V to these rules, to the Central Government on their assessment regarding the status of claims, the compliance with the steps required under the Act, details of claims approved, reasons for rejection, if any and the status of pending claims; y on receipt of a notice as mentioned in section 8 of the Act, take appropriate actions against the concerned authorities under the Act;
- monitor resettlement under sub-section (2) of section 4 of the Act;
- Specifically monitor compliance of the provisions contained in clause (m) of sub-section (1) of section 3 and sub-section (8) of section 4.

IMPLEMENTATION OF FRA IN ODISHA

There is an evidence that Odisha has given explicit attention to several important community initiated institutions like sacred grooves. Some 10,000 Community Forest Management initiatives exist for forest protection and conservation initiated by village elders and youth clubs. Historically, a number of community groups in Odisha have dominated decision making on social, cultural and political issues. When there is a wide range of actors involved in planning, formulating and decision making it becomes pertinent to explore the implementation of the policies at the ground level.

At this instance, this study scrutinises the implementation process under the FRA seeking to identify the implementation challenges and to understand the interface of formal and informal organisations with respect to forest conservation and livelihood of forest dependent communities.

Table – 35: Status of Individual FRA Claims – Example: Koraput District as on 31. 01.2020

| Sl. No. | Particulars | No. of Claims |
|---------|-------------------------------------|---------------|
| 1. | No of Claims Received by FRC | 35,595 |
| 2. | No of claims approved by Gram Sabha | 31,455 |
| 3. | No of claims approved by SDLC | 29,694 |
| 4. | No of claims approved by DLC | 29,192 |
| 5. | Title Distributed | 29,172 |
| 6. | Area (in AC) | 46496.38 |

Table – 36: Status of Community FRA Claims – Example: Koraput District as on 31. 01.2020

| Sl. No. | Particulars | Form B |
|---------|-------------------------------------|--------|
| | No of Claims Received by FRC | 475 |
| | No of Claims approved by Gram Sabha | 178 |
| | No of Claims approved by SDLC | 65 |

| | | |
|--|------------------------------|----------|
| | No of claims approved by DLC | 65 |
| | Title Distributed | 65 |
| | Area (in AC): | 3,780.87 |

Table – 37: FRA beneficiaries covered under different govt. Schemes Under convergence program in Koraput

| Sl. No. | Particulars | No. of Claims |
|---------|------------------------------------|---------------|
| 1. | NO OF Individual Title distributed | 29,092 |
| 2. | IAY | 14,391 |
| 3. | MO KUDIA | 75 |
| 4. | MO POKHARI | 437 |
| 5. | Land Dev. UNDER MGNREGS | 5,581 |
| 6. | National Horticulture Mission | 1,007 |
| 7. | National Bamboo Mission | 44 |
| 8. | Other Programmes | 2,170 |
| 9. | Total | 23,705 |

Table – 38: Status of Individual Forest Rights Claim in Kandhamal District

| Sl. No. | Particulars | No. of Claims |
|---------|---|---------------|
| 1. | No. of IFR claims approved by DLC | 57818 |
| 2. | No. of IFR title distributed after approval of DLC | 57818 |
| 3. | No. of IFR claims in which Demarcation has been made | 53133 |
| 4. | No. of IFR claims in which Demarcation is yet to be made | 4685 |
| 5. | No. of IFR claims in which ROR/Map correction has been made | 51932 |
| 6. | No. of Pattas distributed by the concerned Tahasildar after correction of ROR | 51932 |

(After joint demarcation with Revenue Authority and Forest Department authority the demarcation work will be completed. Accordingly, all Tahasildars and DFO has been instructed to chalk out programme for completion of the said work.)

Table – 39: Status of Community Forest Rights Claim in Kandhamal District

| Sl. No. | Particulars | No. of Claims |
|---------|----------------------------|---------------|
| 1 | No. of CFR claims Received | 2221 |

| | | |
|---|--|------|
| 2 | No. of claims approved by DLC for distribution of Titles | 2221 |
| 3 | No. of community forest title distributed | 2221 |

CASE STUDIES OF GRANTING COMMUNITY RIGHTS IN SAMPLE DISTRICTS

Apart from granting of IFR claims, almost all the CFR claims in the state has been granted or is under verification thus, serving the purpose of the Act. Apart from the state actors, non-state actors such as NGOs have played a vital role in entrusting community with their rights over the forest resources. This section of the chapter analyses few case studies of claiming of CFR claims and in some of the case studies role of the local NGOs could be traced.

Case study – I. Juang PVTG process of claiming habitat rights

The Juang PVTG of Odisha happens to be the first community in the whole to country to have filed habitat rights claim under the Forest Rights Act. A total of three habitat rights (Three Pidha) claim have been filed with the SDLC of which the first one was filed in the year 2010 and the remaining were filed in 2011. The claims were never processed by the SDLC due to prevailing confusion regarding meaning and scope of habitat rights at the level of government. The Government of Odisha subsequently wrote to the Ministry of Tribal Affairs seeking clarification on the issue. The process of claim making was facilitated by Vasundhara (an NGO based at Bhubaneswar, Odisha) and Banabasi Chetna Mandal (a local NGO based at Gonasika, Keonjhar district), Odisha based NGOs. Similar processes were adopted for determination and filing of claims. Example of one such claim making process has been described in the following section:

Process through which the Juang community have claimed Habitat rights

Series of awareness camp and meetings on FRA provisions and habitat rights in the region organised by facilitating local NGO then a Pidha level Mahasabha meeting was organized under the leadership of Mukhya Sardar participated by all Sub-Pidha Sardar with Pradhans, Dehuris and also dakua of all the villages coming under Juang Pidha based on which an action plan developed to initiate the habitat rights determination process. While following up with the agenda Gram sabha of each village under the leadership of Pradhan (whether revenue, hamlets, un-surveyed, forest villages) under all SubPidha organised to discuss the action plan then dates for subsequent meetings was fixed.

Then a subsequent round of gram sabha meetings organised as per previously fixed plan. In these meetings they demarcated their customary boundaries and intimated to SDLC about this development. In next round of meetings, details related to places of NTFP collection, places of worship, Rivers, nalasor any water bodies, grazing places and roads used by them etc were marked and recognizable landmarks (Streams, hillocks, trees etc.) were identified and shown across the previously delineated customary boundary. Prepared maps presented in each of the concerned GS under all Sub-pidha area. Subsequently joint gram sabhas (covering all gram sabha coming under one subpidha area) was organised to look after any issue related to

overlapping area or any conflict between two of the gram sabha and then the claim was finalised.

Pidha level meeting was then organised under the leadership of Sardar and included the Pradhans, Dehuris, Dakua, elders persons, women representatives, Panchayat Secretary, Forest Rights Committee Secretary and President of all the villages falling within that particular sub-pidha for final verification before making recommendation to SDLC. A final Sub-Pidha map was then consolidated and prepared.

The Sub-Pidha map was then finalized by the Sardar (traditional Sub-Pidha leader) with the consent of the Pradhans, Dehuris and all elders/important members of the villages of the Pidha where Panchayat Secretary and FRC Secretary and President were also a part. The Pidha wise Habitat Rights claim was filled before the SDLC. This same process was adopted by all three Sub-pidha for claiming habitat rights

Case Study – II. Kutia Kondha PVTG process of claiming habitat rights

The Kondha were the principal inhabitants in the region now called Boudh and Kandhamal. The Kandhas are divided into many groups among whom the Kutia, Dongaria, and Desia are well known. The Kutia Kondhas are found mainly in Kotagarh, Tumudibandh and Belghar area of the Baliguda subdivision. The Dongaria or the Malua Kandhas lives in high lands in hilly areas of the district. The Desia or Odia Kandhas lives in plain areas with the non-tribal.

The process of recognition of habitat rights has been initiated in collaboration with Kandhamal DLC, local CSO/NGO and the Kutia Kondha traditional leaders, the proposed guideline was piloted in the process of recognition.

Case Study – III CFR governance and management process in Kandhamal

The process for recognition and vesting of community rights under FRA, in Kandhamal, started in 2008, which till date is completed in 2221 villages. The district administration with support from Vasundhara initiated the process of delineation and mapping of community forest resources using GPS in 23 villages of Jamjhari gram panchayat of Phulbani block. Madikhole is a village of Odisha, some 25 Km from Phulbani. Madikhole Gram sabha constituted a community forest resource conservation and management committee (CFR CMC) under section 4(1)(e). The Gram sabha elected 20 members of committee including 10 female member. The CFR CMMC which is formed for the first time under the provision of FRA meets several times and framed some customary rule and regulation and the same has discussed in Gram sabha and passed a resolution of the same. Thereafter it has been implemented and the community initiative on fire management awareness started. For the first time this year they are able to protect forest fire completely and enjoyed the benefits as well given the justice to wild lives. They assessed that number of jungle fowl increases as well as other birds population who all are nesting on ground. The community generated a good income form sal leave plates sale. Women member feel comfortable while visiting the forest for different purpose because

of cooling services of the forest. They are expecting some improvement in sapling number in this year and quality mushroom in rainy season.

Case Study – IV Bilapagha CFR governance and management

Bilapagha is another Village about 30 km from Jashaipur inside Similipal Biosphere Reserve. The Bilapagha governing on about 1200 hector CFR area and constituted a CFR CMC including more than 50% women member from bother Kolha and Bathudi community. Bilapagha Gram sabha framed some basic customary rule and regulation in order to initiate the forest protection, regeneration, conservation and management process after right has been recognized and title given to them under forest right act. CFR CMC also controlling other committee existing in the village such as EDC, SHG after passing a resolution in Gram sabha.

ANALYSIS OF THE ROLES PERFORMED BY THE COMMITTEES AS COMPARED TO THE RULES IN ODISHA

The FRA was expected to be implemented in campaign mode following its enactment in December 2007. Sanctioning land entitlements to tribals and deserving non-tribal families is a complex task and the initial phase was spent in setting up systems and mechanisms for implementation. The role assigned to various committees and the challenges they faced in performing these roles noted from the sample districts are discussed below.

Awareness Generation at Gram Sabha Level

The DLC and SDLC are responsible for disseminating information and generating awareness of the FRA, so that people come forward to file claims for user rights to forest resources. However, there was no systematic effort to disseminate information about the Act and its provisions to FRC members or the Gram Sabha.

The first meeting of the Gram Sabha was the only platform where people came to know about the Act. Officials of the revenue and forest departments were instructed to organise the process, which they did in a campaign mode over a period of 5-7 days across the state. Most of the meetings lasted one to three hours during which the presiding officer explained the basic provisions of the Act.

Committee members particularly at the sub-divisional and lower levels – did not fully understand the process for claiming community rights and were not aware of the documents required as evidence to back up their claims. Initially, only individual claims were demanded and sanctioned in all the districts. Proper dissemination of information would have helped people learn about the community assets for which they could claim user rights under the Act. The community and Gram Sabha would also have been in a better position to discuss each case in detail before sending it to the SDLC through the FRC.

Availability of documents and Forms at the Village Level

The SDLC is responsible for making documents for verifying claims - such as the revenue map, forest maps, voters list, etc. - available at the village level. The tribal development department

distributed application forms free of cost in villages as per instructions issued by the state government. These forms are available with Gram Sabha, ITDA, Block Office or in any of the collector's office of the district. Despite this many, forms were sold to the claimants in few villages in Kandhamal District.

Preparation of Applications and Gathering Evidence

People found it difficult to get documentary evidence, which they had to append to their applications to back-up their claims for user rights. The FRCs and SDLC were not clear about what evidence was required to claim community rights. Even for individual user rights, they accepted only government documents as evidence. Non-tribal forest dwellers found it difficult to establish their legitimate residency in the village for three generations or trace their ancestry in earlier records to claim hereditary rights. The Act says a declaration by any elderly villager (above 75 years of age) would suffice as evidence but no such proof was seen in any of the sample villages. Another problem was the lack of updated land records. When the head of a family died, the land he had been cultivating was distributed among his children. But the land records were not updated. Since titles required to be given to those currently tilling the land, the lack of corrected records created difficulties in obtaining titles. The following documents were most commonly submitted as evidence for claims to community rights:

- Physical verification report of the place by the FRC.
- Copy of the proceedings of the FRC.
- Resolution of the Gram Sabha.
- Map of the area (boundaries marked in red colour).
- Copy of the khasra with recorded possession of land by the community.
- Copy of B-7, B-9 or B-8, B-10 documents along with proof of possession.

Evidence was relatively easier to collect for claims to community rights. This was because such claims were mostly filed in response to state and district-level directives to focus on community claims. So officials ensured that all documents related to such claims were collected and put up before the SDLC.

Examining and Verifying the Claims

Role of the FRCs in verifying claims

- FRCs are pro-active in receiving claim applications but often they lack requisite knowledge regarding the requirement of relevant documents.
- In few villages FRCs had not been constituted according to the stipulated procedure. So it was usually the Panchayat secretary who coordinated the filing of applications in most villages.
- The FRCs also did not have much of a role to play in verifying claims. In some villages, a few FRC members did verify individual claims but these committees had no part in verifying claims for community rights.

Role of the SDLC in verifying claims

- The SDLC was responsible for verifying claims and ensuring that the relevant documents were in place. Several claims did not have the required documents.

- In such cases, the SDLC has duly refer the claim back to the concerned FRC to obtain relevant documents.

Hearing and Adjudicating of Disputes

- DLC is responsible for hearing and adjudicating disputes regarding verification of claims when the matter is at the SDLC level.
- State Level Monitoring Committee is the entrusted authority in the state to hear and adjudicate the dispute if it arises in the DLC level

INSTANCES RECORDED FROM FIELD STUDY

Apart from the assessment of the implementation of the Act through the performance of the Committees prescribed therein and exploring its provisions this chapter enumerates few cases which is important to understand the implementation of the Act in the state. The below mentioned cases have been identified during the course of field study by recording the statements of the affected tribal persons.

Table – 40: FRA Case Study – 1

| Particulars | Details |
|--|---|
| Block & Village | Srasananda |
| Population of village (No. of house holds) | 100 |
| Major Source of Occupation | Agriculture |
| Name of Community | Kandha (ST) |
| Facts of the case | Forest Dept. have given permission to the villagers to collect Minor forest products from the forest only for their daily uses, but they were not allowed to sell these products in market. |
| Source of Information | Villagers |
| Authorities contacted | |
| Current Status | Same |

Table – 41: FRA Case Study – 2

| Particulars | Details |
|---|------------------------|
| Block & Village | Daringibadi & Basabadi |
| Population of village (No. of households) | 45 |
| Major Source of Occupation | Agriculture |
| Name of Community | Kandha (ST) |

| | |
|-----------------------|--|
| Facts of the case | Forest Dept. have given permission to the villagers to collect Minor forest products from the forest only for their daily uses, but they were not allowed to sell these products in market |
| Source of Information | Villagers |

Table – 42: FRA Case Study – 3

| | |
|-----------------------|---|
| Name | Atala Mallick |
| Address | Vill: Srasananda, PO/GP: Minia, Block: Phiringia, Dist: Kandhamal |
| Age | 63 |
| Sex | Male |
| Community | ST (Kandha) |
| Fact of the case | He had applied for forest land. He paid Rs. 75/- for the application form. But the procedure not completed by the Gram Sabha. Due to this he could not get his forest land. |
| Source of information | Affected person himself |

Table – 43: FRA Case Study – 4

| | |
|-----------------------|--|
| Name | Saptaswar Mallick |
| Address | Vill: Srasananda, PO/GP: Minia, Block: Phiringia, Dist: Kandhamal |
| Age | 58 |
| Sex | Male |
| Community | ST (Kandha) |
| Fact of the case | He had applied for forest land. He paid Rs. 75/- for the application form. But the procedure not completed by the Gram Sabha. Due to this he couldn't get his forest land. |
| Source of information | Affected person himself |

Table – 44: FRA Case Study – 5

| | |
|------|-------------------|
| Name | Dasaratha Mallick |
|------|-------------------|

| | |
|-----------------------|--|
| Address | Vill: Srasananda, PO/GP: Minia, Block: Phiringia, Dist: Kandhamal |
| Age | 61 |
| Sex | Male |
| Community | ST (Kandha) |
| Fact of the case | He had applied for forest land. He paid Rs. 75/- for the application form. But the procedure not completed by the Gram Sabha. Due to this he couldn't get his forest land. |
| Source of information | Affected person himself |

Table – 45: FRA Case Study – 6

| | |
|-----------------------|--|
| Name | Gedili Mallick |
| Address | Vill: Srasananda, PO/GP: Minia, Block: Phiringia, Dist: Kandhamal |
| Age | 59 |
| Sex | Male |
| Community | ST (Kandha) |
| Fact of the case | He had applied for forest land. He paid Rs. 75/- for the application form. But the procedure not completed by the Gram Sabha. Due to this he couldn't get his forest land. |
| Source of information | Affected person himself |

OBSERVATIONS

The aforementioned assessment in this chapter regarding the implementation of FRA in the state of Odisha particularly in the Sample Districts stipulates the following concluding observations:

- Adequate efforts have been made by the state government to entrust the claimants right over their land or forest resources by facilitating the process of claim verification but yet the claimants remain unaware of their rights.
- The local authorities have been pro-active in verifying and entitling community claims.
- Problems in entitling individual claims can be noticed in the above mentioned assessment mainly because of submission of irrelevant document as proof of evidence for holding of land.

- The major problem found out from the field study is that the claimants are not aware of the need of have a claim over the land and forest. Hence, the claimants neglect the process of verification of claims.
- It was also noticed that in few villages forms were sold to the claimants by the people of Gram Sabha in Kandhamal District. The major reason behind this is the lack of awareness and illiteracy of the claimants which provokes miscreants to take advantage in this form.
- In few villages FRCs are not duly constituted as per the provisions of PESA Act, 1996 hence the process of filing of claim applications is delayed.
- The local authorities, although proactive in entitling claims but have developed an inadequate strategy to reach out the unlettered tribal population of the state.
- There is a conflict of interest between the decision making of the Gram Sabha and the decision making of forest department which is adversely affecting the forest dwelling population.

Chapter – 6

RECOGNITION OF TRIBAL LAND RIGHTS

The question of land is not just result of the existing situation but its origin may be traced to the periods of deprivation of tribal lands or to periods of the withdrawal of their rights to exploit forest. Gradually, due to various structural changes within and outside the tribal systems, the more advanced groups forced the tribals either to retreat to the nearest jungles or to become landless labourers. Though land is the only source of their livelihood, as their other assets being extremely meagre, tribals were severally deprived. Basically, moneylenders, traders, the feudal lords, or the rich peasants exploit the tribals most. It is an established fact that there is a large scale alienation of lands which belong to the tribes and grabbers invariably in all cases are the non-tribes. This phenomenon has further been ruined by the emergence of new forces of production. Commenting on this, the National Commission on Backward-Areas Development (1980) says, "In a number of areas new industrial and mining complexes, many major irrigation projects were located in the tribal areas resulting in the submergence of extensive lands belonging to the tribals".

Also in the operations of denudation of forest on a massive scale tribal labour had been used to a great extent to clear off the forest area which was a method of the land lords to alienate the tribals from the forests. This further widened the gap between the tribal landless and landed gentry of the non-tribal communities.

Commenting on the problem of land alienation in tribal areas, the Committee on Plan Projects, Planning Commission, presented a report on the Tribal Development Programmes in 1969. The committee noticed that tribal lands in many areas passed into the hands of non-tribals, the legal prohibitions against such transfers notwithstanding. Sample studies in Andhra Pradesh, Orissa and some other States have shown that transfers have taken place on large scale without the permission of the collector or other competent authorities as required by law. The loopholes were exploited by the money lenders and others and they continue to circumvent the legal provisions by entering into 'benami' or other clandestine transactions with the native tribals. The impotency of legislation to arrest this growing menace to the economic advancement of the tribal in such a situation is thus obvious.

DEVELOPMENT OF LAW FOR LAND ACQUISITION

The first land acquisition legislation in India was enacted by the British government in 1824.¹³¹ It enabled the British government to "obtain, at a fair valuation of land or other immovable property required for developmental works such as building of roads, canals and other public purposes. The Bengal Regulation I of 1824 was replaced by Act I of 1850, by which the

¹³¹ The Bengal Resolution I of 1824, the law applied "to the whole of Bengal province subject to the presidency of Fort William.

provision for land acquisition was extended to Calcutta town. By 1857, various laws on land acquisition were consolidated as Act VI of 1857 and it was made applicable to the whole of British India. The 1857 Act was replaced by the Land Acquisition Act (Act X of 1870). However, as noted by the Hon'ble Supreme Court in *Radhey Shyam(D) Through LRs and Others v. State of U.P. and Others*¹³², the Act was made ineffective. The Act of 1870 was repealed and the Land Acquisition Act, 1894 (Act I of 1894) which was said to be enacted for the purpose of facilitating acquisition of private land by the Government for public purposes. After India gained independence in 1947, it adopted the Land Acquisition Act of 1894 by the "Indian Independence (Adaptation of Central Acts and Ordinances) Order" in 1948.

Since 1947, land acquisition in India has been done through the British-era act. It was in 1998 that the rural development ministry initiated the actual process of amending the act. The Congress-led United Progressive Alliance (UPA) in its first term (2004-09) sought to amend the act in 2007 introduced a bill in parliament. It was referred to the standing committee on rural development, and subsequently, cleared by the group of ministers in December 2008, just ahead of its eventual passage. The 2007 amendment bill was passed in Lok Sabha as the "Land Acquisition (Amendment) Act, 2009" in February 2009, and the UPA returned to power for a second term in May that year. However, with the dissolution of the 14th Lok Sabha soon after, the bill lapsed. The government did not have the required majority in the Rajya Sabha to pass the bill.

The Bill of 2007 called for a mandatory Social Impact Assessment (SIA) study in case of large-scale "physical displacements" in the process of land acquisition.¹³³ The act ensured the eligibility of tribals, forest-dwellers and persons having tenancy rights under the relevant state laws. As per the bill, while acquiring the land, the government had to pay for loss or damages "caused to the land and standing crops in the process of acquisition" and additionally, the costs of resettlement and rehabilitation of affected persons or families. This cost or compensation would be determined by the "intended use of the land" and as per prevailing market prices.

The above mentioned Bill of 2007 in 2011 as the "Land Acquisition Rehabilitation and Resettlement Bill, 2011" or LARR, 2011.¹³⁴ The bill proposed that for a private project, land could be acquired only if 80% of the affected families agree to its acquisition.¹³⁵ For a public-

¹³² Division Bench comprising S Sighvi and Asok Kumar Ganguly *Radhey Shyam(D) Through LRs and others v. State of U.P. and others* Civil Appeal No. 3261 decided on April 15, 2011.

"The history of land acquisition shows that in Eighteenth century, Bengal Regulation I of 1924, Act I of 1850, Act VI of 1857, Act XXII of 1863, Act X of 1870, Bombay Act XXVIII of 1839, Bombay Act XVII of 1850, Madras Act XX of 1852 and Madras Act I of 1854 were enacted to facilitate the acquisition of land and other immovable properties for roads, canals and other public purposes by paying the amount to be determined by Arbitrators. The Act of 1870 provided for proper valuation of the acquired land. In case of a dispute on the amount offered in lieu of acquisition, the Collector could make a reference to the Civil Court who were assisted by the assessors. In case of disagreement between the Civil Court and assessors, then an appeal can be filed in the High Court. The mechanism proved ineffective because a lot of time was consumed in litigation."

¹³³ Insertion of new section 3A vide Clause 8 of the Land Acquisition (Amendment) Bill, 2007, Bill No. 97 of 2007. Mandatory Social Impact Assessment (SIA) prior to acquisition of land under this Act.

¹³⁴ The Land Acquisition, Rehabilitation And Resettlement Bill, 2011 introduced in Lok Sabha, Bill No. 77 of 2011

¹³⁵ Statement of Objects and Reasons, Bill of 2011 at page 44. Available at https://www.prsindia.org/sites/default/files/bill_files/Land_Acquisition%2C_Rehabilitation_and_Resettlement_Bill_2011.pdf

private partnership (PPP) project, 70% affected families must agree. Besides, it proposed compensation for the affected parties—four times the market rate in rural areas and two times of the market rate in urban areas. It also sought to compensate artisans, traders and other affected parties through a one-time payment, even if they didn't own land in the area considered for acquisition. The bill was passed in August 2013 as "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" and came into effect on 1 January 2014.¹³⁶

In 2014, the government stated in Parliament that it is difficult to execute the projects, including the "Make in India" programme, which seeks to revive and boost domestic manufacturing hence, the land acquisition is also central to the government's thrust in infrastructure development. To facilitate the same, the land acquisition amendment ordinance in December 2014 was framed with a view to introducing legislation in the Budget session of parliament.¹³⁷

Under the proposed 2015 bill, there will be five categories which will be exempt from certain provisions of the previous act, including consent for acquisition. They are: national security and defence production; rural infrastructure including electrification; affordable housing for the poor; industrial corridors; and PPP (public private partnership) projects where the land continues to vest with the central government.¹³⁸

These categories are also exempted from the SIA provisions, as provided for in the 2013 Act.

The 2013 act facilitated land acquisition by private companies, which the 2015 bill has changed to "private entities." As per its definition, a "private entity" is "an entity other than a government entity" and includes "a proprietorship, partnership, company, corporation, non-profit organisation, or other entity under any other law."¹³⁹

THE LAND ACQUISITION ACT 1894

This Act was enacted by the British with the definite objective of building infrastructure like railways, roads, bridges, canals, communication network and means to transfer their army and weaponry to different parts of the country. Their basic intention was to extend, control and further consolidate their rule throughout the country. Hence, land belonging to rural landowners was acquired under the Act. The ownership and control of the infrastructure and communication network built after land acquisition remained completely with the Government for utilization in public purpose. After independence, the process of acquisition of land from farmers for building steel plants, fertilizer plants, defence related plants and dams (number of villages were submerged to create dams) continued, all for public purposes. Thereafter, the government entered into housing, urban development and industrial sector and resorted to

"Public purpose" has been comprehensively defined, so that Government intervention in acquisition is limited to defence, certain development projects only. It has also been ensured that consent of at least 80 per cent."

¹³⁶ Enacted by Parliament of India on 1st January 2014 vide Bill Citation No. 77-C of 2011.

¹³⁷ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015, Bill Citation No. 152 of 2015.

¹³⁸ Amendment of Section 2 of LAAR Act, 2013 vide Clause 3 of the Bill of 2015.

¹³⁹ Ibid at page 5 available at

[https://www.prsindia.org/uploads/media/Land%20and%20R%20and%20R/LARR%20\(2nd%20A\)%20Bill,%202015.pdf](https://www.prsindia.org/uploads/media/Land%20and%20R%20and%20R/LARR%20(2nd%20A)%20Bill,%202015.pdf).

acquisition of land from farmers for developing housing colonies, laying electricity poles, and industries. All these activities were for public purposes.

In the past few years prior to the enactment of LAAR Act, 2013, large scale acquisition of land has been made for companies under Part VII of the 1894 Act.¹⁴⁰

DRAWBACKS OF THE ACT

- **‘Urgency clause’** is the most criticised and misused section of the 1894 Act. The blatant misuse of Section 17¹⁴¹ by the state governments is a serious cause for concern. The Land Acquisition Act, 1894 has been referred to as a draconian law, because the landowner whose land is proposed to be acquired cannot seek injunction against it. He can only file objections under Section 5A¹⁴² against the proposed land acquisition which is a basic right of the landowner under the principles of Natural justice – *‘audi alterem partem’*. But there have been a number of cases where various state governments have acquired land by misusing the provision of Section 17(4)¹⁴³ of the ‘urgency clause’. Under this provision, the state government may direct that the provisions of Section 5A shall not apply and take away the basic rights of the landowners to file his objections. Hence, the state power is used to misuse the provisions of ‘urgency’. The acquisition of land under Section 4(1) read with Section 17(1) and 17(4) has generated substantial litigation in the last 50 years. One such example could be traced from the judgment of the Supreme Court in **Radhey Shyam (D) through LRs and others v. State of U.P. and Others**¹⁴⁴ wherein it was held as under:

“In cases where the acquisition is made by invoking Section 4 read with Section 17(1) and 17(4)...excluding the application of Section 5A is likely to make the landowner a landless poor and force him to migrate to the nearby city only to live in a slum. A departure from this rule should be made only when the land is required to meet really emergent situations like those enumerated in Section 17(2). If the acquisition is intended to benefit private person(s) and the provisions contained in Section 17(1) and/or 17(4) are invoked, then the scrutiny of the

¹⁴⁰ Part VII of the 1894 Act provides for the Acquisition of Land for Companies. (Sections 38A-44B)

¹⁴¹ Section 17- Special powers in cases of urgency. Clause (1) In cases of urgency, whenever the [appropriate Government] so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the [Government]], free from all encumbrances.

¹⁴² Section 5A- Hearing of objections. Clause (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, [within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be.

¹⁴³ Section 17(4) - In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the provisions of section 5A shall not apply where the appropriate Government so directs to where possession of the land has been taken with the consent of the person interested.

¹⁴⁴ Supra Note 2.

justification put forward by the State should be more rigorous in cases involving the challenge to the acquisition of land."¹⁴⁵

Thus, according to the Supreme Court, Section 5A represents the statutory embodiment of the rule of audi alteram partem and the urgency provision under section 17(1) should not be invoked unless there is real and substantive urgency. Apart from the misuse of the urgency clause, there are certain other drawbacks of the 1894 Act which are mentioned below:

- **Rehabilitation and Resettlement** – There is no provision for rehabilitation and resettlement of persons displaced due to acquisition of land. This generates a lot of discontentment amongst the people.
- **Low Rates of Compensation** – The compensation paid under the Act is at prevailing circle rates in the area which are not even remotely indicative of the actual rates. As a result the government pays at their own market rate which is nowhere near to the actual prevailing market rates. According to Professor Ram Singh of the Delhi School of Economics:

"Market value is always hard to ascertain. Market rate is decided on the basis of 'circle rates' (the registry rate or the stamp duty rate is the minimum rate decided by the government for valuation of land for determining the tax imposed at the time of registration of sale deed of a property), or 'sale deeds' of a similar property, whichever is higher. But people often under quote prices in the sale deeds to avoid paying a high tax. As a result, the government only pays a certain amount as compensation, which is well below the market price of the property."¹⁴⁶

- **Forced Acquisition** – Once the government develops an intention that a particular piece of land may be acquired, nothing can stop the government from acquiring that land without sparing any thought for the person whose land is being acquired. The individual so deprived cannot go to the Court and seek injunction against the proposed acquisition. What he can do is file objections in the written form under Section 5A and to appear before the Collector under Section 5A (2). The Collector shall prepare a report on the basis of his objections which shall be submitted to the appropriate government, the decision of the appropriate government shall be final. The government can overrule the objections on the ground that land is required for a public purpose under Section 6. Thereafter, the acquisition cannot be challenged. The landowner can only challenge the amount of compensation decided by the government. Under the Act, the collector's award of compensation is final, unless altered by a decree of a Civil Court in a regular suit.

In **Rajiv Saran v. State of Uttarakhand**¹⁴⁷ the Constitution Bench of the Supreme Court held:

"The incident of deprivation of property within the meaning of Article 300A of the Constitution normally occurred mostly in the context of public purpose. Clearly, any law, which deprives a

¹⁴⁵ Ibid at page 9.

¹⁴⁶ Namita Kohli, "Landing in Trouble", The Sunday Hindustan Times of India, New Delhi, March 01, 2015, page 4.

¹⁴⁷ Civil Appeal No. 4772 of 1998 decided on August 09, 2011.

person of his private property for private interest, will be amenable to judicial review. In just sixty years, though the concept of public purposes has been given quite interpretation, nevertheless, the “public purpose” remains the most important condition in order to invoke Article 300A of the Constitution.”¹⁴⁸

Finally, the Supreme Court in **Ramji Veerji Patel and Others v. Revenue Divisional Officer**¹⁴⁹ held that:

“The provisions contained in the Act, of late, have been felt by all concerned, do not adequately protect the interest of the landowners/persons interested in the land. The Act does not provide for rehabilitation of persons displaced from their land although by such compulsory acquisition, their livelihood gets affected. For years, the acquired land remains unused and unutilised. To say the least, the Act has become outdated and needs to be replaced at the earliest by fair, reasonable and rational enactment in tune with the constitutional provisions, particularly, Article 300A of the Constitution. We expect the lawmaking process for a comprehensive enactment with regard to acquisition of land being completed without any unnecessary delay.”¹⁵⁰

NEED FOR NEW LAND ACQUISITION ACT

The Government of India believed that a combined law was necessary, one that requires rehabilitation and resettlement necessarily and simultaneously to follow the government acquisition of land for public purposes.

Hence, the 44th Amendment Act of 1978 omitted article 19 (1) (f)¹⁵¹ with the net result being:-

- The right not to be deprived of one property saved by authority of law has since been no longer a fundamental right. property saved by authority of law. the amendment ensure that the right to property is no more a fundamental right but rather a constitutional legal right and statutory write and in the event of preach the remedies available to decrease percent is too high court under article 226 of Indian Supreme court under article 32 of the Constitution.
- Moreover, no one can challenge the reasonableness of the restriction imposed by any law the legislature made to deprive the person of his property.

The Supreme Court while dealing with cases pertaining to land acquisition has stated that the state must pay compensation at the market value of such land, building or structure acquired and the same can be found in the earlier rulings where ‘property right’ was a fundamental right.¹⁵² It propounded that the word ‘compensation’ deployed in article 31(2) implied full compensation, that is the market value of the property at the time of the acquisition. The

¹⁴⁸ Ibid.

¹⁴⁹ 2011 (2) SCALE 364.

¹⁵⁰ Ibid.

¹⁵¹ Vide Clause 2 (ii) of the The Constitution (Forty-Fourth Amendment) Act, 1978 enacted on 30th April 1979.

¹⁵² 1954 AIR 170

legislature must ensure that what is determined as payable must be compensation that is just equivalent of what the owner has been deprived of.¹⁵³

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

This Act¹⁵⁴ is enacted to ensure, in consultation with Institutions of local self-Government and Gram Sabha established under the constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or and make adequate provisions for such affected persons for their rehabilitation and resettlement.

Aim and Objectives

- to ensure, in consultation with Institutions of local self Government and Gram Sabha was established under the constitution of India coma human participative, informed and transparent process for land acquisition for industrialization and development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families
- provide just and fair compensation to the affected families whose land has been acquired are proposed to be acquired or affected by search acquisition
- make adequate provisions for such affected persons for their rehabilitation and resettlement
- to ensure that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post-acquisition social and economic status and for matters connected therewith or incidental thereto.

Purpose and Scope

the act aims to establish the law on land acquisition as well as the rehabilitation and resettlement of those directly affected by the land acquisition in India full stop the scope of this act includes all the land acquisition whether it is done by the central government of India or by any State Government of India.

Availability of the Act

- The government acquire land for its own use, Hold and control, including land for public sector undertakings
- Government acquires land with the ultimate purpose to transfer it for the use of private companies for stated purposes for stop the purpose of the i.a. Land

¹⁵³ 1954 SCR 558

¹⁵⁴ Enacted by Parliament of India on 1st January 2014, Bill Citation No. 77-C of 2011.

Acquisition Bill of 2011 includes public private partnership projects but excludes land required for state or National Highway project

- For immediate usage and declared usage by private companies for public purpose
- The provisions of this Act do not apply to acquisitions under section 316 existing legislations including the special economic zones Act 2005 the atomic energy act 1962 to the Railways act 1989 etc.

Salient Features of the New Act

Following are the salient features of the new act-

- **Compensation:** Given the inaccurate nature of circle rates, the act proposes the payment of compensations that is up to 4 times the market value in the rural areas and two times the market value in the urban areas
- **Resettlement and Rehabilitation:** This is the very first law that links land acquisition and the accompanying publications for resettlement and Rehabilitation over 5 chapters have been dedicated to outline the elaborate process for resettlement and Rehabilitation. the second schedule in particular outlines the benefits that shall accrue in addition to the one-time cash payment.
- **Retrospective operation:** To address historical Injustice the act applies retrospectively to cases where no land acquisition award has been made full stop specifically in cases where the land was acquired five years or more ago but no compensation has been paid on operation has taken place then the land acquisition process will be started a fresh in accordance with the provisions of this act.
- **Multiple checks and Balances:** Comprehensive coma participative and meaningful process involving the participation of local Panchayat Raj institutions has been put in place prior to the start of any acquisition proceedings stop the monitoring committee is at the national and state level to ensure that resettlement and Rehabilitation applications are met have also been established.
- **Specific Safeguards for Tribal Communities and Other Disadvantaged Groups:** No land can be acquired in schedule areas without the consent of Gram sabhas. the laws and laws that all rights guaranteed under such legislations as the panchayat extension to Scheduled Areas act 1996 and the forest rights act 2006 are taken care of. it has special enhancement benefits outlined in a dedicated chapter for those belonging to the scheduled caste and Scheduled Tribes.
- **Safeguards Against Displacement:** The law provide that no one shall be dispossessed until and unless all payments are made and Alternative sites for the resettlement and Rehabilitation have been prepared. the third schedule even list the infrastructural amenities that I have to be provided to those that have been displaced.
- **Compensation for Livelihood Losers:** In addition to those using land, the act provides compensation to those who are dependent on the land acquired for their livelihood

- **Exemption from Income Tax and Stamp Duty:** No Income Tax shall be levied and no stamp duty shall be charged on any amount that accrues to an individual as a result of the provision of the new law
- **Share in Appreciated Land Value:** Where the acquired land is sold with third-party for higher price than 40% of the appreciated land value will be shared with original owners
- **Caps on Acquisition of Multi-crop and Agricultural Land:** In order to safeguard food security and to prevent arbitrary acquisition, that directs the states to impose limits on the area under agricultural cultivation that can be acquired
- **Return of Unutilised Land** – In case the land remains unutilized after acquisition the new act empowers the states to return the land to the owner of the state land Bank
- **Consent:** In cases where II PPP projects are in vult or acquisition is taking place for private companies the new act requires the consent of less than 70% and 80% respectively of those whose land is short to be acquired full stop this ensures that no forcible acquisition can take place

PROTECTION OF INTEREST OF SCHEDULED TRIBES

The Act provides for as under-

- **Separate Chapter:** A separate chapter has been carved out to protect interest of tribals and those belonging to scheduled castes. Where acquisition does take place it shall be done as a demonstrable last resort
- **Approval:** As far as possible no acquisitions will take place in schedule areas. and where such acquisition does take place it has to be done with the approval of the consent of local Institutions of self-governance including the autonomous councils where they exist
- **One third to be Paid Upfront:** In case of land being acquired from members of scheduled caste or Scheduled Tribes, at least one third of the compensation amount due shall be paid to the affected families at the outset as first instalment and the rest shall proceed by taking over possession of the land.
- **Resettlement in the same Scheduled Area:** The Schedule tribes affected families shall be resettled preferably in the same schedule area in 1 compact block so that they can retain their ethnic linguistic and cultural identity.
- **Land for Community:** Predominantly inhabited by the scheduled caste and Scheduled Tribes sell get land to such extent as may be decided by the appropriate government free of cost for community and social gathering.
- **Development Plan:** Development plan laying down the details of procedure for settling land rights due but not settled and restoring titles of tribals on alienated land by undertaking a special drive together with land acquisition the plan must also contain a program for development of alternate fuel and non-timber forest produce resources on forest lands within a period of 5 years sufficient to meet the requirement of tribal communities as well as Schedule Caste.

- **Alienation of Tribal Land to be Void:** Any alienation of tribal lands on land belonging to members of Schedule Caste is in disregard of the laws and regulations for the time being in force shall be treated as null and void and in the case of acquisition of such clients, the rehabilitation and resettlement benefits shall be available to the original tribal landowners on the landowners belonging to scheduled caste.
- **Higher land for land area for SC ST:** In every project those losing land and belonging to the SC and ST will be provided land equivalent to land acquired for two and a half acres which is lower.
- **Payment of Additional Amount:** In addition to a substance amount of rupees 3000 per month for year which all affected families get, just dual caste and Scheduled Tribes displaced from schedule areas shall receive an amount equivalent to rupees 50000/-
- **Granting of Fishing Rights:** The affected scheduled tribes other traditional forest dwellers and the scheduled caste families having fishing rights in a river or pond aur Dam in the affected area shall be given fishing rights in the Reserve area of the irrigation for Hydel projects.
- **If Resettled Outside Scheduled Area then Additional Benefits:** Where the affected families belonging to the scheduled caste and Scheduled Tribes are located outside the district then there shall be paid and additional 25% rehabilitation and resettlement benefits to which they are entitled in monetary terms along with a one-time entitlement of 50000 rupees.

PROTECTION OF INTEREST OF PANCHAYATI RAJ INSTITUTIONS

The Act provides as follows-

- **SIA in consultation with PRIs:** The social impact assessment has to be carried out in consultation with the representatives of the Panchayati Raj institutions in fact, the appropriate government is required by the law to ensure adequate representation of these institutions during the discharge of the process.
- **SIA Reports to be Shared:** Report under the social impact assessment with these individuals in the local language along with the summary
- **Consent of Gram Sabha:** The consent of the gram sabha if necessary before any acquisition can be given in Scheduled Areas and it also has to be in accordance with the provisions of PESA act 1996.
- **Representation of Panchayat Chairperson on R&R Committee at a Project Level:** The rehabilitation and resettlement committees at project level has to have the chairperson of the panchayat located in the affected area or their nominees as representatives.
- **Panchayat Ghar:** Panchayat have to be provided as per the list of infrastructural amenities given in the third schedule

- **Representation in Expert Group:** Group has to have two members belonging to the Panchayati Raj institutions. this is a powerful body that has the power to reject a project
- **Hearings in all Gram Sabhas:** In case where an affected area involves more than one gram panchayat and municipality public hearings shall be conducted in every Gram Sabha where more than 25% of land belonging to Gram Sabha is being acquired

ISSUE OF RETROSPECTIVE APPLICATION OF THE ACT

Section 24(1) of the 2013 Act provides that the Act will not be applicable in cases where an award has been made under section 11 of the old Act. Further, section 24(2) of the 2013 Act starts with a non-obstante clause and provides-

"Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holding has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

Hence, the benefit under the provisions of the 2013 Act as per the above-stated statutory provision is being given in the cases wherein the award has been made under the provisions of the old Act *five years (5) or more* prior to the commencement of the 2013 Act (i.e. on or before 01.01.2009) but the compensation has not been paid or the physical possession of the property has not been taken.

In the recent case of *Delhi Development Authority v. Sukhbir Singh & Others*¹⁵⁵, the Hon'ble Supreme Court has granted the benefit of sec. 24(2) of the 2013 Act to the land owners, as the award under section 11 of the Land Acquisition Act, 1894 was passed in the year 1997, i.e., prior to 01.01.2009.

The Hon'ble Supreme Court, while deciding above mentioned case, has found that it is squarely covered by the ratio of another Supreme Court judgement, i.e. *Pune Municipal Corporation v. H.M. Solanki*¹⁵⁶. In Pune Municipal Corporation case, the date of award passed under section 11 of the Land Acquisition Act, 1894 was 31.01.2008, i.e. prior to 01.01.2009

Conditions for availing the benefit of section 24(2) of the 2013 was noted in the case of *Delhi Development Authority*:

¹⁵⁵ *Delhi Development Authority v. Sukhbir Singh & Others*, MANU/SC/0986/2016

¹⁵⁶ *Pune Municipal Corporation v. H.M. Solanki* AIR 2014 SC 982

1. *Land Acquisition should have been initiated under Land Acquisition Act, 1894;*
2. *Award under Section 11 should have been made 5 years or more prior to the commencement of the 2013 Act, i.e. award should have been made on or before 01.01.2009;*
3. *Physical possession has not been taken or the compensation has not been paid.*

However, the issue which remains contentious is the interpretation of 5 year period, i.e. whether the above stated provision will benefit the land losers, whose lands have been acquired after 01.01.2009. Till date there is no precedent of any court which provides clarity over this issue.

Liberal Interpretation of 5-year term

The Government of India on the basis of the Solicitor General's opinion came out with a circular which clarified the position with respect to interpretation of section 24(2) of the Act. The said circular states that a landowner becomes eligible to the benefit available under sec. 24 (2) of the Act in cases where the award under section 11 of the 1894 Act is passed after 01.01.2009 *and* the period of 5 years has not lapsed from the date of passing of this award *and* the date of commencement of this Act *and* if the said period of 5 years gets lapsed on any date after the commencement of the Act and the compensation is not paid till such date.

Further the Hon'ble Supreme Court in numerous instances including cases, *Union of India v. Shiv Raj & Others*¹⁵⁷ and *Ram Kishan & Ors .v. State of Haryana & Others*¹⁵⁸ has considered the above said circular of Government of India while deciding the cases. In *Delhi Development Authority* case, court while explaining the object of s. 24(2) observed:

"The picture that therefore emerges on a reading of Section 24(2) is that the State has no business to expropriate from a citizen his property if an award has been made and the necessary steps to complete acquisition have not been taken for a period of five years or more. These steps include the taking of physical possession of land and payment of compensation. What the legislature is in effect telling the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after pronouncement of award. Not having done so even after a leeway of five years is given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed."

As per the liberal interpretation and keeping in mind clause 18 of the objects of the 2013 Act, it seems clear that the benefit of section 24 (2) must be given to the land loser whose land have been acquired by an award passed under the old Act after 01.01.2009, i.e. within 5 years of the commencement of the 2013 Act.

Strict Interpretation of 5 year term

In *M/s Competent Automobiles Limited v. UOI & Others*¹⁵⁹ (Civil Appeal No. 5054 of 2008), the apex court observed:

¹⁵⁷ *Union of India v. Shiv Raj & Others* (2014) 6 SCC 564

¹⁵⁸ *Ram Kishan & Ors .v. State of Haryana & Others* (2015) 4 SCC 347

¹⁵⁹ *M/s Competent Automobiles Limited v. UOI & Others*, AIR 2015 SC 3186.

"The said award must predate the commencement of the Act i.e. 1-1- 2014; by at least five years (or more) i.e. the award must have been passed on or before 1-1-2009...Each and every deeming operation under Section 24(2) requires unambiguously and unvaryingly that a factual conclusion be drawn about the passing of the award under Section 11 of the 1894 Act, on or before 1-1-2009."

Further, the Hon'ble Supreme Court in case of *Ratan Singh v. Union of India & Others*¹⁶⁰, reiterated the same. In case of *Athena Demwe Power Limited*¹⁶¹ of the Hon'ble Gauhati High Court while considering the fact that the award in question was passed on 11-5-2012, while possession was taken on 22-6-2012. Thus, it does not satisfy the test of sec. 24(2), as the award was made after 01.01.2009. Thus, Court while allowing the appeal on behalf of the appellant-company, on whose behalf, the lands were acquired held that

"this section cannot obviously deal with a situation if the award is passed within five years of the commencement of the Act of 2013."

However, the question which remains unanswered is the incidence of the said Provision in cases where the award is passed within 5 years of the commencement of the 2013 Act and the possession has not been taken or the compensation for such acquisition has not been paid even after the expiry of 5 year period from passing of such award.

Conclusion of this Issue

The decisions of the Hon'ble Apex Court cited above have created confusion with regard to applicability of section 24(2) in cases where the award under Sec. 11 of 1894 Act has been passed after 01.01.2009 and the compensation has not been paid even after 5 years. As per the strict interpretation of the 5 year period, as envisaged under Section 24(2) of the 2013 Act, the land losers whose lands have been acquired by an award passed under the old Act after 01.01.2009 and the compensation has not been paid till date shall be kept devoid of the benefits of the 2013 Act, while the same benefit shall be given to the land losers whose lands have been acquired by an award passed under the old Act on or before 01.01.2009. It is well settled principle under the law that a beneficial piece of legislation has to be given a liberal interpretation.

Recommendation on this Issue

There exists a need that the apex court must step in and give a liberal interpretation with regard to interpretation of '5 year period' under section 24(2). Hence, the land losers whose lands have been acquired after 01.01.2009 should be accorded with the benefits under the 2013 Act.

DETAILS OF THE CASE STUDIES IN STUDY AREA

During the course of this Project, the instant research study has undertaken few relevant cases in the state of Odisha relevant to assess the implementation of the legislations pertaining to the

¹⁶⁰ *Ratan Singh v. Union of India & Others Civil Appeal No. 2852 OF 2009.*

¹⁶¹ *Athena Demwe Power Limited, W.A. No. 175 of 2015.*

land acquisition of scheduled persons in the State including the provisions of seeking consent, assessment of market value, payment of compensation and the provisions for rehabilitation and resettlement. The list of cases studies undertaken in this project are as follows:

Table – 46: List of cases in Odisha in the context of LARR Act, 2013

| Sl. No. | Year | Name of Project | Place |
|---------|------|------------------------------------|-----------------------|
| 1. | 2012 | National Thermal Power Corporation | Darlipali, Sundargarh |
| 2. | 1963 | Similipal Tiger Reserve | Similipal, Mayurbhanj |
| 3. | 2019 | National Aluminium Company Limited | Pottangi, Koraput |
| 4. | 1976 | Upper Kolab Dam | Kotpad, Koraput |
| 5. | 1971 | Hindustan Aeronautics Limited | Sunabeda, Koraput |

Land Rights Case Study – 1

NTPC DARLIPALI – SUNDARGARH DISTRICT

The board of directors of NTPC Ltd has approved an investment of Rs 12,532.44 crore in January, 2014 for the 1,600 Mw (2x800) super thermal power project to be set up at Darlipalli in Odisha's Sundargarh district.

The Darlipalli super thermal power project will draw water from the Hirakud reservoir in the Mahanadi river. NTPC has secured coal linkage for this project in the form of Dulanga coal block with mine capacity of seven million tonnes per annum (mtpa) under command area of Mahanadi Coalfields Ltd (MCL) and Pakri Barwadih block in Bihar's Hazaribagh district with a mining capacity of 12.5 million tonne per annum (mtpa). Odisha will get 50 per cent power from the Darlipalli project.

For the purpose of establishment of NTPC Super Thermal Power Plant the notification of acquisition of land was published in 2011 under the Land Acquisition Act 1894, The said acquisition of land affected 101 original families (a total of 244 persons including 143 extended family). For the purpose of rehabilitation and resettlement of the aforementioned persons the Darlipali R&R Colony was developed and the affected persons were shifted therein. It is pertinent to mention herein that Odisha Rehabilitation and Resettlement Policy 2006 was adhered hereto. Particularly, 139 persons opted for ready to move-in houses and 105 persons opted for land patch within the R&R Colony. The process of shifting began in 2016 and was completed by the end of 2017.

Stages of Acquisition to Resettlement is stated below:

- Compensation of acquisition of the land along with solatium was paid to the affected persons in 2014 which is 3 years before shifting them to the R& R colony.
- Thereafter, third party contractors were awarded contracts for initiating developmental activities for the Plant. Eg. Toshiba, BHEL, L&T etc. (Empty land was developed first)

- The R&R Colony, Darlipali was prepared by 2016 and all the affected persons were shifted therein by the end of 2017.
- The Thermal Power Plant started its operation in 2018.

Stages of entrusting Rehabilitation and Resettlement of Affected Persons

- Peoples' opinion was taken from person to person basis by the officials of NTPC specially appointed for implementing R&R Policy, 2006 during 2014-15.
- The space for development of R&R Colony was decided with the public participation at Khiraguda.
- Free consent of all the affected persons was obtained in the form of a notarized affidavit without any vitiating factor that they have decided their own colony.
- The master plan for development the R&R Colony was made.
- After construction of the R&R Colony, it was handed over to the Land Acquisition Officer, Sundargarh which subsequently allotted the houses and plots to the affected persons after approval of RDC.

Table – 47: Land acquired by NTPC, Darlipali in village Raidihi, Area acquired 90.33 Acres

| Type | Land | Structure and Trees |
|------------------------|------------------|----------------------------|
| Total Awarded Amount | Rs. 13,88,50,320 | Rs. 26,06,401 |
| Total Disbursed Amount | Rs. 13,88,50,320 | Rs. 19,27,625 |
| Balance | NIL | Rs. 6,78,776 |
| Percentage of Payment | 100% | 73.95% |

Table – 48: Land acquired by NTPC, Darlipali in village Raidihi, Area acquired 15.78 Acres

| Type | Land | Structure and Trees |
|------------------------|-----------------|----------------------------|
| Total Awarded Amount | Rs. 2,10,93,787 | Rs. 2,13,09,106 |
| Total Disbursed Amount | Rs. 2,10,93,787 | Rs. 2,13,08,106 |
| Balance | NIL | NIL |
| Percentage of Payment | 100% | 100% |

Table – 49: Land acquired by NTPC, Darlipali in village Darlipali, Area acquired 1184.57 Ac

| Type | Land | Trees | Structure |
|------------------------|--------------------|-----------------|------------------|
| Total Awarded Amount | Rs. 1,96,42,78,800 | Rs. 1,20,61,814 | Rs. 6,32,68,344 |
| Total Disbursed Amount | Rs. 1,95,33,24,810 | Rs. 1,16,96,131 | Rs. 5,63,88,036 |
| Balance | Rs. 1,09,53,990 | Rs. 3,65,683 | Rs. 68,80,308 |

| | | | |
|-----------------------|--------|--------|--------|
| Percentage of Payment | 99.44% | 96.96% | 89.12% |
|-----------------------|--------|--------|--------|

Table – 50: Land acquired by NTPC, Darlipali in village Darlipali, Area acquired 31.88 Ac

| Type | Land |
|------------------------|-----------------|
| Total Awarded Amount | Rs. 5,17,40,691 |
| Total Disbursed Amount | Rs. 3,89,42,885 |
| Balance | Rs. 68,80,308 |
| Percentage of Payment | 75.26% |

Table – 51: Structure on Government Land in village Darlipali

| Type | Land |
|------------------------|-----------------|
| Total Awarded Amount | Rs. 3,89,48,291 |
| Total Disbursed Amount | Rs. 3,66,48,262 |
| Balance | Rs. 23,00,029 |
| Percentage of Payment | 94.09% |

Table – 52: Rehabilitation and resettlement benefits

| Type | Payment |
|--------------------------------|---|
| Total Award Passed | Rs, 28,65,89,800 |
| Paid | Rs. 28,52,88,600 |
| Balance | Rs. 13,01,200 |
| Total no. of displaced persons | 244 |
| Shifted Persons | 243 (139 opted for houses & 105 opted for land) |

Details of Darlipali R&R Colony

- The Darlipali R&R Colony is spread over an area of 58.15 acres having concrete fencing in all the sides having one entry point having both conventional and solar electric supply. All the houses are provided electricity and have concrete roads in both sides of their houses with well developed drainage system.
- As of now the electricity is provided by NTPC but the residents have to pay for the electricity consumption once the R&R Colony is handed over to the Government.
- There is a government primary school till class 5 and there are two two schools with high secondary education and one college providing senior secondary education in the vicinity.
- NTPC has provided furniture to all the aforementioned schools and colleges. It also provides a scholarship of Rs. 3000/- to the students to top their class every year. The scholarships are given to the students on 15th August of every year.

- There is a primary health center in the R&R Colony which is not yet operational and is scheduled to be handed over to the government in April 2020.
- There is a shopping complex made in the campus of the R&R Colony having 14 shops which are provide to the inhabitants without any cost. Out of 14 shops only 2 shops are in operation selling grocery items. Hence, the rest of the shops are to be handed over to the Sub-Collector, Sundargarh to do further allotment.
- There is a Veterinary Hospital to look after the health conditions of the animals in the surrounds which is not is operation and is scheduled to be handed over to the government in April 2020.
- There is a Tribal Centre built within the campus of the R&R Colony which is to be handed over to the Odisha Livelihood Mission in April 2020.
- It has Water Tank System having capacity to hold 50 lakhs litres of water ensuring 24/7 water supply to the residents and there is one Water ATM providing 24/7 drinking water.
- Mobile Van Health Chech-Up facility is provided on daily basis.
- Apart from the above there are 2 Community Centers for conducting community activities and there are 2 Cremation Sheds.
- Further, an amount of Rs. 15 crores have been deposited with the District Collector for the future maintenance of the R&R Colony at Darlipali.

Other Benefits provided

- Instead of job, one-time cash was given. (category wise payment of cash is fixed as per RR Policy 2006)
- The third party contractors are asked to give preference to the locals on contractual basis.
- 101 domestic daily use household items were provided which was not provided in the R&R Policy 2006 such as bucket, mug, bedsheets, kitchen items, utensils etc.

Land Rights Case Study – 2

SIMLIPAL TIGER RESERVE PROJECT OF 1973

Background Facts

The Simlipal Tiger Reserve, is a compact block of elevated plateau located in the central portion of Mayurbhanj district, in the northern part of Orissa. The Simlipal Reserve Forest spread over 2,750 sq. km, was declared as “Tiger Reserve” on 04.12.1973, under Project Tiger Scheme of India. On 31st December 2007, the Critical Tiger Habit (CTH) was declared as per the Section 38V of the WLPA amended act, extending its core area over 1194.75 sq. km and a buffer area of 1555.25 sq. km.

The National Park consists of seven ranges with 39 protection camps. The buffer zone has three forest divisions with 12 ranges and 19 protection camps. There is a road network of 597 km within the Core, and 139 km in the buffer zone of Simlipal Tiger Reserve.

There are 1,265 villages inside the Simlipal Biosphere Reserve with a total population of 4.62 lakh, out of which 73.44% belongs to minority groups. Out of 1,265 villages, 61 villages are situated inside the sanctuary area of which 60 villages are in the buffer area and 1 village still exists in the core area. There are 3 Gram Panchayats inside Simlipal, viz. Gudugudia, Barheipani and Astakumar. According to Census 2001 the total ST population in Simlipal area is around 11,520 (91.77%). The buffer has a total population of 12,500 people.

Table – 53: Conflict and mobilization in Similipal

| Sl. No. | Particulars | Remarks |
|---------|------------------------|---|
| 1. | Intensity | MEDIUM (street protests, visible mobilization) |
| 2. | Reaction stage | In REACTION to the implementation (during construction or operation) |
| 3. | Groups mobilizing: | Indigenous groups or traditional communities Local ejos Landless peasants Ethnically/racially discriminated groups Scheduled Tribes (Adivasi) |
| 4. | Forms of mobilization: | Referendum other local consultations Street protest/marches Appeals/recourse to economic valuation of the environment |

Table – 54: Impact of the Tiger Project in Similipal

| Sl. No. | Particulars | Remarks |
|---------|------------------------|---|
| 1. | Environmental Impacts | Visible: Food insecurity (crop damage) Potential: Biodiversity loss (wildlife, agro-diversity), Deforestation and loss of vegetation cover |
| 2. | Health Impacts | Visible: Malnutrition, Mental problems including stress, depression and suicide Potential: Exposure to unknown or uncertain complex risks (radiation, etc...), Violence related health impacts (homicides, rape, etc..), Health problems related to alcoholism, prostitution, Other environmental related diseases |
| 3. | Socio-economic Impacts | Visible: Displacement, Lack of work security, labour absenteeism, firings, unemployment, Loss of livelihood, Militarization and increased police presence, Specific impacts on women, Violations |

| | | |
|--|--|--|
| | | <p>of human rights, Land dispossession, Loss of landscape/sense of place, Other socio-economic impacts</p> <p>Potential: Increase in Corruption/Co-optation of different actors, Increase in violence and crime, Loss of traditional knowledge/practices/cultures, Social problems (alcoholism, prostitution, etc..)</p> |
|--|--|--|

Table – 55: Outcome of the Tiger Project in Simlipal

| Sl. No. | Particulars | Remarks |
|---------|---------------------------------|---|
| 1. | Project Status | In operation |
| 2. | Conflict outcome/ response: | <p>Compensation</p> <p>Criminalization of activists</p> <p>Under negotiation</p> <p>Application of existing regulations</p> |
| 3. | Development of alternatives: | <p>Some villages located in the buffer area, whose community forest rights (CFR) have been recognized, are constituting a forest management committee and 30 villages have already prepared a management and conservation plan for community forest resources. 21 villages have submitted a management plan to the Sub-divisional level committee and approved by the District collector. About 10 villages have already started implementing their management plan with the support of the Forest department. The process is being followed up by Vasundhara and CREFTDA, and a meeting is held with the concerned authorities every month to follow up the process. However, the real implementation of these rights continues to be obstructed by the forest department, and the indigenous communities are continuously struggling to proper implement the law – a law which has the potentiality to bring out of poverty thousands of people and legalize their status in their forest reserved areas.</p> <p>Legal Actions: The first legal action has been taken on 15th December 2014, when the local indigenous activist Telanga Hasa from Jamunagar village, submitted an appeal to the to the Ministry of Tribal Affair to request to stop the relocation from the Simlipal Tiger Reserve and provide the basic amenities to villages inside Simlipal. On 15th and 16th December 2016, a National Public Hearing was organized by the Human Rights Law Network, in New Delhi, in support of the Jamunagarh relocated villagers. It was</p> |

| | | |
|--|--|--|
| | | <p>argued that while community rights and titles received their rights were immediately deprived in the relocated site. It was also criticized that the two villagers inside the core areas, were continuously denied of asserting their rights, although titles distributed and CFRs recognized.</p> <p>Since the beginning of 2017 local activist led by Telanga Hasa, have started to get organized to protest against the ongoing eviction under the flag of Simlipal Surakshia Manch (SSM). An important meeting was organized at the state level on 6 January, 2017 in Bhubaneswar, Odisha to protest against the forcible eviction of the villagers from the STR. On that day the representatives of Simlipal Surakshia Manch (SSM) appealed to stop the relocation plan both in core and buffer area, asking to stop the continuous harassment and ensuring basic facilities to the communities of the Simlipal Tiger Reserve.</p> |
|--|--|--|

Information on Similipal Core Area

There were four Gram Panchayats existing in the core area of Similipal Tiger Reserve. Details of these gram panchayats are as follows:

Jenabil – Total 84 families have been shifted in two phases from the village Jenabil and rehabilitated at Ambadiha Rehabilitation Colony under Udala Tehsil of Kaptipada Sub-Division.

Jamunagarh – Total 46 families shifted in two phases from the village Jamunagarh and rehabilitated at Ambadiha (8 families) and Bahubandh (35 families) Rehabilitation Colony under Udala Tehsil. (However, 3 families are still staying in the Jamunagarh village).

Kabatghai – total 85 families have been shifted in 2016 in two phases from the village kabatghai and rehabilitated 38 families at Ambadiha Rehabilitation Colony under Udala Tehsil and 47 families in Manada Rehabilitation Colony under Jashipur Tehsil of Panchpir Sub-Division.

Bahua – As per the survey conducted in the year 1998, a total of 61 families are staying in the village Bakua. After several persuasion the families are not willing to shift from their village.

Apart from the villages in the core area, there were villages in the reserve area of the Similipal Tiger Reserve. Details of these villages are as follows:

Bahaghar and Uparbarakamuda – 35 families have been shifted in 2013 and rehabilitated at Asankudar Rehabilitation Colony under Thkurmunda Tehsil of Panchpir sub-division.

Kiajhari – 79 families have been shifted from village Kiajhari during the year 2017 and rehabilitated at Khandiadhar Rehabilitation Colony under Karanjia Tehsil of Panchpir Sub-Division.

Ramjodi – 73 families have been shifted from village Ramjodi during the year 2018 and rehabilitated at Sialinai Rehabilitation Colony under Karanjia Tehsil of Panchpir Sub-Division.

Matakacha – 42 families have been shifted from village Matakacha during the year 2018 and rehabilitated at Pahadmadak Rehabilitation Colony under Karanjia Tehsil of Panchpir Sub-Division.

As per the National Tiger Conservative Act 2008, the rehabilitation package under Option-II i.e. payment of compensation @Rs. 10 lakhs per family through fixed deposit. Besides that, 10 decimal homestead land, Biju Pucca Ghar, electrification, drinking water, cattle shed etc. facilities are provided to those rehabilitated. Towards agriculture land @Rs. 1 lakh per acre has been given to those rehabilitated for their own agricultural land.

Land Rights Case Study – 3

NALCO MINING: POTTANGI BLOCK, KORAPUT

Background Facts

The Navratna PSU had applied for environment clearance from Environment Ministry for bauxite mining lease spread over 697.979 ha land in Pottangi village of Koraput district. The bauxite mining lease will have an annual capacity of 3.5 million tonne per annum (MTPA). For this purpose, the Odisha State Pollution Control Board on 17th December 2019 organised a public hearing at the stadium ground and the administration had invited villagers of Khudi and Sorispadar panchayats under Semiliguda and Kotia, Pottangi, Maliput and Nuagam in Pottangi block to attend it.

Post the public hearing, the media houses reported that the public hearing was conducted smoothly and a clearance was given to NALCO therein. For example,

“Nalco Pottangi mines supported in public hearing

Wednesday, 18 December 2019 | PNS | BHUBANESWAR

The National Aluminium Company Limited (Nalco) was allotted the Pottangi bauxite mines in Koraput district. As part of statutory conditions, the public hearing for environment clearance was held on Tuesday in a peaceful and amicable manner, wherein thousands of villagers from periphery villages of Pottangi block attended the meeting supporting the project.

With significant participation of villagers, the meeting was conducted smoothly in presence of large number of public representatives, present and past members of Parliament of Koraput and others, who shared their views. Koraput ADM Deben Kumar Pradhan presided over the meeting.”¹⁶²

Ground Reality

- People from 5 panchayats in Pottangi Block, Koraput attended the public hearing on 17th December 2019 namely, Maliput, Kotia, Sorispadar, Pottangi, and Nuagam.
- Approximately 2000 people gathered in the stadium field to attend the public hearing.

¹⁶² Source: The Pioneer, available at: <https://www.dailypioneer.com/2019/state-editions/nalco-pottangi-mines-supported-in-public-hearing.html>

- Peoples from villages who would be directly affected did not attend the public hearing as they feared the immense presence and activity of police in the area during the hearing.
- People present in the hearing were mostly from the outside villages who are not affected by the mining project of NALCO. Moreover, none understood the proposition and gave clearance.

Current Status

- People have come up on the streets and are making demonstrations in opposition to the NALCO's mining project in Pottangi Block, Koraput.
- The main reason for their opposition was because the mining would adversely impact agriculture and drinking water in the area by drying up natural streams and would also hurt their religious sentiments as the entire hill range is home to various tribal deities and of great religious significance to locals.

Land Rights Case Study – 4

UPPER KOLAB HYDRO ELECTRICITY PROJECT

Background of the Project

Upper Kolab Hydro Electric Project, Located in the district of Koraput (Odisha) was taken up for excavation in the year 1976 by the Irrigation and Power Department, Govt. of Odisha at an estimated cost of Rs. 74.63 Crores. This Project is utilising the water potential of river 'KOLAB' a tributary of river Godavari. It is a multipurpose project aimed at Generation of 95MW (firm) Hydro Electric Power, providing irrigation facilities to 47,985 H.A. by lift canal irrigation and supplying drinking water to Damonjodi, Koraput, sunabeda and Jeypore town. The Project work was completed in two stages i.e. STAGE-I & STAGE-II.¹⁶³

For the purpose of commencement of the Project the required land was acquired (*details of the acquired land; details of the displaced persons and the compensation paid to them is mentioned below*) resulting in displacement from four villages namely Khilaput, Koraput, Khaparaput and Kelchagaon and were shifted to Four Camps in Kotpad Block of Koraput District namely, Camp-4a, Camp 4B, Camp 6 and Camp 7 respectively.

Brief History

Preliminary investigations for the project were carried out by the Government of Madras before April 1936. At that time Koraput district was a part of Madras Presidency and subsequently detailed investigations were carried out by Govt. of Odisha after 1961. The present proposal was finalised after investigating several proposals with alternative dam sites and water conductor systems. The power project was approved by the Planning Commission during August 1975 and irrigation project in June 1976.¹⁶⁴

¹⁶³ Odisha Hydro Power Corporation Limited's Official Website. Available at <http://ohpcltd.com/Upperkolab>.

¹⁶⁴ Ibid.

Table – 56: Detailed information on rehabilitation of U.K.H.E.P Koraput

| Number of Displaced Persons | | | | Remarks |
|-----------------------------|------|---------|-------|--|
| S.T | S.C. | General | Total | |
| 1443 | 459 | 1278 | 3180 | Have already been paid rehabilitation grant |
| 40 | 12 | 86 | 138 | Governments in W/R Department have been moved for sanctions of Rehabilitation Grant of Rs. 1937502.00 vide this office letter No. 760, dated. 28.08.2002 |
| 1483 | 471 | 1364 | 3318 | |

Table – 57: Land based Resettlement for agriculture and horticulture

| | | |
|---------|------------------------------------|-------------|
| ST | 199@ Ac.3.00 per Displaced Person | Ac. 597.00 |
| SC | 30 @ Ac.3.00 per Displaced Person | Ac. 90.00 |
| General | 297 @ Ac.3.00 per Displaced Person | Ac. 891.00 |
| | Total : | Ac.1578.00 |
| | House site | Ac.96.99 |
| | | Ac. 1674.99 |

Table – 58: Resettlement of cash grant

| | | |
|---------|---|--------------------|
| ST | 1244 @ Rs. 1440 /- per Displaced Person | Rs. 1,74,65,760.00 |
| SC | 429 @ Rs. 1440 /- per Displaced Person | Rs. 60,23,160.00 |
| General | 981 @ Rs. 1440 /- per Displaced Person | Rs. 1,37,73,240.00 |
| | Total : | Rs. 3,72,62,160.00 |

Table – 59: Rehabilitation grant to be paid to be paid to 138 D.P. As per recommendation of 16th R.A.C.

| | | |
|---------|---------------------------------------|------------------|
| ST | 40 @ Rs. 1440 /- per Displaced Person | Rs.5,61,600.00 |
| SC | 12 @ Rs. 1440 /- per Displaced Person | Rs.1,68,480.00 |
| General | 86 @ Rs. 1440 /- per Displaced Person | Rs. 12,07,440.00 |
| | Total | Rs. 19,37,520.00 |

Table – 60: Information of displayed families of U.K.H.E.P. Koraput land base resettlement

| Camp No. | No. of DP | ST | SC | OC | Total | Area Allotted |
|----------|-----------|-----|----|----|-------|---------------|
| 04 | 262 | 198 | 21 | 43 | 262 | Ac. 73423 |
| 05 | 57 | 00 | 03 | 53 | 57 | Ac. 15550 |

| | | | | | | |
|-------|-----|-----|----|-----|-----|-----------|
| 06 | 76 | 00 | 00 | 76 | 76 | Ac. 8679 |
| 07 | 131 | 01 | 06 | 124 | 131 | Ac. 48947 |
| Total | 526 | 199 | 30 | 267 | 526 | Ac. 7499 |

Table – 61: Resettled o payment of cash grant

| No. of DP | ST | SC | OC | Total |
|-----------|------|-----|-----|-------|
| 2654 | 1244 | 429 | 981 | 2654 |
| | 00 | 03 | 53 | |
| 3180 | 00 | 00 | 76 | 3180 |
| | 01 | 06 | 124 | |

DETAILS OF FIELD STUDY

For the purpose of collection of information regarding the Project, the team of SCSTRTI visited the site of rehabilitation where the displaced persons from the Upper Kolab Project are shifted. The information collected by the fact-finding team are as follows:

Camp – 6 Baikunthapur (01.07.2018) (Displacement for Development of Upper Kolab Dam)

Background Facts

Out of the total of families displaced for the construction of Upper Kolab Dam, 120 families were displaced particularly from Khilaput, Koraput, Khaparaput and Kelchagaon and were shifted to Camp – 6, a remote area in Kotpad District. Initially, it was decided that the displaced villages to be rehabilitated in Mathu (Malkangiri) but later it was shifted to Kotpad Block in Koraput District.

The then Rehabilitation and Resettlement Policy

While acquisition of land, the displaced families were duly paid the then assessed market value of land along with 15% solatium in 1981 which was accepted by those displaced. Further, the interaction with the residents of Camp – 6 revealed that those displaced families were promised that ready to move in pucca house will be provided along with agricultural land wherein the water from the Kolab Dam was supposed to be channelized, a community forest was promised to be given for collecting timber and other livelihood purposes. Further, they were also promised that and all the facilities like communication, good roads, education, medical facility, electricity, employment etc. to be provided to them in that new settlement area.

Revealed Outcome

After shifting those displaced families to Camp – 6, they were asked to stay in 10*7 ft temporary structured houses with no wall and tin ceiling. Further, they were asked to built their own houses for which they will be duly paid by the Govt. Hence, those displaced families built

their own house (kacha house) by collecting available resources within 3 months. Thereafter, the acting authorities took away the temporary established structured camp and paid nothing to the residents. Moreover, the agriculture land so provided to them is 2 kms far from their settlement and the water canal from Kolab Dam is 3 kms away from their agriculture land and no community forest is provided to them.

Current Status

- Got the recognition of a village namely 'Baikunthapur' on 01.07.2018.
- Currently, 44 households residing in the village and the rest have migrated to nearby town centres.
- A primary school providing education till class 5 is built in 2015 where there are 2 teacher having 10-15 students approximately per year.
- There are three tubewells in the village out of which only one was working which is recently made in February, 2020.
- People have stolen tins from neighboring areas and have set it as ceiling hence, they are deprived to PM Awas Yojna.
- Many households do not have pattas (land documents) as the demarcation of the land is not done properly. In 1991 the demarcation was done which mismatched with the demarcation of 2017 and no action is taken since then.
- As no community forest is provided to those displaced staying in Camp – 6, they are dependent on Chitra Jungle which is 15 kms away for collecting timber and other forest produces. For this reason, the residents of Camp – 6 have to pay some amount in rupees to the watchman appointed by the caretaking village.
- There is no road connecting village to the main road. People have carved their own path by clearing the jungle.

Camp – 7 (Displacement for Development of Upper Kolab Dam)

Background Facts

Out of the total of families displaced for the construction of Upper Kolab Dam, 100 families approximately were displaced particularly from Biriguda, Tiadiput, Doraput, Baraguda, Khaparaput and Katiaguda between 1986-87 and were shifted to Camp – 7 in Kotpad Block, Koraput. Initially, it was decided that the displaced villages to be rehabilitated in Mathu (Malkangiri) but later it was shifted to Kotpad Block in Koraput District.

The then Rehabilitation and Resettlement Policy

While acquisition of land, the displaced families were duly paid the then assessed market value of land along with 15% solatium in 1981 which was accepted by those displaced. It is pertinent to mention herein that not all the families displaced have received the compensation amount for acquisition of their land. Further, the interaction with the residents of Camp – 7 revealed that those displaced families were promised that ready to move in pucca house will be provided along with agricultural land wherein the water from the Kolab Dam was supposed to be channelized, a community forest was promised to be given for collecting timber and other livelihood purposes. Further, they were also promised that and all the facilities like

communication, good roads, education, medical facility, electricity, employment etc. to be provided to them in that new settlement area.

Revealed Outcome

After shifting those displaced families to Camp – 6, they were asked to stay in 10*7 ft temporary structured houses with no wall and tin ceiling. Further, they were asked to built their own houses for which they will be duly paid by the Govt. Hence, those displaced families built their own house (kacha house) by collecting available resources within 3 months. Thereafter, the acting authorities took away the temporary established structured camp and paid nothing to the residents. Moreover, the agriculture land so provided to them is 1 km far from their settlement and the water canal from Kolab Dam is 2 kms in the opposite direction from their agriculture land and no community forest is provided to them.

Current Status

- A total of 200 households approximately belonging to different communities reside in this camp out of which most of the males are dependent upon labourer work for their income.
- The residents of Camp – 7 are suffering from identity crisis as they are not recognized as a village since its establishment. They are often called as refugees by the neighboring villages.
- As the community forest is never provided to the residents of Camp – 7, they have always been dependent upon the community forest of other villages for collecting timber and other forest produces. There have been instances of clashes between the residents of Camp -7 and other nearby villagers as they object from entering their community forest. (Instance: In 2001, some residents of Camp – 7 entered the community forest of Dangriguda village for collecting firewood, to which the villagers of Dangriguda village opposed and started physically abusing them and filed a case against the residents of Camp – 7. The residents of Camp – 7 also filed a case against Dangriguda villagers hence, the police interfered into the matter and stayed for 5 days in Camp – 7. After this incident people of Camp 7 village met the Collector of Koraput to seek help for this matter and share their problems regarding their day to day life. But no step has been taken by the Collector to solve this problem).
- Camp – 7 is well connected to the block headquarters through concrete roads.
- There is a school in the settlement area established in 2005 providing education till matriculation.
- Medical van facility is routinely provided to the residents.
- Approximately, 5 households in Camp -7 settlement area has received Pradhan Mantri Abhas Yojna and still in the process of receiving on a rotation basis.

Land Rights Case Study – 5

DISPLACEMENT DUE TO ESTABLISHMENT OF HAL, SUNABEDA IN KORAPUT DISTRICT: CASE STUDY

Background Facts

In the year 1960-61, 8187.94 acres of land was acquired by AEF, Sunabeda for establishment of Aero Engine Project. Out of which 7297.48 acres is private land and 890.46 acres is government land. Out of the total land acquired by the AEF, 3121.15 acres (2315.72 acres of private land 805.43 acres of government land) of land was possessed by HAL, Sunabeda and rest of the land was surrendered by HAL and the said land was kept in Govt. Khata (5066.79 acres). According to the information procured from the Land Acquisition Office, Koraput a total of 10 villages were affected namely, Kaki, Chakarliput, Thalaput, Kadigam, Charangul, Khalpadi, Chulapari, Rajpalama, Bodigam, Chikapar wherein a total of 435 families were displaced and only 138 families are rehabilitated. For the purpose of rehabilitation, a total of 83 buildings were constructed and still 82 families are residing unauthorized in HAL premises. Meanwhile, two writ petitions were filed one by the president of the displaced persons and the other by HAL namely, T. Muduli v. Union of India, W.P. (C) 1380/2015 and HAL v. State of Odisha, W.P. (C) No. 14804/2017.

The below mentioned tables shows the area of land acquired by HAL, no. of family displaced, amount of compensation awarded and the present status of the unused land on a village by village basis. Thereafter, the directions given in the writ petitions filed before the Odisha High Court by the displaced persons and HAL are mentioned in details along with its compliance.

Table – 62: Total private land acquired for HAL

| Sl. No. | Name of Village | Land Acquired | Compensation Awarded | Families Displaced |
|---------|-----------------|---------------|----------------------|--------------------|
| 1. | Kaki | 2129.45 | 669748.76 | 59 |
| 2. | Chakriliput | 247.23 | 112291.23 | 36 |
| 3. | Thalaput | 728.58 | 228783.25 | 56 |
| 4. | Kodigam | 615.17 | 241360.24 | 25 |
| 5. | Charangul | 141.55 | 40194.67 | 0 |
| 6. | Khalapadi | 148.59 | 60332.01 | 0 |
| 7. | Chulapari | 984.71 | 379459.96 | 85 |
| 8. | Rajpalama | 334.94 | 116411.62 | 0 |
| 9. | Bodigam | 627.75 | 262434.76 | 18 |
| 10. | Chikapar | 1339.51 | 487750.88 | 156 |
| 11. | Total | 7297.48 | 2598767.38 | 435 |

Source: Land Acquisition Office, Koraput, Odisha, 2020.

Table – 63: Acquired land by HAL

| Sl. No. | Name of Village | Govt. Land | Private Land | Total Land Acquired | Occupied by const. of factory building etc. | Approx vacant land in possession of HAL | No. of families displaced | Remarks |
|---------|-----------------|------------|--------------|---------------------|---|---|---------------------------|---------|
| 1. | Kaki | 287.17 | 917.55 | 1204.72 | 1054.72 | 150 | 59 | |
| 2. | Chikapar | 134.87 | 870.28 | 1005.15 | 815.15 | 190 | 36 | |
| 3. | Chakarliput | 2.07 | 44.66 | 46.73 | 26.73 | 20 | 56 | |
| 4. | Thalaput | 142.28 | 316.58 | 458.86 | 178.86 | 280 | 25 | |
| 5. | Kodigam | 239.04 | 166.65 | 405.69 | 285.69 | 120 | 156 | |
| | Total | 805.43 | 2315.72 | 3121.15 | 2361.15 | 760 | 332 | |

Source: Land Acquisition Office, Koraput, Odisha, 2020.

Table – 64: Information on Acquired Land of Hal

| Sl. No. | Name of Village | Total land acquired | | Possession by HAL | | Balance land returned back | | Present status of balance land |
|---------|-----------------|---------------------|------------|-------------------|------------|----------------------------|------------|---|
| | | Private Land | Govt. Land | Private Land | Govt. Land | Private Land | Govt. Land | |
| 1. | Kaki | 2129.45 | 287.17 | 917.55 | 287.17 | 1211.9 | | On Ac. 1211.90 AEF Project and colony approximately Ac. 350.00 |

| | | | | | | | | |
|--|--|--|--|--|--|--|--|--|
| | | | | | | | | NAC Office Ac. 7.36 Public School Ac. 33.89 Panthika Ac. 03.00 IGNOU Ac. 10.00 D.P. Tenement Ac. 300 Govt. TRW School Ac. 50 Police Station Ac 5 Jawahar Water Work Ac. 10 BSNL Office Ac. 1 IDCO Ac. 20.27 Housing Board Colony Ac. 15 OSEB Ac. 10 ICR Ac. 6.62 Women's College Ac. 3 Vacant Site Ac. 268 UKP Ac. 116.76 NAD Ac. 2 |
|--|--|--|--|--|--|--|--|--|

| | | | | | | | | |
|----|----------|---------|--------|--------|--------|--------|--|--|
| 2. | Chikapar | 1339.51 | 134.87 | 870.28 | 134.87 | 469.23 | | Central University Ac. 300.39 Tool & Engineering Ac. 3.40 Chikapar New Basti Ac. 15 Timber Ac. 10 Vacant site cornered by HAL Ac. 140.44 |
|----|----------|---------|--------|--------|--------|--------|--|--|

Source: Land Acquisition Office, Koraput, Odisha, 2020.

In order to seek adequate rehabilitation and resettlement, a writ petition was filed in the High Court of Odisha by one of the displaced persons. The details of the said case are as follows:

DIRECTION AND ITS COMPLIANCE IN W.P. (C) NO. 14804/2017

Direction No. 1

| |
|--|
| Direction |
| So far as the rehabilitation formula is concerned, the same is printed in vernacular and circulated among the inhabitants of the area, who are alleged and accepted to have encroached the land in question. |
| Compliance |
| HAL took up necessary activities and organized awareness camps in the encroached area on 17.02.2018, 23.02.2018, 26.02.2018 and 01.03.2018. |

Direction No. 2

| |
|--|
| Direction |
| The Collector through his good office and his subordinates shall open a grievance cell for atleast 45 days in order to facilitate hearing of the grievance by alleged encroachers, who are asserted to be the descendants of the land oustees. Such fact about opening of the grievance cell shall be widely published in the locality, giving an opening date and the closing date of the grievance cell. |
| Compliance |
| A grievance cell has been opened in the Land Acquisition Section of Collectorate, koraput from 20.01.2018 to 05.03.2018 (45 days). The opening of the grievance cell has since been widely published in three localities of HAL encroached area by displaying banner and notices have been affixed on the walls and read out the directions of the Hon'ble Odisha |

High Court and concept of the grievance cell in presence of the public of the three encroached areas. Tahasildar, Semiliguda and his field staff, LAO, Koraput and his staff, IIC, Sunabeda and Similiguda PS were present at the time of publicity.

Direction No. 3

Direction

If any person files any document, the same is verified and a detailed chart along with the supporting document be prepared for further reference at the time of hearing of this case.

Compliance

During the grievance period, not a single grievance petition has been received. But on 08.02.2018 and 06.03.2018 the President of HAL Bistapita Sangha Mr. Trilochan Muduli and his supporters approached the grievance cell and they demanded to receive the petitions of all the 22 villages instead of receiving the petition only from encroachers of HAL area. The LAO, Koraput explained them the details and asked them to submit the grievance petition only by the encroachers of HAL premises. On 08.03.2018 Sri Trilochan Muduli and his supporters submitted 105 grievance petition instead of 82 and requested to receive. All the 105 petitions were received on 05.03.2018. on 10.03.2018 a joint meeting was conducted under the chairmanship of Collector and District Magistrate, Koraput and the following members were present.

1. Superintendent of Police, Koraput
2. Addl. District Magistrate, Koraput
3. Sub-Collector, Koraput
4. Executive Director, HAL, Sunabeda
5. Tahsildar, Similiguda
6. Land Acquisition Officer, Koraput
7. Mr. Trilochan Muduli and his supporters

Further, Mr. Muduli and his supporters submitted 16 point demand of Koraputia Jana Surakhya Sangha dated 29.10.2016 before the Collector, Koraput and asked for fulfilment of 16 point demand. The Collector explained that the matter is under sub-judice and requested them to cooperate the revenue field functionaries during field enquiry. The Collector instructed the Tahsildar, Similiguda to complete the detailed field enquiry of individual petitions and submit the report by 12.03.2018. The Tahsildar, Similiguda submitted the field enquiry report of 105 individual petitions. Out of 105 grievance petitions 29 petitioners have not submitted any supporting land documents at the time of enquiry and while conducting field enquiry of other 76 individual grievance petitions, it is revealed that they belong to 19 families (19 recorded tenants) and most of the encroachers are great grandsons and daughters of the original tenants. It was further found that all the original tenants have been paid compensation of their acquired land at the time of acquisition in the year 1963.

Direction No. 4

Direction

So far as the land displaced persons' association is concerned, its president and other office bearers shall move forward from the demand of job and shall negotiate with HAL authorities so far as the amenities and facilities of their livelihood in the rehabilitation colony is concerned.

Compliance

The displaced persons' association has not agreed to negotiate with HAL regarding their livelihood and improvement of amenities and facilities in the rehabilitation colony. They insisted on fulfilment of their 16 point demand.

Direction No. 5

Direction

The Executive Director, HAL is directed to see if any eligible person can be adjusted on job on a contractual basis in the establishment of HAL and such prayer of the land displaced persons' association may be favorably considered but the same should be done by the labour supplier contractors.

Compliance

The HAL authorities requested Mr. Muduli to provide 4-5 names and their details among the encroached persons on or before 05.03.2018 in order to engage in HAL as contract labourer through different labour supply contractors. Thereafter, Mr. Muduli demanded for permanent job in HAL for 95 persons as reported by HAL.

Direction No. 6

Direction

Last but not the least, if possible, awareness camps in regular intervals be held inside the area under encroachment by the officials of HAL and proper police protection shall be provided by the Superintendent of Police, Koraput and Mr. Muduli undertakes to cooperate in conducting some awareness camp to make the inhabitants of the colony aware about the rehabilitation formula.

Compliance

The awareness camps have been conducted by HAL in regular intervals but no fruitful results come out as reported by HAL. Mr. Muduli has cooperated in conducting the awareness camps. The Superintendent of Police, Koraput has also provided necessary police and security arrangements during the field enquiry. The District administration and the HAL authorities have made all efforts in organizing awareness camps and convince the people to cooperate and shift to the rehabilitation colony. HAL authority has also assured to provide remaining basic amenities as per demand of the people in the rehabilitation colony at Mohanpada. But no development took place between HAL and Land Displaced Persons' Association for shifting of the encroachers to the rehabilitation colony at Mohanpada.

Source: Land Acquisition Office, Koraput, Odisha, 2020.

Ground Reality

The research team of SCSTRTI have conducted an exhaustive study on the displacement of the villages in process of land acquisition by HAL. In this process, the research team has visited all the relevant government offices to procure the relevant information from the government records and has also visited and recorded the statement and also collected relevant documents from the residents of the villages inhabited by the affected and displaced persons including the villages established within the premises of HAL (encroached villages) namely, Kakigaon, Kodigaon, Pangiguda, Thalapat and Sindhiput. During the course of this field study, the research team has reached out to the Pangiduga village to the residence of Mr. Trilochan Muduli and has interviewed him personally and have procured relevant documents available with him. It was discovered during the field study that the the rehabilitation provided to the displaced persons was not habitable as it is build on the top of a nearby hill with no roads making it impossible for the residents to commute. Apart from that no consent was taken from those displaced before preparing the rehabilitation plan. During focused group discussions in Kodigaon and Pangiguda village it was noted that these people objected the rehabilitation scheme the hills wont help them in cultivating crops which is a major source of livelihood for these displaced tribal peoples. It is pertinent to mention herein that 22 villages are found to be displaced is the process of land acquisition for HAL in Sunabeda Block of Koraput District. But the government record shows that only 10 villages are displaced. The census of the other 12 villages is not found in census of 2011.

It can be noted from the records that the approximately 5000 acres of acquired land is remained unused and is further used for government purposes without returning it to the original land owners. The displaced persons are currently inhabiting in these patches of unused land which fall within the premises of the said HAL boundary in Sunabeda. Hence, these people are considered are illegal residents are not benefitted with any government schemes. Be that as it may, these people lack basis livelihood and have absolutely no transportation facility, no electricity, no educational facilities. For collecting drinking water, these people have to travel 5kms to nearest reservoir.

ODISHA REHABILITATION AND RESETTLEMENT POLICY 2006

In order to ensure sustained development through a participatory and transparent process, Government have framed a comprehensive resettlement and rehabilitation policy. Basic objectives of the policy are : -

1. to avoid displacement wherever possible and minimize it exercising available options otherwise,
2. to recognize voices of displaced communities emphasizing the needs of the indigenous communities and vulnerable sections,
3. to ensure environmental sustainability through participatory and transparent process and
4. to help guiding the process of developing institutional mechanism for implementation, monitoring, conflict resolution and grievance redressal.

In this chapter, few case studies of developmental projects causing displacement of persons are assessed especially pertaining to Industrial projects, Mining projects and National Park and Sanctuary projects.

ACQUISITION OF LAND AND PAYMENT OF COMPENSATION

Procedure prescribed by Government shall be followed in acquiring land and other property and for payment of compensation / award. All compensation money due to the 'displaced families' shall be paid through account payee cheques.

As regards 'public property' like School Building, Club House, Hospital, Panchayat Ghar, electrical installation, place(s) of worship, value of such property affected shall be deposited with the concerned District Collector. Either Project or District Administration shall take up construction at the place as would be determined in consultation with representatives of displaced persons.

The Project proponent may opt for direct purchase of land on the basis of negotiated price after issue of notification requiring acquisition of land under relevant Act(s). If acquisition of land through direct purchase fails, other provisions of the relevant Act may be invoked.

Land not utilized by the Project within the prescribed time limit and for the required purposes shall be resumed.

RESETTLEMENT AND REHABILITATION PLAN

Based on the list approved by Government and option of displaced families, Resettlement and Rehabilitation Plan shall be prepared by the Collector for resettlement and rehabilitation after due consultation with displaced communities in the manner determined by the Government. Such plan should address the specific needs of the women, vulnerable groups and indigenous communities. The same will be placed before the RPDAC for approval.

While preparing the plan, the following aspects should be taken into consideration:

- i. Site for the resettlement habitat shall be selected by the RPDAC in consultation with the displaced families.
- ii. No physical displacement shall be made before the completion of resettlement work as approved by the RPDAC. The certificate of completion of resettlement work will be issued by the Collector.
- iii. Gram Sabha shall be consulted.
- iv. Where there is multiple displacement additional compensation amounting to 50% of the normal compensation payable, shall be paid to each displaced family over and above the normal compensation in form of ex-gratia.
- v. Provisions relating to rehabilitation will be given effect from the date of actual vacation of the land.

- vi. Project Authority shall abide by the provisions laid down in this Policy and the decisions taken by RPDAC from time to time provided they are within the ambits of the approved Policy of the Government.
- vii. District Administration and Project Authorities shall be jointly responsible for ensuring that the benefits of R&R reach the target beneficiaries in a time bound manner.
- viii. Record of Rights of the land and houses allotted to the displaced persons should be handed over to them by the District Administration while resettling them in the Resettlement habitat. The District Administration shall take steps for immediate declaration of the new Resettlement habitat as a Revenue Village if it is not a part of an already existing Revenue Village.
- ix. Steps will be taken by the Project Authorities for acclimatization of the resettled people in new habitat including development of cordial social relationship between the host and resettled communities and to ensure as far as practicable overall improvement of standard of living of the displaced families.
- x. Subject to the details regarding provision of employment as enunciated elsewhere in the Policy the project authorities shall give preference in the matter of employment, both direct and indirect as well as through contractors employed by them, for execution, operation and maintenance of the project, to local persons as per the detailed guidelines issued by the State Government from time to time.

REHABILITATION ASSISTANCE

1. INDUSTRIAL PROJECTS

- a. Employment: Families shall be eligible for employment, by the project causing displacement or loss of all agricultural land. For the purpose of employment, each original family will nominate one member of such family.
- b. Project authorities should notify their employment capacity sufficiently in advance.
- c. As far as practicable, the objective shall be to provide one member from each displaced/other family as mentioned above with employment in the project. However, where the same cannot be provided because of reason to be explained in writing, cash compensation as mentioned below shall be provided to the displaced/other families.
 - (i) Displaced Families coming under category (i) – Rs. 5 Lakhs
 - (ii) Displaced Families coming under category (ii) – Rs. 3 lakhs
 - (iii) Displaced Families coming under category (iii) – Rs. 2 lakhs
 - (iv) Families coming under category (iv) and (v) – Rs. 1 lakh

((i) Displaced families losing all land including homestead land, (ii) Displaced families losing more than 2/3rd of agricultural land and homestead land, (iii) Displaced families losing more than 1/3rd of agricultural land and homestead land, (iv) Displaced families

losing only homestead land but not agricultural land, (v) Families losing all agricultural land but not homestead land)

- d. Provision for homestead land: Subject to availability, each displaced family will be given at least 1/10th of an acre of land free of cost in a resettlement habitat for homestead purpose.
- e. Assistance for Self-relocation: Each of the displaced family who opts for self-relocation elsewhere other than the Resettlement habitat shall be given a one time cash grant of Rs.50,000/- in lieu of homestead land.
- f. House Building Assistance: Besides, Project authority shall construct house for each of the displaced families in the resettlement habitat or provide house building assistance of Rs.1,50,000/- to each of the displaced families settling in the Resettlement habitat or opting for self-relocation elsewhere.
- g. Shops and Service Units: Project authorities will also construct shops and service units at feasible locations at their own cost, which will be allotted in consultation with Collector to project displaced families opting for self-employment. While allotting such units, preference will be given to physically challenged persons and members of displaced SC & ST families.

2. MINING PROJECTS

Same Rehabilitation assistance is provided as provided to the displaced persons in the industrial projects.

3. WATER RESOURCES, NATIONAL PARKS AND SANCTUARY

- a. Homestead land @0.10 acre in Rehabilitation habitat or cash equivalent @ Rs.50000/- to each displaced family opting for self-relocation elsewhere.
- b. House Building Assistance: Rs.1,50,000/-to each displaced family, which includes cattle shed. This will be admissible to all displaced families whether settling in a Resettlement Habitat or elsewhere.
- c. Assistance for Agricultural Land: Each Displaced Family belonging to ST category shall be provided two-and-a-half acres of irrigated agricultural land, or five acres of non-irrigated agricultural land. Each Displaced Family belonging to all other categories shall be provided two acres of irrigated agricultural land, or four acres of non-irrigated agricultural land. In case of non-availability of land, cash equivalent will be provided @ of Rs.1,00,000/- per acre of irrigated land and Rs.50,000/- per acre of non- irrigated land, including the cost of reclamation or at the rate decided by the Government from time to time.
- d. Registration cost of land up to 5 acres of un-irrigated land or two and half acres of irrigated land in case of indigenous households or 4 acres of un-irrigated land or 2 acres of irrigated land for other displaced households who opt for cash based rehabilitation

in lieu of land shall be paid by the project authority within a period not exceeding five years from the date of displacement.

OBSERVATION

After the assessment of the provisions of LARR Act, 2013 and the assessment of the case studies listed above the following observations are made out.

1. In almost all the case studies enumerated in this chapter the land has been acquired prior to the enactment of the LARR Act, 2013 hence, the Land Acquisition Act, 1894 applies for acquisition of land and Odisha Rehabilitation and Resettlement Policy, 2006 applies for providing rehabilitation and resettlement to the displaced persons.
2. It could be noted that in the case study of displacement caused by establishment of HAL and Kolab Dam in Koraput district, the displaced persons are not provided adequate rehabilitation and resettlement as per the Odisha Rehabilitation and Resettlement Policy, 2006.
3. The rehabilitation provided to those displaced in the HAL establishment are not availed by the displaced persons because they find it inhabitable. This reason arises as no consent was taken from the displaced persons before preparing the rehabilitation scheme.
4. The issue of employment opportunity could be seen in all the case studies assessed.
5. NTPC, Darlipali in Sundargarh District is the only project wherein all the provisions of the Odisha Rehabilitation and Resettlement Policy, 2006 is complied with. All the displaced persons are provided with ready to move in houses and piece of land to those who availed for it. Apart from this, shopping complex and community halls along with medical facilities have been provided in one residential area. Although no employment is provided as the need of the project does not match the skill level of the displaced but are duly paid compensation as per the Policy.
6. No adequate rehabilitation is provided to those displaced in Similipal Biosphere area. It is to mention herein that the Similipal Tiger Reserve was declared as national park in 1971 and since then the relocation of the forest villages is taking place. Few villages are yet to be relocated despite 40 years of effort.
7. Excessive land is acquired and remaining unused land is not returned back to the original land owners. Such situated can be noted in the case study of displacement caused due to establishment of HAL in Sunabeda Block of Koraput District.

CONCLUSION AND RECOMMENDATION

It is well known that the tribal population in India is the most affected segment of our society hence, an affirmative action was required for the upliftment of the tribal population especially because of their sufferings in colonial times and their social past disadvantages. For achieving this objective, the post-independent India framed the constitution of India wherein a special status was given to certain tribal communities and were recognized as ‘scheduled tribe’. In post independent India, several attempts have been made and are still being made to protect their interests. For serving this purpose several welfare legislations have been enacted thereby extending the scope of administration in tribal areas. With the increasing number of enactments, the challenge of implementation is also increasing. In the wake of this context, legislations pertaining to all the thematic areas of tribal interest have been assessed in the context of scheduled tribes in Odisha. These thematic areas of tribal interest include their socio-economic and cultural rights under constitution of India, safety and security against criminal offences and protection of their land and forest rights.

On assessment of the constitution of India, it was found out that the constitution has provided special recognition to the tribals and have provided for their safeguards. These safeguards include, social, political, educational etc. apart from providing for fundamental rights and other safeguards, the constitution establishes a mechanism for regulating tribal affairs which is envisaged in its 5th & 6th Schedule. For the purpose of this study, 5th Schedule is the relevant part as Odisha is one among the states included in the said Schedule. Under the said schedule the Governor is entrusted with the regulatory power and a Tribal Advisory Council is established to decide on tribal affairs. In furtherance of this, the state of Odisha has also enacted Orissa Tribes Advisory Council Rules, 1983. Apart from this, subsequent amendments have been made by securing reserved positions in government sector for education and jobs.

Right to protection of life and rights to live with dignity is fundamental right in India. In order to secure this right of the tribal population, SC ST (POA) Act, 1989 was enacted by the Parliament. The said Act provides for offences and prescribes punishments, establishment of special courts, conducting inquiry and providing rehabilitation assistance to the victims. With advancement of time and need of the hour the said act is duly amended in 2018 thereby strictly enforcing the anticipatory bail provision envisaged in section 438 of Cr.P.C. but the same provision has been diluted by the hon’ble supreme court of India. On assessing the legislation called SC ST (POA) Act, 1989, the following deductions are made:

Assessment of disposed cases under SC ST (POA) Act, 1989

Upon assessment of the disposed cases in the sample districts, it was observed many cases have been with vested interests which lacked merits, many cases were reported which actually took place, many cases were not reported because of social stigma and many cases are settled in the

mediation made by the people of the village. Delving deep into the judgments of the disposed cases, it was observed that in most of the cases the witnesses along with the victim turn hostile.

- iii. **Process of Inquiry:** The relevant Acts relating to the Scheduled Tribe communities provides for the process of inquiry. It states that the investigation shall be done by the Superintendent of the Police and the Executive Magistrate. Upon assessment it was found that the investigation process is duly followed in the state in letter and spirit. However, it is also observed that despite the completion of investigation reports, in number of cases, the police have delayed to file the charge sheet which leads to delay in the process of justice.
- iv. **Off-court settlement of issues:** Upon assessment of the implementation of SC ST (POA) Act, 1989 in the sample districts, it was observed that many of the aggrieved scheduled tribe population do not seek the legal recourse of justice rather, they call for an off court settlement which is carried out in the presence and recommendation of the elderly persons or community leaders of the village or of cluster of villages or from their own socio-political hierarchy at different levels.

The POCSO ACT 2012 in relation to STs

With the advancement of time, criminal offences against scheduled tribes is seen as a bigger challenge. Particularly, there is a substantial increase in the number of sexual offences against ST population especially, tribal children. For tackling this challenge in the country, the Parliament enacted POCSO Act 2012 and provided punishment for sexual offences against children and provides for rehabilitation therein. Apart from this, the Act prescribes methods for conducting medical examination of the victim, and also provides for the process of conducting enquiry. For the purpose of the project, this study is limited to assessment of the Act in the context of tribal population in the state. Upon assessment of this legislations the following observations are made:

- iv. **Assessment of disposed cases in sample districts:** Observations on the the disposed cases under POCSO Act in the sample districts almost matches to the observations made in assessment of SC ST (POA) Act, 1989. However, it was specifically found out from the evidence trial stage of the cases that the victims make statement in support of the accused thereby changing her earlier statement given to police. A major reason behind this is because sexual offences are immoral for most of the tribal population and they try to settle the issue by getting the victim married to the accused. Further, in many cases the accused is kind of known relative of the victim for which the community members try to resolve the matter at their level and hence influence the victim to change statement in court of law to save the accused and save the relations. There are also certain marriage customs that come on the way of exercising provisions under the POCSO Act. The marriage by force, marriage by capture, marriage by elopement customs prevailing in the ST communities customarily go against the provisions of POCSO Act. There are also sanctions and punishments approved under customary law of particular ST communities that helps in out of court settlement of the cases. Many cases remain unreported because of the customary law and local traditions. A general

observation is that only such cases are reported where there is interference of statutory bodies like district child protection units or such other official concerns. However, following specific observations require mention here.

- v. **Establishment of special courts:** Upon assessment of the said Act, it was noted that the state government has been proactive in implementing the mandates of the POCSO Act in the State. As many as 24 special courts have been designated as POCSO court in Odisha covering the scheduled tribe dominated areas of the state. The POCSO courts have been expediting the cases as per procedural formalities and justice administration.
- vi. **Rehabilitation to the victims under POCSO Act:** Until the amendment of the POCSO Rules in 2020, there was an ambiguity regarding the fund from which the compensation is to be made and the authority dealing with this process. Unlike other states, Odisha had enacted Odisha Victim Compensation Scheme, 2012 which duly provided for compensation to victims under POCSO Act and made the DSLA responsible to carry out the process of compensating the victim.

Forest Rights Act

Forest resources constitute a source of livelihood for scheduled tribe population invariably in the state of Odisha. This makes assessment of the forest rights of the scheduled tribes very much important. In this regard, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 along with Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 has been assessed. Upon assessment of the said legislation, the following observations have been made.

- iv. **Entitlement of community claims:** The assessment of the said Act revealed that the local authorities have been pro-active in verifying and entitling community claims. All the community claims applied in the sample districts have been considered for granting titles, although not all have been finally granted. However, in the entire process from claim making to claim granting the following has been noticed that suffice to say why the claim granting is going on at a relatively slower rate.
- v. **Lack of awareness regarding the entire process of claiming forest rights:** One of the key observations from the field study is that the claimants are not well aware of the requirement to have a claim over the land and forest. Hence, the claimants neglect the process of verification of claims. At times, due to lack of awareness, authorities take advantage of the situation. For example, forms were sold to claimants by authorities. In most cases the community members believe that the said forest is under their bonafide use since generations and hence they are the de-facto rights holders. Hence, they do not feel the urgency of filing a claim. It is remarkable that where external agencies like NGOs have been providing hand holding support, there the claims are made early and the processes are followed well and the claim is expedited by the ST community.
- vi. **Improper formation of gram sabha:** Gram Sabha is the local body entrusted with the power to verify claims. On assessment in the field, it was observed that the gram sabhas are often not formed as prescribed. On delving deep into the topic, it was observed that non enactment of PESA Rules makes the process of constitution of gram sabha ambiguous.

Legislations on Land Rights

The legislations on land rights that primarily address the right to land of the tribal population has been one of the major thematic areas assessed in this project. Due to increase in the number of development projects in the State, which are generally established in the scheduled tribe dominated areas, a large segment of the tribal population have been displaced and have not been duly rehabilitated. This project has assessed the land rights of the tribal in this context. The land acquisition in India was initially governed under Land Acquisition Act, 1894 wherein no provisions for rehabilitation and resettlement was provided. Hence, National Rehabilitation & Resettlement (R&R) Policy was developed. In the state of Odisha, the Odisha R&R Policy of 2006 was referred while rehabilitating the displaced persons. Post 2013, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act was enacted which provided specifically for acquisition of Tribal Land and made specific provisions for rehabilitation and resettlement. Upon making an assessment of the said legislations and policy in the context of the case studies undertaken, the following deductions are made:

- iv. **Seeking of consent:** In the process of acquisition of land, seeking consent of the affected persons is the most important aspect. On assessment of the indicative case studies, it was observed that the process of obtaining consent was vitiated. No strict process was adopted in obtaining consent from the affected persons.
- v. **Analysis of assessed case studies:** Most of the assessed case studies are prior to 2013 which indicates that the land thus acquired in the studied cases are to be rehabilitated under 2006. Moreover, studying of the 2013 Act raises an ambiguity whether the 2013 Act will apply to the cases prior to 2013 regarding the rehabilitation and resettlement of displaced persons.
- vi. **No adequate rehabilitation made to displaced persons:** Apart from the case study of NTPC, Darlipali, Sundargarh none other development projects in Odisha have adequately provided rehabilitation and resettlement to the displaced persons.

Protection framework and administrative compliance

The legislations thus studied provides for a framework of protection of tribal interests. In order to give effect to the framework a proper administrative compliance is required. On delving deep into this aspect of the protection framework, it was observed that the state has established special administrative cell for protection of interest of scheduled tribes pertaining to different subject matters. Human Rights Protection Cell (HPRC) is one of such special administrative body established to protect civil rights. It is established in the Office of Superintendent of Police in every district and is responsible for receiving grievances under SC ST (POA) Act. The Child Welfare Committee is another example of such administrative body which receives grievances for child abuses. ITDAs are established in designated pockets of scheduled tribe areas of the state who are responsible for spreading awareness for recognition of tribal rights and their promotion.

Critical observations

Despite the fact that there are systems and procedures set, protection frameworks in place, administrative compliances being made, there still remains issues to be resolved or to make the justice system more proactive and purposeful. To sum up the observations made on assessment of the said legislations in terms of their implementation in the state, the following observations are made:

Lack of preparedness for developing awareness campaigns: Lack of awareness is the major reason for violation of rights of the citizens particularly, the scheduled tribes. A major reason of this is the rate of illiteracy in the tribal areas. The constitution of India levies a positive obligation upon the states to ensure education to everyone and the states have also been progressive in ensuring the same. Yet, the process of evolution of society is taking its own time. Be that as it may, this study observes that the authorities have failed to spread proper awareness in the tribal areas in any of the thematic areas of the tribal interest. It may be assumed that the authorities have not been able to make them understand the nexus between their right over their land, forest resources etc. and the corresponding obligation of the state to ensure the same. The scheduled tribes in general are not aware of appropriate forums to seek remedy if their right is violated.

Proactive intent of the State: The constitution of India in its Part IV imposes a positive obligation upon the state to enact the national legislations in the state and to enact any such welfare legislation/schemes/rules. It is to mention herein that the state of Odisha has been proactive in implementing national provisions in the state. The instances of reflection of proactive approach of the state that this report recorded are as follows:

- v. The mandates of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are duly implemented in the state. The special courts are set up in tribal areas to deal with cases of atrocities. The joint enquiry report is prepared by the designated authorities i.e. Asst. Commissioner of Police/ Sub-Divisional Police Officer and the Executive Magistrate in the prescribed performa under the Act. Immediate rehabilitation assistance is provided to the victim. District Welfare Officer (DWO) make the payment of compensation as per the Schedule – I of the Act and maintains the record.
- vi. The POCSO Act, 2012 is duly implemented in the state. As many as 24 special courts have been designated in the state as POCSO courts including that in scheduled tribe dominated areas. The POCSO Courts have been proactive in dealing with the cases. In few cases, capital punishment is ordered to the accused upon found guilty. Post enactment of the POCSO Act in 2012, Odisha was one among the first states to notify victim Odisha Victim Compensation Scheme under section 357A of Cr.P.C. in the same year, and the compensation to the victims under POCSO Act are paid under this scheme unlike in most of the states in India prior to enactment of POCSO Rules, 2020. Even the Supreme Court had felt the ambiguity in identifying appropriate fund for making payment under the Act.
- vii. The provisions of FRA are appropriately implemented in the state. The institutions under the Act i.e. FRC, SDLC and DLC are rightly functioning in verifying the

claims. Apart from these, other state institutions such as ITDA and local NGOs play a vital role in spreading awareness and facilitating people in availing their claims. It may be noted here that the state has accepted all the community claims in the sample districts. Individual claims are also given equal importance and at any instance if any dispute arises, the claim is remanded back for verification without directly rejecting it.

- viii. The state has also played a vital role in safeguarding land rights of the tribal peoples. The provisions of LARR Act, 2013 have been implemented in the state. The acquisitions carried on post 2013 requires a comprehensive Systematic Impact Assessment (SIA) prior to acquisition and the Act also provides specifically for acquisition of tribal land and prescribes compensation and rehabilitation. Prior to 2013, the state had enacted its Rehabilitation and Resettlement Policy in 2006 to provide rehabilitation to those displaced.

Designated offices & systematic maintenance of records: In the state of Odisha, separate offices have been designated to carry on the activities and maintain the records. For example, Land Acquisition Office (LAO) established in the Collector's Office maintains records of land acquisition in every district; ITDA ensures promotion of forest rights in tribal areas and maintains its records, DSLA is the authority to provide legal assistance to the needy ones. Apart from the designated offices, the state has fixed a permanent template to maintain the records (including storage of soft copies). For example, the format of joint enquiry report in the atrocity cases is same in all districts; same format for recording information on granting of IFR and CFR claims. It is pertinent to mention herein that there is no set template in the state to maintain the records relating to land acquisition for developmental projects.

Irregular commission of meetings: This report observes that in most of the cases the authorized officials and members meet routinely as per the mandate of the act, for example the verification of claims by SDLC and DLC; submission of joint enquiry report in atrocity cases but, this report also observes irregular commission of the meetings. For example, the Odisha Tribes Advisory Rules, 1951 provides for two annual meetings in one year whereas the Council has conducted three meetings in five preceding years.

Relative lack of legal & procedural awareness among government authorities: Any welfare legislation could be rightly implemented if the implementing authorities are well versed with it. This report observes that there is a relative lack of legal and procedural awareness among the relevant authorities. This report notes that, for example in case of FRA implementation, in certain study villages the members of FRCs were not aware regarding requirement of requisite documents as a proof of evidence for their land. Especially, in case of claiming land right by an OTFD it becomes extremely difficult to establish 75 years of ancestry.

Lack of judicial interference despite other evidences: Prosecution needs evidences to prove its case. Hence, in support of the statement of the victim the prosecution advances witness. It is observed from the assessment of the criminal legislations that in most of the cases dealt in the sample districts, the accused is acquitted because the victim who had initially stated the offence committed the crime refuses the same before court despite other evidences prove the

offence committed by accused such as medical report proved sexual offence. Despite the availability of other evidence, the accused is acquitted on the basis of the statement of the victim and the court hold the victim hostile.

Lack of intent to make good the previous loss: The assessed government records accessed through RTI applications and procured from government offices reflect that the law has not been appropriately implemented much before the present time i.e. before 2-3 decades leading to aggravation in disputes. Yet, none of the authorities in the current situation have initiated in any process to resolve the issues. For example, approximately 5000 acres of land was acquired in excess for establishment of HAL in Sundabeda, Koraput in 1963; part of the same land is used for other government purposes and another part is still unused which is at times forcefully cultivated by the previous land owners.

Non-cooperation between members of gram sabha & forest department: Non-cooperation between two agencies of the state is the most disgraceful in a democratic setup which adversely affects the rights of the scheduled tribe. This report observes that there are dispute between the decision of Gram Sabha and the Forest Department happening frequently. In few cases of Kandhamal District, the Gram Sabha has permitted the tribals to sell forest produce but while carrying on the same, the officers of Forest Department stop them from transporting the forest produce outside forest area, which is a violation of provisions contained in the Act.

KEY RECOMMENDATIONS

- ix. **Need for a comprehensive study on status of PESA Act, 1996 in Odisha:** The entire subject matter of entrusting forest rights and safeguarding land rights is a matter self governance. The same is safeguarded by the Constitution of India. Hence, PRIs have been set for carrying on the decision making in local level. The functioning of Gram Sabha forms a major part of it. It plays a vital role in verifying forest rights claims and also in providing consent for acquisition of their land. It is pertinent to mention herein that the power and functioning of Gram Sabha the core subject matter of PESA Act, 1996 although its Rules are yet to be enacted. Hence, a comprehensive study of PESA Act is required in light of the land and forest rights of the tribal population in the state to assert whether the tribals are actually benefitted by the implementation of the legislations protecting forest and land rights in tribal areas.
- x. **Design and organise large scale awareness camps:** It is undisputed that the authorities are carrying on large scale awareness camps yet they have not been successful in spreading awareness regarding the implementation of laws and also regarding the rights and duties of affected persons. Information dissemination campaigns should have several dimensions to reach out to the people. They should have a mass communication approach i.e. reaching out through radio, television and other media to ensure that people receive the basic messages the communication material seeks to convey.
- xi. **Development of proper investigation methodology:** From the aforementioned assessment of legislation affording protection to scheduled tribes including children against atrocities and sexual offences, it can be concluded that in most of the cases

charges are wrongly framed and it is also noted in the judgments that improper/incomplete investigation is done by the police wrongly incriminating the accused persons. Hence, the justice system provided by these penal legislations could not be availed by the target population. It is relevant to mention that there is no proper structuring of the investigation process in criminal cases. In this context, it is highly recommended to develop a stringent investigation process in criminal cases specially in cases pertaining to tribals as they are provided with special protection under Indian constitution.

- xii. Ensuring proper rehabilitation assistance & protection to victims of atrocities and witnesses:** It can be deduced from the assessment of the aforementioned criminal cases dealt by special courts in Odisha that the witness and the victims have turned hostile. The reason for this could not be known properly during the course of this project. But for the sake of proper implementation of the justice system as provided by criminal justice system and ensuring justice to the victims adequate protection should be afforded to the victims and prosecution witnesses so that they are not be threatened to withdraw from their statement given to police.
- xiii. Enhancing the scope of judicial interference:** The criminal justice in India prevails from 19th century, approximately 150 years old which was framed by the colonial government in the light of past days' conditions. The criminal justice system is based on the statement of the victim. In cases where the victims are turned hostile, the wrongdoer is set free from the legal consequences. It can be observed from this assessment that in most of the cases of atrocities in tribal areas, the victims and witness have turned hostile and the accused is acquitted despite of availability of medical evidence against him. In this context, it is highly recommended that the criminal justice system be amended in present day situation so that the scope of judicial interference be extended to consider other relevant evidences such as medical report to hold the accused guilty even if the victim turns hostile. This shall ensure proper implementation of justice system.
- xiv. Intensive capacity building approach:** Though the authorities are well and adequately designated yet the number of committees fall short regarding the verification of forest rights claims. The same situation prevails in all aspects of tribal interest. Hence, there is a need to increase the number of authorities per target population. Moreover, these authorities are required to be intensively trained to familiarize them with the provisions of the required legislations.
- xv. Improve implementation mechanism:** Despite a stable implementation mechanism which has been, to a reasonable extent, successfully implemented in the studied legislations and cases, disputes keep arising between the authorities and the tribal population. There has been instances where there is a dispute between the decision of the gram sabha which is in conflict with the decision of Forest Department resulting in violation of the rights of the tribals. Apart from this, this study recommends to appoint experts to identify the forest lands while verification of IFR and CFR claims.
- xvi. Development of online portal:** In the era of globalization, internet has come to the rescue for gathering information. In this era, the government has not maintained an online portal for all the offices of the relevant state departments. The websites of few

departments are well developed but are not routinely updated hence, they lack the updated latest information or orders in relation to the legislations for protection scheduled tribes in the state, the implementation mechanisms and the status updates.

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Victim Compensation
Under SC & ST (POA) Act, 1989

Mayurbhanj District

42

Annexure - I (Colly)

MAYURBHANJ DISTRICT OFFICE : BARIPADA

(ST & SC DEVELOPMENT SECTION)

Phone No-06792-260763, E-mail ID: dwombi.od@nic.in, dwomayurbhanj@rediffmail.com

ORDER

No. 6855 /DWO Dt. 12-12-18,

Basing on the joint inquiry report of concerned Police Officer & Executive Magistrate and recommendation of the Superintendent of Police, Mayurbhanj, sanction is hereby accorded for payment of monetary relief to the following 26 (Twenty six) Nos. of victims under SC & ST POA Act amounting to Rs. 57,62,500/- (Rupees Fifty Seven Lakhs Sixty Two Thousand Five Hundred) only as per the norms of relief mentioned against each as admissible under the provisions of the law.

| SI No | Name of the Victims & Address | Police Station Case No & Date | Nature of Offence & under Section | Amount Recommended by Police Officers & Executive Magistrate in Rs. | Amount to be Sanction as per Section. | Sanctioned Amount |
|-------|--|--------------------------------------|--|---|--|-------------------|
| 1 | 1. Manasi Dehuri & 2. Deepak Bhakta, both of Vill- Chhatna(Bhaktasahi), PS- Rasgobindpur, Dist- Mayurbhanj | R. G Pur PS Case No- 104/dt.21.11.17 | Abused victim in obscene words by naming his caste and assault & under section 294/506/34 & IPC- 3(1)(r)(s)/ 2(Va) SC & ST PoA Act | 4,00,000 (2,00,000/- each victim) | 1. 25 % at FIR stage=50,000/- 2. 50 % when the charge Sheet Sent to court = 1,00,000/- (SI No-41 of norms for relief amount) | 3,00,000/- |
| 2 | Sukura Majhi, vill- Mahuri, PS- Baisinga, Dist- Mayurbhanj | Baisinga PS Case No- 170/dt.18.10.16 | Abused victim in obscene words by naming his caste and assault & under section 294/307/506/427/34 & IPC- 3(1)(r)(s)/ 2(Va) SC & ST PoA Act | 2,00,000/- | 1. 25 % at FIR stage=50,000/- 2. 50 % when the charge Sheet Sent to court = 1,00,000/- (SI No-41 of norms for relief amount) | 1,50,000/- |
| 3 | Hemanta Kumar Soren, S/o- Laxmikanta Soren, Vill- Patakundia, Ps- Morada, Dist- Mayurbhanj | Morada PS Case No-61/24.10.17 | Abused victim in obscene words by naming his caste and assault & under section 341/323/294/506 & IPC 3(1)(r)(s)/ 2(Va) SC & ST PoA Act | 2,00,000/- | 1. 25 % at FIR stage=50,000/- 2. 50 % when the charge Sheet Sent to court = 1,00,000/- (SI No-41 of norms for relief amount) | 1,50,000/- |

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| 4 | Shri Kailash Behera, S/o- Samanta Behera, Vill- Malikedam, PS- Tiring, Dist- Mayurbhanj | Baisinga PS Case no- 144/dt.23.09.2017 | Abused victim in obscene words by naming his caste and assault & under section 147/148/457/294/506/34 1/323/427/379/149 IPC 3(1)(r)(s)/ 2(Va) SC & ST PoA Act | 2,00,000/- | 1. 25 % at FIR stage=50,000/- 2. 50 % when the charge Sheet Sent to court = 1,00,000/- (SI No-41 of norms for relief amount) | 1,50,000/- |
| 5 | 1. Sobha Soren, D/o- Ram Chandra Soren, Vill- Bhagabandi, PS- Tiring, Dist- Mayurbhanj & 2. Puja Patra, D/o- Gouranga Patra, Vill- Naharda, PS- Bahalda, Dist- Mayurbhanj | Tiring PS Case No-66/dt.18.12.17 | Molested the victims & under section 354/354-A IPC -10 & 12 POCSO Act & 3(1)(w)(i), 2(Va) SC & ST(PoA) Act | 4,00,000 (2,00,000 each victim) | 1. 50 % at FIR stage= 1,00,000/- 2. 25 % when the charge sheet is sent to court= 50,000/- (SI No-25 of norms for relief amount) | 3,00,000/- |
| 6 | Churia Beshra, Vill- Paiksahi, PS- Rasgobindpur, Dist- Mayurbhanj | Rasgobindpur PS Case No- 08/dt.24.01.18 | Abused victim in obscene words by naming his caste and assault & under section 341/323/294/506 IPC Sec 3(1)(s)/2(va) SC & ST PoA Act | 2,00,000/- | 1. 25 % at FIR stage=50,000/- 2. 50 % when the charge Sheet Sent to court = 1,00,000/- (SI No-41 of norms for relief amount) | 1,50,000/- |
| 7 | Dharmendra Majhi, S/O- Budhiram Majhi, vill- Itamundia, PS- Badasahi, Dist- Mayurbhanj | Badasahi PS Case No- 62/dtd.30.04.18 | Committed Carnal intercourse against the order of nature & under section 342/377/ IPC 6 POCSO Act & 3(2)(v) SC & ST PoA Act | 4,00,000/- | 1. 50% when the charge sheet Sent to court = 2,00,000/- (SI No-40 of norms for relief amount) | 2,00,000/- |
| 8 | Bidyadhar Dandapat, Vill- Raghupur, PS- Baisinga, Dist- Mayurbhanj | Rairangpur PS Case No- 03/dt.09.01.18 | Abused victim in obscene words by naming his caste and assault & under section 448/294/ IPC 3(1)(2)(r)(s) SC & ST POA Act | 1,00,000/- | 1. 25% after FIR=25,000/- & 2. 50 % after Charge Sheet sent to court=50,000/- (SI no-19 of norms for relief amount) | 75,000/- |
| 9 | Subani Patra, Vill- Mahubhandar, PS- Bisoi, Dist- Mayurbhanj | Bisoi PS Case No-17/dt.21.03.18 | Committed Sexual assault & under section 376(1)/417/323 IPC & Sec (1)(w)(i)(ii)/2(v)(va) SC & ST PoA Act | 5,00,000/- | 1. 25% when charge sheet sent to court= 1,25,000/- (SI No-44(i) of norms for relief amount) | 1,25,000/- |
| 10 | Smt. Usha Naik, Vill- Tikhia, PS- Bahalda, Dist- Mayurbhanj | Bahalda PS Case No- 37/dtd.30.05.18 | Abused victim in obscene words by naming his caste and assault & under section 294/354/34 IPC /4 OPWH Act/ Sec 3(1)(s)(w) SC & ST PoA Act | 2,00,000/- | 1. 25 % at FIR stage=50,000/- 2. 50 % when the charge Sheet Sent to court = 1,00,000/- (SI No-41 of norms for relief amount) | 1,50,000/- |

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| 19 | Mausumi Behera, Vill-Mahardapalsa, PS-Jashipur, Dist-Mayurbhanj | Jashipur PS Case No-26/dt.27.03.18 | Committed Rape, under section 363/376(2)(n)/294/506 IPC 6 POCSO Act & 3(1)(r)(s),2(v) SC & ST PoA Act | 5,00,000/- | 1. 25 % after Charge sheet sent to court= 1,25,000(SI No-44(i) of norms for relief amount) | 1,25,000/- |
| 20 | Subodh Chandra Marndi , Vill-Kandalia, PS-Bangripasi, Dist-Mayurbhanj | Bangripasi PS Case No-12/dt.04.02.18 | Abused victim in obscene languages aspering his caste & assualt, under section 148/341/294/323/307/42 7/506/379/149 IPC 3(1)(r)(s) SC & ST PoA Act | 1,00,000/- | 1. 25% after FIR=25,000/- & 2. 50 % after Charge Sheet=50,000/- (SI no-19 of norms for relief amount) | 75,000/- |
| 21 | Silly Bagsingh , Vill-Rugudibeda, PS-Thakurmunda, Dist-Mayurbhanj | Karanjia ps case No-31/dt.01.03.18 | Abused victim in obscene languages aspering her caste & assault, under section 294/509/ IPC R.W.S 3(1)(r)(s)/3(2)(va) SC & ST PoA Act | 2,00,000/- | 1. 25% after FIR=50,000/- & 2. 50 % after Charge Sheet sent to court=1,00,000/- (SI no-32 of norms for relief amount) | 1,50,000/- |
| 22 | Late Champa Murmu, D/o- Churia Murmu, Vill- Garudabasa, PS-Betnoti, Dist-Mayurbhanj | Betnoti PS Case No-82/dt.15.06.18 | Committed rape & Murder, under section 363/376(3) /376(A)/376(AB)/302, IPC -6 POCSO Act-2012 & Sec-3(1)(w)/3(2)(v)(va) SC & ST POA Act | 8,25,000/- | 1. 50 % after medical report=4,12,500 & 2. 50% after Charge Sheet sent to court(SI No-45 of norms for relief amount) | 8,25,000/- |
| 3 | Shri Pravakar Patra, At- Tulasichaura, W.No-23, PS-Baripada Town, Dist-Mbj | Baripada Town PS Case No-86/dt.28.04.18 | Abused victim in obscene languages with caste aspiration, under section 448/294/506/34 IPC - 3(1)(r)(s), 2(va) SC & ST PoA Act | 1,00,000/- | 1. 25% after FIR=25,000/- & 2. 50 % after Charge Sheet sent to court=50,000/- (SI no-19 of norms for relief amount) | 75,000/- |
| | Manorama Singh, Vill-Jadunathpur, PS-Badasahi, Dist-Mayurbhanj | Badasahi PS Case No - 40/dt.13.03.18 | Committed Rape , under Section 363/366/376/(2)(i)(n), IPC -6 of POCSO Act & 3(2)(v) SC & ST POA Act | 5,00,000/- | 1. 50 % after Medical Report= 2,50,000 & 2. 25 % after Charge sheet sent to court= 1,25,000(SI No-44(i) of norms for relief amount) | 3,75,000/- |

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|----|---|--------------------------------------|---|-------------|--|------------|
| 11 | Smt. Jira Naik, Vill-Langalsila, PS-Badampahad, Dist-Mayurbhanj | Badampahad PS Case No-37/dt.13.12.17 | Gang Rape, under Sec 376D/341/323/ IPC /3(1)(w)(i)/3(2)(v)(va) SC & ST POA Act. | 8,25,000/- | 1. 25% after Charge Sheet Sent to court=2,06,250/-(SI No-44(ii) of norms for relief amount) | 2,06,250 |
| 12 | Shri Lakheswar Naik, Vill-Badsole, ps-Jharpokhoria, Dist-Mbj | Jharpokhoria PS Case No-114/25.12.17 | Abused victim in obscene language aspering his caste & assault and threatened to Kill & under section 341/323/294/506 IPC 3(1)(r)(s), 2(Va) SC & ST PoA Act | 2,00,000/- | 1. 25% after FIR=50,000/- & 2. 50 % after Charge Sheet yo court=1,00,000/-(SI no-41 of norms for relief amount) | 1,50,000 |
| 13 | Shri Bhagabata Patra, vill-Patrasahi, Kumbhirda, PS-Raruan, Dist-Mayurbhanj | Raruan PS Case No-72/dt.31.12.17 | Abused compt. In obscene languages aspering his caste & threatened to kill & Under section 294/506/34 IPC /3(1)(r)(s)/3(2)(va) SC & ST PoA Act | 1,00,000/- | 1. 25% after FIR=25,000/- & 2. 50 % after Charge Sheet sent to court=50,000/-(SI no-19 of norms for relief amount) | 75,000/- |
| 14 | Smt. Laxmipriya Nayak, Vill-Hatimundi, PS-Jashipur, Dist-Mayurbhanj | Jashipur PS Case No-64/dt.29.05.17 | Committed Rape, under section 363/376(2)(n)/294/506/34 IPC/ 3(1)(w)(i),2(v)(va) SC & ST PoA Act | 5,00,000/- | 1. 25 % after Charge sheet Sent to court = 1,25,000(SI No-44(i)of norms for relief amount) | 1,25,000 |
| 15 | Smt. Hiramani Tudu, Vill-Hatijhuri(Kamarsahi), PS- Baisinga, Dist-Mbj | Baisinga PS Case No-67/dt.29.04.16 | Sexual relationship with the victim by giving assurance to marry her, Under section 493/417/420 IPC - 3(2)(v) SC & ST PoA Act | 4,00,000/- | 1. 25% after FIR=1,00,000/- & 2. 50 % after Charge Sheet=2,00,000/-(SI no-40 of norms for relief amount) | 3,00,000/ |
| 6 | Hemamani Goipai, vill-Ektali, PS-Jashipur, Dist-Mayurbhanj | Jashipur PS Case No-17/26.02.18 | Committed Rape, under Section 363/366/376/(2)(n), IPC - 3(1)(r)(s) & 3(2)(v) SC & ST POA Act | 5,00,000/- | 1. 25 % after Charge sheet= 1,25,000(SI No-40 of norms for relief amount) | 1,25,000 |
| 7 | Kumari Kandhei Naik, Vill-Kenduadiha, PS-Kuliana, Dist-Mayurbhanj | Kuliana PS Case No-104/24.12.17 | Gang Rape, under section 376-D(i)(j)(1)(m). (109)/34 IPC 6/17 of POCSO Act & 3(1)(w)(i)(ii) SC & ST PoA Act | 8, 25,000/- | 1. 25% when charge sheet Sent to court=2,06,250/- | 2,06,250/- |
| | Dharmendra Naik, Vill-Mandua, PS-Karanjia, Dist-Mayurbhanj | Karanjia PS Case No-11/25.01.18 | Abused victim in Obscene Language aspering his Caste & threatened to kill, under section 341/294/323/506 IPC RWS 3(1)(r)(s) SC & ST PoA Act | 1,00,000/- | 1. 25% after FIR=25,000/- & 2. 50 % after Charge Sheet sent to court=50,000/-(SI no-19 of norms for relief amount) | 75,000/- |

| | | | | | | |
|---|---|---|---|--------------------------|--|----------------------------|
| 25 | (1) Late Mahati Gagrai & (2) Janga Gagrai, At-Dhakata, PS-Badampahad, Dist-Mbj | Badampahad PS Case No- 15/dt.05.04.18 | Murder the victim Mahati Gagrai & assault the victim Janga Gagrai with Wooden Stick, under section 302/323/354/506/ IPC/3(1)(r)(w), 2(v)(va) SC & ST POA Act. | 8,25,000/- & 2,00,000 | 1. 50% after Post Mortem=4,12,500/- 2. 50% after Charge Sheet sent to court=4,12,500/- & 1. 25% after FIR = 50,000 & 2. 50% after Charge Sheet=1,00,000(SI No 45 & 41 of norms for relief amount) | 8,25,000/- & 1,50,000/- |
| 26 | Rasmita Sahu, Vill-Bangriposi, PS-Chandua, Dist-Mayurbhanj | Chandua PS Case No- 26/dtd.28.06.18 | Unwelcome physical contact with the victim, U/s-354/363/366/ IPC/12 POCSO Act/3(1)(w)(ii), 2 (va) SC & ST PoA Act. | 2,00,000/- | 1. 50% at FIR stage=1,00,000/- 2. 25% after Charge Sheet sent to court=50,000/- (SI No-26 of norms for relief amount) | 1,50,000/- |
| Total | | | | | | 57,62,500/- |
| (Rupees Fifty Seven Lakhs Sixty Two Thousand Five Hundred) Only | | | | | | |

12/12/18
Collector & District Magistrate
Mayurbhanj

Memo No- 6856/DWO Date 12-12-18

Copy forwarded to the Superintendent of Police, Mayurbhanj for favour of kind information.

12/12/18
Collector & District Magistrate
Mayurbhanj

Memo No- 6857/DWO Date 12-12-18

Copy forwarded to the F.A cum Additional Secretary to Govt. for favour of kind information and necessary action.

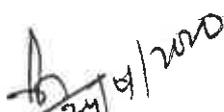
12/12/18
Collector & District Magistrate
Mayurbhanj

JOINT ENQUIRY REPORT ON ATROCITY CASES UNDER SCs & STs (POA) ACT 1989/ AMENDMENT ACT 2015 AND SCs & STs (POA) RULES 1995 / AMENDMENT RULES 2016

1. **Name & Designation of the enquiring officer with Contact No. :-**
 - i. **Sub-divisional Police officer :-** Shri Lalit Ku. Pattnayak OPS , SDPO Betnoti , Mob. :- 9439587156
 - ii. **Executive Magistrate :-** Shri Prabhakar Mohapatra ORS, I/C Tahasildar Rasgobindpur Mob. :- 9438322437
2. **Date of FIR , Name of the PS with case No. & SR No. :-** Rasgobindpur PS case No. 133 Dt. 12.11.19 U/S 376(2)(n)/313 IPC/Sec. 3 (1)(r)(w)(1)/2(v)/2(va) SC & ST [POA] Act
3. **Date of enquiry :-** 24.01.2020
4. **Name with father's / husband's name & address of victim with contact No. :-** Sugi Hansda (21) D/O- Badra Hansda, vill- Musamari , PS- Rasgobindapur, Dist- Mayurbhanj.
5. **Date & place of occurrence :-** On 11.11.19 and before , PO- "Jahira field " at vill- Musamari, PS- Rasgobindapur, Dist- Mayurbhanj and at village Urmal , PS - Udala , Dist- .
6. **BY whom FIR was first lodged :-** Complt. Sugi Hansda (21) D/O- Badra Hansda, vill- Musamari , PS- Rasgobindapur, Dist- Mayurbhanj.
7. **Whether the victim belongs to SC or ST if yes mention caste and sub-caste :-** Victim Sugi Hansda D/O- Badra Hansda, vill- Musamari , PS- Rasgobindapur, Dist- Mayurbhanj. is 'SANTAL' by caste which comes under 'ST' category .
8. **By whom the atrocity committed , Name with father's/ Husband's name & address with caste & sub-caste:-** Prakash Sahu S/O- Rabindra Sahu vill- Mushamari, PS- Rasgobindpur , Dist- Mayurbhanj is 'TELI' by caste which comes under S.E.B.C./O.B.C.
9. **Nature of offence in brief extent of loss / list of victims / immediate relief , if any**
 - i. **Nature of offence in brief :-** That accd. Prakash Sahu committed sexual assault several times upon the victim Sugi Hansda by giving assurance of marriage with having sufficient knowledge that she is belongs to ST community. When the victim became pregnant, reminded him about his earlier promise and insisted him for marriage, the accused left her. Thus, it is concluded to be a true case U/S- 376(2)(n) IPC/3 (1)(r)(w)(1) /2(v)/2(v)(a) SC & ST (POA) Act against accused Prakash Sahu S/O- Rabindra Sahu vill- Mushamari, PS- Rasgobindpur , Dist- Mayurbhanj who is liable for the offence. Sec. 313 IPC could not be established due to want of corroborative/substantial evidence.
 - ii. **Report in detail about the extent of atrocity , loss and damage of the property of the victims :-** Knowing the victim belongs to "ST" category , accd. sexually assaulted her repeatedly with an assurance of marriage .
 - iii. **List of victims and their family members and dependants entitled for relief :-** victim Sugi Hansda (21) D/O- Badra Hansda, vill- Musamari , PS- Rasgobindapur, Dist- Mayurbhanj is entitled to get the relief .
 - iv. **Immediate relief provided to the victims or not**
(Rule-6 (2) relates to point No. V
10. **Sub-clause under section 3 of the SCs & the STs (PoA) Act 1989 (Amendment Act 2015) and other Act to which the offence attracts :-** U/S 376(2)(n) IPC/ Sec. 3(1)(r)(w) (1)/2(V)/2(v)(a) SC & ST (POA) Act

11. **Date of medical examination and opinion of the doctor** :- On 13.11.19 victim Sugi Hansda to MO CHC, Rasgovindpur for her medical examination but she denied for the same .
12. **In case of murder/ death /disability incapacitation** :- No
13. **Whether the victim is earning / non-earning member** :- Non-earning member
14. **In case of Fire/damage, value of property** :- No damage of property
15. **Submission of the Charge Sheet with CS No. and date, if no (give reason)** :- P.CS is going to be submitted .
16. **Amount of relief recommended as per rule 12 (4) (Scheduled Annexure – 1 of the SCs and STs (PoA) Amendment Rules 2016) and stages of payment percentage / Amount as per JER , with full clarity of amount if recommended mention the name of the victim (s) with father/ husband name** :- Rs. 5,00,000 /- (Five lakhs) to the victim Sugi Hansda (21) D/O- Badra Hansda, vill- Musamari , PS- Rasgobindapur, Dist- Mayurbhanj . Payment to be made as follows :- i) 50 % after medical examination and confirmatory medical report, ii) 25 % when the charge sheet is sent to the court , iii) 25 % on conclusion of trial by the lower Court .
17. **Whether intensive Police patrolling introduced in that area of occurrence** :- Yes
18. **Whether effective and necessary steps taken to provide protection to the witnesses and other sympathizers of victims** :- Yes , IIC Rasgovindpur PS instructed to render necessary protection to the witnesses , the victim and her family members .
19. **Whether a report on the relief and rehabilitation facilities provided to the victims has been forwarded to the special court or exclusive special court by the district Magistrate or the Sub-divisional Magistrate or the exclusive magistrate or superintendent of Police , as per 12 (7) of the SCs & the STs (POA) Amendment rule 2016** :- Intimation sent to DLSA , Mayurbhanj, Baripada . .
20. **Whether information regarding the relief amount have been provided to the victims / his dependents / associated organizations or individuals , as per Sec. 15 A (11)(k) of the SCs & the STs (POA) Amendment Act 2015** :- Yes
21. **General Remarks of the enquiring officers** - The case was investigated by Shri Lalit Kumar Pattnayak OPS, SDPO Betnoti and was supervised by Shri Smit P. Parmar IPS , SP , Mayurbhanj who deducted the case as true case U/S 376(2)(n) IPC/ Sec. 3(1)(r)(w)(1)/2(V)/2(v)(a) SC & ST (POA) Act against accd. Prakash Sahu (32) S/o Rabindra Sahu of village – Musamari , PS – Rasgovindpur , Dist – Mayurbhanj . Hence we recommended monetary benefits as per the Gazette of India : Extraordinary Notification Dt. 14.4.16 vide Annexure -I (Norms for relief amount) .


 (P. Mohan)
 Tahasildar
 Rasgobindpur


 (L.K. Pattnayak)
 S.D.P.O, Betnoti

**JOINT ENQUIRY REPORT ON ATROCITY CASES UNDER SCs & STs (PoA) ACT 1989/ AMENDMENT
ACT 2015 AND SCs & STs (PoA) RULES 1995/ AMENDMENT RULES 2016**

1. Name and Designation of the Enquiry Officer :
with contact No.
 - i. Assistance Commissioner of Police Sub-Divisional Officer/DSP :- Smt. Sabita Majhi, OPS, DSP HRPC
MBJ-Cum-I/C SDPO Udala.
Contact No.94383-88989
 - ii. Executive Magistrate :- Sri Laxmidhara Nayak, ORS
Addl. Tahasildar, Kaptipada
Contact No.88958-96954
2. Date of FIR, Name of the PS with Case NO. & SR No. :- Sarat PS case No.46 dt. 05.12.2019
U/S 323/354 IPC/ Sec.75 JJ ACT/
R/W 3 (xi) ST & SC (POA) ACT
3. Date of Enquiry :- 09.02.2020
4. Name with Father 's/Husband name and address of the victim with contact No. :- Mamatamayee Bandia (11) D/O Gobinda Bandia of village Akhapalana, PS-Thakurmunda, Dist.Mayurbhanj
Contact No. 7894334440
5. Date and place of occurrence :- On 04.12.19 Near Sandei Govt. Primary School which is situated at a distance of about 10 KMs towards North from Sarat PS
6. By whom FIR was first lodged :- Complt. Kairasing Bandia (48) S/O Durga Charan Bandia of village Sanadei (Kankumra), PS-Sarat., Dist.Mayurbhanj
7. Whether the victim belongs to SC or ST if yes: mention Caste and sub-caste :- **ST (Kolha)**
8. By whom the Atrocity committed the Name with Father's/Husband's name and address with caste and sub-caste. :- Debasish Mohanty (33) S/o- Santosh Kumar Mohanty Vill/PS- Kaptipada, Dist.Mayurbhanj. ("**KARANA**"- "**GEN**")
9. Nature of offence in brief extant of loss / list of victim /immediate relief, if any
 - i. Nature of Offence in brief: -

On 05.12.2019 at 3.15 PM Complt. Kairasing Bandia (48) S/o- Durga Charan Bandia of Sanadei (Kankumra), PS- Sarat, Dist- Mayurbhanj appeared at Sarat PS and tendered a written report before OIC alleging therein that his niece Mamatamayee Bandia (11) D/o- Gobinda Bandia of Akhapalana under Thakurmunda PS is staying in his house since last 06 years and studying in Class-V at Sanadei Govt. Primary School. On 04.12.19 his niece Mamatamayee had been to the school along with her friends and returned back to home at about 4.20 PM. On the same night at about 8.00 PM Mamatamayee cried and refused to go school. Being asked she disclosed that her school teacher Debasish Mohanty has assaulted her by means of a stick due to which she sustained injury on her leg and hand. Further she disclosed that the said teacher does not teach the students rather sleeps in the classroom under the influence of liquor. When her niece and other student made protest, he assaulted her and other classmates. As such he reported the fact at PS for taking legal action.

- ii. Report in detail about the extent of Atrocity:
loss and damage of the property of the victims :- Nil
- iii. List of victim and their family members and dependants entitled for relief. : Mamatamayee Bandia(11)D/O Gobinda Bandia of village Akhapalana, PS-Thakurmunda, Dist.Mayurbhanj
- iv. Immediate relief provided to the victims or not : N/A
(Rules -6(2) relates to point No.-V.
10. Sub -caste under Section 3 of the SCs & the STs : RWS 3 (1)(r)(w(i)(ii)/ 2 (va) ST/SC (POA) Act (PoA) Act 1989 (Amended Act 2015) and other Act to which the offence attracts.
11. Date of Medical examination and opinion of the Doctor : Nil
12. In case of Murder /death /disability incapacitation : Nil
13. Whether victim earning/non- earning member : (Student)
14. In case of fire, damage value of property : Nil
15. Submission of Charge Sheet with CS NO. and date : Charge Sheet will be submitted soon
If no (Give reason)
16. Amount of relief recommended as per the rules 12(4) : Rs.2,00,000/-(Two Lakhs)
(Scheduled,Annexure -1 of the SCs & the STs (PoA) Amendment Rules -2016) and stages of payment percentage /Amount as per JER, with full clarity of the victim (s) with Father /Husband
17. Whether intensive police patrolling introduced in that area of occurrence : Not required.
18. Whether, effective and necessary steps taken to provide protection to the witness and other sympathizers of the victim: Not Required.
19. Whether a report on the relief and rehabilitation facilities provided to the victim has been forwarded to the Special Court or Exclusive Special Court , by the District Magistrate or the Sub -Divisional Magistrate or Superintendent of Police, as per Rules 12(7) of the SCs & Sts (PoA) Amendment Rules. : After registration of the case a copy of FIR has been sent to District Welfare Officer.
20. Whether information regarding the relief amount have been provided to the victims/ his dependents/ associated organisations or individuals, as per Sec- 15(A)(11)(k) of the Scs & STs (PoA) Amendment Act -2015. : N/A

21. General remarks of the Enquiring Officer

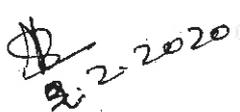
Investigation and supervision of the case so far transpired that the instant case is the cruelty outburst of accused Debasish Mohanty. The accused is a primary teacher by profession and is a Govt. servant. He was

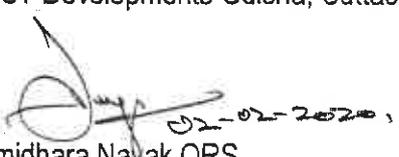
posted to Sanadei Govt. Primary School as Junior Teacher and was on duty on the date of occurrence. The victim girl Mamatamayee Bandia is minor as revealed from the school admission register. Besides the victim girl belongs to ST community whereas the accd teacher belongs to General category. The victim girl has been staying in the house of her uncle Kairasing Bandia (Complt.) since the age of her adolescence. She is presently pursuing her study in Class-V at Sanadei Govt. Primary School. The accused teacher was very ill reputed in the school for his cruelty towards the students especially in case of girl students having sufficient knowledge that they are minor and most of the students including the victim girl are tribal. As disclosed by the victim girl and other students the accused teacher was a habitual drunkard person and was not taking classes in the school rather assaulting the students without any ostensible reason under the influence of liquor. On the date of occurrence i.e. on 04.12.19 the victim girl had been to her school and attended her classes. On the same day the accused teacher was also present in the school and entered into the room of Class-V, but he did not impart class rather slept out of inebriation state as usual like other days. When the victim girl and other students called him to solve their problems of subject, he woke up in an angry mood and assaulted the victim girl and other students by means of a stick saying as to why they made interruption in sleeping. Due to such assault the victim girl sustained pain on her body. However after closing of school the victim girl returned back to her uncle's house and remained in a depression state till night. On the same night at about 8.00 PM when the Complt asked her about such unhappiness, she bluntly replied about her reluctance to continue her study. On further query she disclosed about her sordid story and barbarity of accd teacher occurred on the same day at school. Knowing this the Complt informed the fact to the local ward member and committee members of the SMC. Being advised he lodged FIR at Sarat PS on the following day i.e. on 05.12.19 against the erring teacher for taking drastic action as per law upon which the instant case was registered and investigated into.

On this issue as per written allegation of Complt Kairasing Bandia (48) S/o- Durga Charan Bandia of Sanadei (Kankumra), PS- Sarat, Dist- Mayurbhanj, SI Reena Baxla, OIC Sarat PS registered Sarat PS Case No.46 dt. 05.12.2019 U/S 323/354 IPC/ 75 JJ ACT/ 3 (xi) ST & SC (POA) Act and as per provision the instant case was entrusted to Smt. Sabita Majhi, OPS, HRPC, Mayurbhanj -cum-I/C SDPO, Udala for its investigation.

This case has been supervised by Shri Abhimanyu Nayak, OPS(1), Addl. Superintendent of Police, IUCAW, Mayurbhanj who concluded it to be true case U/S 354/323 IPC /RWS 75 JJ Act/ RWS 3 (1)(r)(w(i)(ii)/ 2 (va) ST/SC (POA) Act against the accused Debasish Mohanty (33) S/O Santosh Kumar Mohanty of VIII/PS- Kaptipada, Dist- Mayurbhanj who is liable to face the charge.

Thus, taking into the consideration of the above facts and evidence gathered during investigation, we recommend financial assistance of amounting rupees which may be upto Rs.2,00,000/- (Two Lakhs) in favour of victim girl Mamatamayee Bandia as per guidelines of Commissioner SC/ST Developments Odisha, Cuttack.


Smt. Sabita Majhi, OPS
DSP, IUCAW, Mayurbhanj
Sub-Divisional Police Officer
Udala


Sri Laxmidhara Nayak, ORS
Addl. Tahasildar-Cum-Executive Magistrate
Kaptipada, Tahasil, Dist. Mayurbhanj.

KAPTIPADA

JOINT ENQUIRY REPORT ON ATROCITY CASES UNDER SCs & STs (POA) ACT 1989/AMENDMENT ACT 2015 AND SCs & STs (POA) RULES 1995/AMENDMENT RULES 2016.

1. Name and Designation of the Enquiring Officer with contact No.
 - (i) Sub-Divisional Police Officer- Shri Snehashis Sahoo, OPS, SDPO, Rairangpur.
Mob.No-94386 53046.
 - (ii) Executive Magistrate- Shri Sushanta Kumar Baral, ORS, Addl. Tahasildar Kusumi. Mob.No.79822 11328
2. Date of FIR, Name of the PS with case No. and SR No.: Rairangpur Rural P.S. Case No.40, dt.01.06.2019, U/S 341/294/509/506/34 IPC turned to Sec 341/294/509/506/34 IPC-R/W-Sec 3(1)(r)(w)(ii) SC & ST (POA) Act. (SR No.214/2019)
3. Date of Enquiry:-On dt.09.01.2020.
4. Name with Father's/Husband's name and address of the victim with contact No. : Parbati Baskey, 26 yrs, W/o Mantu Baskey of village-Gopalpur, PS- Rairangpur Rural, Dist- Mayurbhanj. Mob No. 93488 07403.
5. Date and Place of occurrence:-On 01.06.2019 in between 01.00 PM to 01.15 PM. On the road to F/L shop of Bhagaban Sahu and at Gopalpur Bandha Chhak at village Gopalpur, Hatbadra, PS- Rairangpur Rural, Dist- Mayurbhanj.
6. By whom the F.I.R. was first lodged: Parbati Baskey, 26 yrs, W/O Mantu Baskey of village-Gopalpur, PS- Rairangpur Rural, Dist- Mayurbhanj.
7. Whether the victim belongs to SC or ST, if yes mention caste and sub-caste: Yes the victim belongs to ST category and "SANTAL" by sub-caste.
8. By whom the Atrocity is committed, Name with Father's/Husband's name & address with caste and sub-caste:-Accused persons 1. SK Usman @ Kanda(32yrs), 2. SK Kurban (28yrs), both S/o SK Hyder of village Deogan, PS: Badampahar, Dist.: Mayurbhanj who belong to "GENERAL" category and "MUSLIM" by sub-caste.
9. Nature of offence in brief and extent of loss/list of victims/immediate relief, if any.

(i) Nature of offence in brief:-The enquiry reveals that the Complt. Parbati Baskey along with Lily Das, Rina Giri, Durgabati Das, Parbati Patra, Suchitra Patra and Deepa Das of village Gopalpur, PS. Rairangpur Rural use to do labour work in the brewery of Bhagaban Sahu located at Hatbadra. As usual on 01.06.19 at about 01.15 PM, while they were returning to their village, en-route near the FL. shop of Bhagaban Sahu, accused Sk. Kanda @ Usman of village Deogaon came on a motor cycle bearing registration no. OD-11-

J-2138 from the opposite direction, wrongfully restrained them, passed obscene comments outraging their modesty, abused them in obscene languages and also intimidated them to kill. Immediately, they informed the labour supervisor Markand Pradhan about the matter, who in turn, intimated the fact to the villagers. Further, after about 20 minutes, the accused Sk. Kanda @ Usman reached near the pond of their village and created unwanted tension. On this, when some of the villagers arrived at there and on seeing them the accused ran away leaving his motor cycle there. While fleeing away, the accused fell down on a heap of metal and sustained injuries. On getting information about the matter, ASI, Hatbadada OP reached the spot and shifted the accused Sk. Kanda @ Usman to the hospital for treatment. After about one hour of the incident, his brother Sk. Kurban came to the village and threatened the villagers to kill. On 01.06.2019 at 8.30 PM, the complainant reported the incident in writing at Rairangpur Rural PS upon which law was set into motion with institution of the case in hand and accordingly investigation coursed in to the alleged offence.

(ii) Report in detail about the extent of atrocity, loss and damage of the property of the victims: - The accused persons wrongfully restrained the victim, passed ugly remarks, abused her in obscene words outraging his caste and threatened her against dire consequences.

(iii) List of victims and their family members and dependants entitled for relief :
Parbati Baskey, 26 yrs, W/O Mantu Baskey of village-Gopalpur, PS- Rairangpur Rural, Dist- Mayurbhanj.

(iv) Immediate relief provided to the victims or not (Rule – 6(2) relates to point No-v:- Nil.

10. Sub-Clause Under Section 3 of the SCs and STs (POA) Act 1989 (Amended Act 2015) and other act to which the offence attracts:-Sec 341/294/509/506/34 IPC - R/W-Sec 3(1)(r)(w)(ii) SC & ST (POA) Act

11. Date of medical examination and opinion of the Doctor: - The medical examination of the victim found not required.

12. In case of Murder/death/disability Incapacitation: NIL.

13. Whether victim earning / non-earning member:- The victim Parbati Baskey is an earning member of the family.

14. In case of Fire, damage value of property:- Nil.

15. Submission of Charge Sheet with CS No. and date. If no (Give reason) :Charge sheet to be submitted soon after the completion of investigation.

16. Amount of Relief recommended as per Rule 12(4) (Scheduled, Annexure-1 of ~~The SC and ST (POA) Amendment Rules 2015~~ and stages of payment, percentage/Amount as per JER, with full clarity of amount, if recommended mention the name of the victim(s) with Father/Husband name : The victim

Parbati Baskey, 26 yrs, W/O Mantu Baskey of village-Gopalpur, PS- Rairangpur Rural, Dist- Mayurbhanj is eligible to get the relief amount of Rs.2,00,000/- (Two Lakh) which is to be paid as follows- 25 percent at First Information Report (FIR) Stage, (ii) 50 percent, when the charge sheet is sent to the Court and (iii) 25 percent on conclusion of trial by the Court.

17. Whether intensive police patrolling introduced in that area of occurrences: - Police patrolling has been intensified in that area and OIC Rairangpur Rural P.S has been instructed to keep close watch over further development.
18. Whether, effective and necessary steps taken to provide protection to the witnesses and other sympathizers of the victims:- OIC, Rairangpur Rural P.S has been instructed to keep close watch over the accused persons and the witnesses and other sympathizers of the victim has been assured against police assistance in case of requirement.
19. Whether a report on the relief and rehabilitation facilities provided to the victims has been forwarded to the Special Court or Executive Special Court, by the District Magistrate or the Sub-Divisional Magistrate or the Executive Magistrate or Superintendent of Police, as per Rule 12(7) of the SCs and The STs (POA) Amendment Rules 2016 :-No.
20. Whether information regarding the relief amount have been provided to the victims / his dependants/ associated organisations or individuals, as per Sec-15 A (11)(k) of The SCs & The STs (POA) Amendment Act-2015 : Yes.
21. General Remarks of the Enquiring Officer: It is a true case U/S 341/294/509/506/34 IPC/ r/w sec. 3(1)(r)(w)(ii) SC/ST (PA) Act against accused persons Sk. Kanda @ Usman and Sk. Kurban, both sons of Sk. Hyder of vill. Deogaon, PS: Badampahar, Dist.: Mayurbhanj and basing on prima-facie charge-sheet has been placed against them to stand their trial in the court of law.

On the above back drop the case of atrocity to the complainant is well proved and we recommend the amount as noted in Col.-16, as per Gazette of India vide GSR No.424 (E) dtd.14.04.2016 under the rules of Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Amendment Rules-2016.


(Executive Magistrate)
Tahasilk Badampahar


(S.D.P.O.)
RAIRANGPUR

**JOINT ENQUIRY REPORT ON ATROCITY CASES UNDER SCs& STs (PoA) ACT 1989/ AMENDMENT
ACT 2015 AND SCs& STs (PoA) RULES 1995/ AMENDMENT RULES 2016**

1. Name and Designation of the Enquiry Officer :
with contact No.
 - i. Assistance Commissioner of Police Sub-Divisional Officer/DSP :- Smt. Sabita Majhi, OPS
DSP HRPC, MBJ-Cum-I/C SDPO Udala.
Contact No.9438388989
 - ii. Executive Magistrate :- Manisa Madhulika Hembram, OAS
Tahasildar, Udala.
Contact No.7205614413
2. Date of FIR, Name of the PS with Case NO. & SR No. : Udala PS Case No.184 dt. 15.11. 2019 U/S 341/294/
354(B)/509/506 IPC/8 POCSO Act/ turned to U/S 341/
294/354(B)/509/506/376/511 IPC/8 POCSO/Act-2012/
Sec.3(1)(r)(s) SC & ST (POA)Act (SR No.530/2019)
3. Date of Enquiry : 03.02.2020
4. Name with Father 's/Husband name and address of the victim with contact No. : Kumari Sasmita Murmu D/O Manik Chand Murmu
of village Manikpur, PS-Udala, Dist.Mayurbhanj
Contact No.
5. Date and place of occurrence : On 05.11.2019 Near Deo River Bridge
25 KMs North-West to Udala PS
6. By whom FIR was first lodged : Kumari Sasmita Murmu (13) D/O Manik Chand Murmu
Of village Manikpur, PS-Udala, Dist.Mayurbhanj
7. Whether the victim belongs to SC or ST if yes: **ST (SANTAL)**
mention Caste and sub-caste
8. By whom the Atrocity committed the Name with Father's/Husband's name and address with caste and sub-caste. : Jitu Barik(23) S/O Ramahari Barik
of village Kundabai, PS-Udala
Dist.Mayurbhanj,(SEBC)
9. Nature of offence in brief extant of loss / list of victim /immediate relief, if any
 - i. Nature of Offence in brief: -

On 15.11.2019 at 7.30 PM U/S 341/294/354(B)/509/506 IPC R/W Sec.8 POCSO Act by SI WSI AP Das of Udala PS on receipt of report from Complt. Kumari Sasmita Murmu(13) D/O Manikchand Murmu of village Manikpur, PS-Udala, Dist.Mayurbhanj against accused Jitu Barik S/O Ramahari Barik of village Kundabai, PS-Udala, Dist.Mayurbhanj as the above accused deliberately passed nude comments and exhibited obscene gestures during her School going time and during returning hours with her from friends from the School. On 15.11.2019 at about 1 PM he waited with a Bolero near Deo river bridge, forcibly took away her inside to the Bolero, made unwelcome physical contact to her body and private part and molesting her breasts with an attempt to gratify her sexual lust. When she shouted loudly and hearing her shout Manaranjan Barik and Nityananda Pradhan arrived there and rescued her, but accused Jitu Barik managed to escape from the spot with the Bolero. Initially the case was investigated into by WSI A.P.Das and as per provision the instant case was further entrusted to Smt. Sabita Majhi, OPS, HRPC, Mayurbhanj -cum- I/C SDPO, Udala.

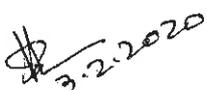
- ii. Report in detail about the extent of Atrocity:
loss and damage of the property of the victims :- Nil
- iii. List of victim and their family members and dependants entitled for relief. : Kumari Sasmita Murmu(13) D/O Manik Chand Murmu
Of village Manikpur, PS-Udala, Dist.Mayurbhanj
- iv. Immediate relief provided to the victims or not : N/A
(Rules -6(2) relates to point No.-V.
10. Sub -caste under Section 3 of the SCs & the STs : Sec.3(1)2(va)(r)(w)(i)(ii) SC/ST (POA) Act (PoA) Act
1989 (Amended Act.2015) and other
Act to which the offence attracts.
11. Date of Medical examination and opinion of the Doctor : Nil
12. In case of Murder /death /disability incapacitation : Nil
13. Whether victim earning/non- earning member : Student
14. In case of fire, damage value of property : Nil
15. Submission of Charge Sheet with CS NO. and date : Charge Sheet will be submitted soon
If no (Give reason)
16. Amount of relief recommended as per the rules 12(4) : Rs.2,00,000/-(Two Lakhs)
(Scheduled,Annexure -1 of the SCs & the STs (PoA)
Amendment Rules -2016) and stages of payment
percentage /Amount as per JER, with full clarity of
the victim (s) with Father /Husband
17. Whether intensive police patrolling introduced in that : Not Required.
area of occurrence.
18. Whether, effective and necessary steps taken to provide: Not Required.
protection to the witness and other sympathizers of
the victim.
19. Whether a report on the relief and rehabilitation facilities provided to the victim has been forwarded to the Special Court or Exclusive Special Court , by the District Magistrate or the Sub -Divisional Magistrate or Superintendent of Police, as per Rules 12(7) of the SCs & Sts (PoA) Amendment Rules. : After registration of the case a copy of FIR has been sent to District Welfare Officer.
20. Whether information regarding the relief amount have been provided to the victims/ his dependents/ associated organisations or individuals, as per Sec- 15(A)(11)(k) of the Scs & STs (PoA) Amendment Act -2015. : N/A
21. General remarks of the Enquiring Officer :

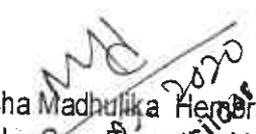
The veracity of the case is that the victim Kumari Sasmita Murmu reads in Class-VIII of GP High School, Kundabai and used to make to and fro to the school by riding her bicycle with mates. When the Compl. comes to the School and returns, accused Jitu Barik who has beetle shop used to pass nude comments in an amours way, exhibited obscene gestures, abused her in slang languages demeaning her caste saying her as "ADIVASI JHIO HELE BHI MAL TA KHAS HEICHHI" etc. with an intention to extort of her, offered chocolates to impress upon her. On 15.11.2019 at 1-PM while the compl./victim was returning from School with her friend Gouri Hembram to her home near Deo bridge accused Jitu Barik awaited there with a Bolero vehicle, dragged into the Bolero, made foreplay molesting her breast, put in his finger to her private part with unwelcome physical contact. With a view to assault her sexually. Apprehending any impediment danger she made alarm for which Manaranjan Barik and Nityananda Pradhan arrived there and rescued the but failed to apprehend the accused as he managed to escape. During investigation the IO seized the School Admission Register of Gram Panchayat High School, Kundabai in respect of victim Sasmita Murmu where the DOB of victim is mentioned as 20.01.2006. Accordingly her age is 13 years 09 months 25 days on the day of report at PS.

On this issue as per written allegation of Compl. Kumari Sasmita Murmu(13) D/O Manik Chand Murmu of village Manikpur, PS-Udala, Dist.Mayurbhanj, WSI A.P.Das registered Udala PS Case No.184 dt.15.11.2019 U/S 341/294/354(B)/509/506 IPC/8 POCSO and subsequently this is turned to U/S 341/294/354(B)/509/506/376/511 IPC/8 POCSO Act/Sec.3(1)(xi)(r)(wi) SC/ST(POA) Act and as per provision the instant case was further entrusted to Smt. Sabita Majhi, OPS, HRPC, Mayurbhanj -cum- I/C SDPO, Udala.

This case has been supervised by Shri Abhimanyu Nayak,OPS(1),Addl. Superintendent of Police,IUCAW, Mayurbhanj who concluded it to be true case U/S 376/511/341/294/354(B)/ 509/506 IPC/ 8 POCSO Act/Sec.3(1)2(va)(r)(w)(i)(ii) SC/ST (POA) Act and accused Jitu Barik(23) S/O Ramahari Barik of village Kundabai ,PS-Udala, Dist.Mayurbhanj is liable for the offence.

Thus, taking into the consideration of the above facts and evidence gathered during investigation, we recommend financial assistance of amounting rupees which may be upto Rs.2,00,000/-(Two lakhs)in favour of the Kumari Sasmita Murmu as per guidelines of Commissioner SC/ST Developments Odisha, Cuttack.


Smt. Sabita Majhi,OPS
DSP,IUCAW,Mayurbhanj


Manisha Madhulika Hembram, OAS
Tahasildar-Cum-Executive Magistrate
Udala, Tabasil, Dist. Mayurbhanj.



OFFICE OF THE SUPERINTENDENT OF POLICE, MAYURBHANJ, BARIPADA

Letter No. /HRPC

Dt. 12.2019

JOINT ENQUIRY REPORT OF SRI RAM CHANDRA SOREN, OAS, TAHASILDAR-CUM-EXECUTIVE MAGISTRATE, BARIPADA TAHASIL AND SMT. SABITA MAJHI, OPS, DSP, HRPC-CUM-CRIME, MAYURBHANJ, BARIPADA IN CONNECTION WITH BARIPADA SADAR PS CASE NO- 130 DT. 17.10.19 376/511/ 354 IPC/ 12 POCSO ACT/ 3(1)(r)(s) SC/ST (POA) ACT. (SR NO- 461/19)

1. Name and Designations of the enquiring officers with contact number:
 - (i) Assistant commissioner police /Sub-Divisional Police Officer: Smt. S. Majhi, OPS, DSP, HRPC-Cum-Crime, Mayurbhanj, Baripada. (Contact No- 9438322929)
 - (ii) Executive Magistrate: Sri Ram Chandra Soren, OAS, Tahasildar-Cum-Executive Magistrate, Baripada Tahasil, Mayurbhanj. (Contact No- 6370892992)
2. Date of FIR , Name of the PS with Case No. & SR No- Baripada Sadar PS case No- 130 dt. 17.10.19 U/s 376/511/354 IPC/ 12 POCSO Act/ 3(1)(r)(s) SC/ST (POA) Act. (SR No. 461/19)
3. Date of Enquiry: 09.12.2019
4. Name With father /Husband's name & address of the Victim (s)/Complt.
: Parbati Mukhi (14)
D/o- Santosh Mukhi
Vill- Baghuasole
PS- Baripada Sadar
Dist- Mayurbhanj (Victim Girl)
5. Date and place of the occurrence : On 16.10.19 at about 1.00 PM
6. By whom the FIR was lodged : Hemanta Kumar Dutta, HM of Govt. UP School, Badabramhanamara.
7. Whether the victim belonging to SC or ST if Yes mention caste and sub-caste : Yes, "HADI" by sub-caste under 'SC' category
8. By whom the atrocity is committed Name with fathers / Husband's name & address with caste & sub-caste: Prasanta Kumar Bhujbal (52) S/o- Late Shyam Sundar Bhujbal of W. No. 21, Purnachandrapur, PS- Baripada Town, Dist- Mayurbhanj, A/p- Asst. Teacher, Govt. UP School, Badabramhanamara. ("KHANDAYAT" by Sub-Caste under "GEN" category)
9. Nature of offence in brief extent to loss/list of victims/ immediate relief, if any:-
 - (i) Nature of Offence in Brief: On 16.10.19 at about 1.00 PM the above noted acdd teacher attempted to commit sexual assault followed with sexual harassment by dragging the minor girl student namely Parbati Mukhi as mentioned above inside the office room of Badabramhanamara Govt. UP School in order to fulfill his sexual appetite after taking the advantage of loneliness having sufficient knowledge that the victim is minor and is a member of "SC" community.
 - (ii) Report on detail about the extent of atrocity loss/damage of the property of the victims :NA
 - (iii) List of Victim and their family members and dependent entitles for relief : The victim girl and her family members.
 - (iv) Immediate relief provided to the victims or not (Rule- 6(2) releases to police No. 14) NA

10. Sub-Clause under section 3 of the SCs and STs (PA)

Act-1989 (Amended Act 2015) and other Acts to which the offence attracts: Sec. 3

(1)(w)(i)(ii)/2 (v)/(va) SC/ST (POA) Act

11. Date of Medical Examination and opinion of the Doctor :On 18.10.19
12. In case of Murder/Death/disability incapacitation :NA
13. Whether the victim earning/non-earning Member :Non-earning Member (Student)
14. In case of Fire ,damage, value of property :Not required
15. Submission of the Charge sheet with CS No- and date
If no (Give reason) : This case is pending for further investigation and likely to be charge sheeted U/s 376(3)/376(2)(f)/511/354 IPC RWS 12/18 POCSO Act, 3 (1)(w)(i)(ii)/2 (v)/(va) SC/ST (POA) Act

16. Amount of relief recommended as per Rule 12(4) (Scheduled, Annexure-1 of The SCs& The STs (POA) Amendment rules 2016 and stages of payment

Percentage/Amount as per JER, with full capacity of amount, if recommended mention the name of the victim(s) with fathers/Husband name
compensation is recommended: **Rs. 2 Lakh only.** 25% of compensation in favour of Compl Krishna Ghadei (victim) may be given after submission of CS and rest compensation amount may be given after conviction.

17. Whether intensive police patrolling introduced in that area of occurrences : Yes
18. Whether effective and necessary steps to provide protection to witnesses and other sympathizers of the victim : Yes
19. Whether a report on the relief and rehabilitaization facilities provided to the victims have been forwarded to the special court or Exclusive Special court by the District Magistrate or Superintendent of Police . as per Rule 12(7) of The SCs& The STs (POA) Amendment rules 2016 :NA
20. Whether information regarding the relief amount have been provided to the victims /dependants /associated organizations or individuals, as per the sec 15k(11) of The SCs& The STs (POA) Amendment rules 2016 :Yes
21. General remarks of the Enquiring Officers:

The veracity of the case is that the instant is the depravity outburst of accd teacher Prasanta Kumar Bhujbal towards victim girl Parbati Mukhi to fulfill sexual appetite. The victim girl Parbati Mukhi is a minor as revealed from her school admission register and was less than 17 years of age, but more than 10 years on the date of occurrence. Besides the victim girl is a member of 'SC' community whereas the accd teacher Prasanta Kumar Bhujbal belongs to 'GEN/SEBC' category. The accd Prasanta Kumar Bhujbal is a teacher by profession and is a Govt. servant. He was posted to Badabramhanamara Govt. UP School as a Teacher and was imparting English subject in the school. The victim girl was prosecuting her up to primary study at Badabramhanamara Govt. UP School in Class-VI by remaining in SC/ST Girls hostel located inside the campus of Badabramhanamara Govt. High School at a distance of about ½ KM from the school after being completed her primary course at Gunju Sahi Primary School. The Compl Hema Kumar Dutta is serving as Headmaster and is the authority of the spot school. The accd teacher was a se- perverted person and had a bad eye towards the girl students especially the victim girl with an intention to achieve his lustful design having sufficient knowledge that they are minors and belong to Adivasi/Harison community. Prior to the occurrence there were so many allegations against the teacher for exhibiting misconduct and harassing the girl students at school, but it could not be entertained as none ventured to stand against him out of fear. On the date of occurrence i.e. on 16.10.19 both the accd teacher and victim girl had attended school as usual like other days. On the same day at 1.00 PM both the accd teacher and victim girl were present at school whereas the other staff including HM and students were busy otherwise due to recess hour. In the meanwhile the accd teacher found the victim girl loitering near the office room alone. The accd teacher taking advantage of loneliness called the victim girl to the office room with an ulterior motive to hara-

her immorally. When the victim girl entered into the office room, the accd teacher directed her to make herself nude. On her protest he being annoyed attempted to commit sexual assault on her by outraging her modesty by way of squeezing her breast and dragging her wearing apparels without her consent. However the victim girl managed to escape from his clutch and intimated the fact to her hostel matron Sabitri Murmu and other classmates which was subsequently travelled very fast in the nearby vicinity. Knowing this, the family members of victim girl and other nearby villagers congregated at the spot. On being asked the victim girl depicted her sordid story and depravity of accd teacher before her family members which invited resentment/ hostility in the locality on the following day i.e. on 17.10.19 from 12.00 Noon onwards to till night. The agitating mobs in a large number around 1000 in strength under the leadership of one Mangal Charan Mohanta created pandemonium inside the school campus with a demand to hand over the erring teacher to their custody for taking drastic action against him at their level. Seeing such violence the Complt and other staffs of the school concealed the accd teacher in a room under lock and key in order to avoid reach of derailed mob. When the environment of the school became unrest and furious out of act of agitators, information was sent to local PS to curb down the issue. Accordingly the PS staffs proceeded to the spot and tried their best to settle down the issue, but it became futile due to adamant nature of agitators for which other police officers including IIC, Sadar PS, Baripada and force reached the spot and tried to convince the agitators to take legal action against the accd teacher as per law. In this connection the Complt produced a written report before IIC at spot upon which the instant case was registered and preliminary investigation was commenced. In spite of assurance given and FIR shown the crowd did not neither refrained from their activities nor vacated the spot rather escalated their criminal activities in an extreme level to punish the accd teacher which refers Baripada Sadar PS case No- 131 dt. 18.10.19 U/s 147/148/294/337/338/354/353/ 186/506/149 IPC RWS 3 & 4 PDPP Act RWS 9(b) Explosive Act was registered against the aforesaid agitators on the written report of Complt SI S.R. Sahoo of Baripada Sadar PS and investigated into by IIC, Sadar PS, Baripada. However after augmentation of additional force at the spot, the mob was dispersed. Accordingly both the accd teacher and victim girl were rescued and brought to PS for taking needful action.

Thus, taking into the consideration of the above facts and evidences recorded by the investigating officer, we recommended a sum of Rs. 2 Lakhs only as financial assistance/ compensation in favor of the victim girl Parbati Mukhi and her family members as per the guidelines of commissioner SC/ST development Odisha, Cuttack as it is well evident to be a case of atrocity upon victim girl committed by the accd teacher namely Prasanta Kumar Bhujbal.


9.12.19.

Smt. Sabita Majhi, OPS,
DSP, HRPC-Cum-Crime, Mayurbhanj
Baripada.


09/12/19

Sri Ram Chandra Soren, OAS,
Tahasildar-Cum-Executive Magistrate,
Baripada Sadar Tahasil, Dist- Mayurbhanj.

Victim Compensation under
SC/ST (POA) Act, 1989

Koraput District

Amarendra J (Colly)

**Implementation of Scheduled Castes & Scheduled Tribes
(Prevention of Atrocities)**

Under these act Social safeguard has been provided to Scheduled Tribes and Scheduled Castes. The victims are being paid the compensation on the basis of Joint Enquiry Report of S.D.P.O. and Revenue Officer. The Monetary Relief is being given to the Atrocity victims according to the gravity of the case. The payment made in different stages in different cases as per the guidelines communicated vide latest Govt. Letter No. 10948/SSD dttd. 18.06.2018 of Director, SC, Welfare, ST & SC Development Department, Odisha

Payment of Monetary Relief to victims of Atrocities of Koraput District for the year 2018-19: (17 Victims benefitted)

| Sl. No. | Name & Address of the Victim | P.S. Case No. | Section under POA Act | Stage-wise payment due | | | Monetary relief suggested by JER (In Rs.) | PAYMENT for 1 st & 2 nd installment due (In Rs.) |
|---------|--|---|--|--|-------------------------------------|---|---|--|
| | | | | 1 st phase | 2 nd phase | 3 rd phase | | |
| 01 | Late Bhumika Disari D/o Purba Disari Village- Sortsapadar PS-Pottangi District-Koraput | Pottangi PS Case No. 62 dttd 23.07.2017 | U/S. 363/302/2013/34 IPC R.W. Sec. 5 of Odisha Prevention of Witch Hunting Act and Sec. 3(2)(v) SC/ST (POA) Amendment Act-2015 | 4,12,500 (50% after Post Mortem report) | 4,12,500 (50% When Charge sheet) | - | 8,25,000 | 8,25,000 |
| 02 | Smt. Mani Khara W/o Magu Khara Village-Lenjiguda GP-Mali Maria PS-Pottangi District-Koraput | Pottangi PS case No 68 dttd 30.07.2017 | U/S 448/354(B)/294/325/506 IPC R/W Sec. 3 (1) (w) (i) of SC & ST (POA) Amendment Act-2015 | 50,000 (25% At FIR Stage) | 1,00,000 (50% When Charge sheet) | 50,000 (25% When Accused are convicted at Lower Court) | 2,00,000 | 1,50,000 |
| 03 | Balaram Muduli S/o Urkudi Muduli Village-Banasil, PS-Dasamantpur District-Koraput | Dasamantpur PS Case No. 35 dttd. 01.05.2017 | U/S 311/323/294/506 IPC turned to Sec. 341/323/294 IP/R/W Sec. 3(0)(x) SC/ST (PoA) Amendment Act-2015 | 25,000 (25% When Charge Sheet) | 75,000 (75% On conviction) | - | 1,00,000 | 25,000 |
| 04 | Lalita Khira @ Sagar D/o Arjuna Khira Village- Dasamantpur Nuasahi, PS-Dasamantpur, Dist.-Koraput | Dasamantpur PS Case No. 25 dttd. 18.04.2016 | U/S. 376 (2) (n) /506 / 34 IPC and 6 POCSO Act. R/W Sec. 3 (2) (v) SC & ST (POA) Amendment Act-2015 | 1,00,000 (25% At FIR Stage) | 2,00,000 (50% When Charge sheet) | 1,00,000 (25% When Accused are convicted at Lower Court) | 4,00,000 | 3,00,000 |

| | | | | | | | | |
|----|--|--|---|---|--|--|----------|----------|
| 05 | Dammu Halwa S/o Mangala Halwa | Koraput Sadar PS Case No. 60 dtd. 29.04.2016 | U/S- 147/148/341/323/294/506/354 B/427/380/149 IPC/3(1)(x)(xi) of SC & ST (PA) Act | 22,500 (25% When Charge sheet) | 67,500 (75% On conviction) | -- | 90,000 | 22,500 |
| 06 | Smt. Goura Halwa, W/o Dammu Halwa | --do-- | --do-- | 90,000 (50% After Medical Examination) | 90,000 (50% At the conclusion of trial) | -- | 1,80,000 | 90,000 |
| 07 | Ghasiram Suna S/o Mukunda Suna All are village- Lithmaliguda, Harjan Sahi PS-Koraput Sadar, Dist-Koraput | --do-- | --do-- | 22,500 (25% When Charge sheet) | 67,500 (75% On conviction) | -- | 90,000 | 22,500 |
| 08 | Netrananda Behera, ORS S/o Late Gandharba Behera, AT/PO-Somepur, PS: Kishore Nagar, Cutback (R) A/Pr. Addl. Tahasildar, Semiliguda Tahasil | Semiliguda PS Case No. Z4 dtd. 23.06.2017 | U/S. 186/192/332/353/506/34 IPC turned to U/S 186/192/332/353/506/34 IPC /3 (1) (i) (s) (2) (v-a) of SC/ST POA Amendment Act-2015 | 1,00,000 (50% At FIR Stage) | 50,000 (25% When Charge sheet) | 50,000 (25% On conclusion of trial by the Lower Court) | 2,00,000 | 1,50,000 |
| 09 | Sada Gonda S/o Late Sadan Gonda Village-Lathiiguda, PS-B. Singpur District-Koraput | B. Singpur PS Case No. 37 dtd. 21.06.2017 | U/S 294/323/506 IPC RM Sec. (3) (1) (x) SC/ST POA Act | 25,000 (25% When Charge sheet) | 75,000 (75% On conviction) | -- | 1,00,000 | 25,000 |
| 10 | Dutika Jani D/o Ghasi Jani Village-Balda, PS- Sunabeda District-Koraput | Sunabeda PS Case No. 26 dtd. 18.02.2017 | U/S 376 (2) (n) /506 IPC /R.W. Sec 6 POCSO Act-2012/ 3(2)(v) of SC & ST (PoA) Amendment Act-2015 | 2,50,000 (50% After medical Examination and confirmatory report) | 1,25,000 (25% When Charge sheet) | 1,25,000 (25% On conclusion of trial by the Lower Court) | 5,00,000 | 3,75,000 |

| | | | | | | | | |
|----|---|---|---|--|---|---|----------|----------|
| 16 | Hiramani Hantai D/o Late-Sukra Hantai Village-Balkunda PS-Bolpanguda District-Koraput | Boipanguda PS Case No. 95 dtd. 25.09.2016 | U/S. 376(2) (i) IPC & POCSO Act-2012 turned to Sec. 376 (2) (L) IPC/ 6 POCSO Act-2012 turned to Sec 376 (2) (i) (i) (n)/50g IPC / R.W. Sec. 6 of POCSO Act / 3 (w) (i) (ii) SC & ST (PA) Amendment Act-2015 | 2,50,000 (50 % After medical Examination and confirmatory report) | 1,25,000 (25% When Charge sheet) | 1,25,000 (25 % On conclusion of trial by the Lower Court) | 5,00,000 | 3,75,000 |
| 17 | Late Chaitan Bhatara S/o Late Dhan Bhatra Village-Bhatigaon PS/Block- Borigumma District-Koraput | Borigumma PS Case No. 149 dtd. 19.10.2016 | U/S. 302/34 IPC turned to Sec. 302/34 IPC, R/W Sec. 3(2)(v) SC/ST POA Act | 4,12,500 (50 % after Post Mortem report) | 4,12,500 (50% When Charge sheet) | -- | 8,25,000 | 8,25,000 |

PROPOSAL FOR MONETARY RELIEF TO VICTIMS FOR THE YEAR 2019-20

| Sl. No. | Name of the Police Station | Police Station Case No. | Charge sheet No. & Date | Name & Address of the victims | Community (SC/ST) | Section under IPC & (PoA) SC/ST Act | Name of the Offence | Joint enquiry conducted by | Amount recommended by JER | Proposed amount for Sanction (Minimum amount of relief) | | | Remarks (if any) |
|---------|----------------------------|-------------------------------|-------------------------------------|--|-------------------|--|---|--|---------------------------|---|-----------------------|-----------------------|---|
| | | | | | | | | | | 1 st Phase | 2 nd Phase | 3 rd Phase | |
| 1 | Kundra Police Station | PS Case No. 57 dt. 01.07.2018 | Charge Sheet No. 57 dtd. 01.09.2018 | Manjima Jani D/O Late Bhagaban Jani Village- Mundaraguda, PS-Kundra Dist-Koraput | ST (Paraja) | U/S 417/493/420/294 IPC R.W. 3(2)(v)/(3)(2)(va) SC & ST POA Amendment Act 2015 | The accused committed sexual relationship with the victim after promising her to marry. But when the victim delivered a female child the accused denied to accept her as she belongs to ST category | Sri Victor Sore, OAS, Tahasildar, Kundra and Sri T.J.Reddy, OPS, I/c SDPO, Jeypore | 4,00,000/- | 1,00,000/- (25%) | 2,00,000/- (50%) | 1,00,000/- (25%) | May be released amounting to Rs. 3,00,000/- (Rupees Three Lakh), i.e. 75% at this stage. (Govt. have been requested for release of funds vide this Office Letter No. 6652 dtd. 21.12.2019) |

Along with investigation report**Child abuse cases**

| Sl.No. | Year | Police station Name & case No. | Name & address of the victim | Amount disbursed. |
|--------|------|---|--|-------------------|
| 1 | 2013 | Daringbadi P.S case No. 73/13 76/13 | Rinki Pradhan, D/O Radhakanta Pradhan, vill: Basabadi, Daringbadi (student of Kirikuti Nodal UP School) | Rs. 60,000/- |
| 2 | 2013 | Daringbadi P.S case No. 73/13 76/13 | Franklina Pradhan, D/O Radhakanta Pradhan, vill: Basabadi, Daringbadi (student of Kirikuti Nodal UP School) | Rs. 60,000/- |
| 3 | 2013 | Daringbadi P.S case No. 73/13 78/13 | Antima Pradhan, D/O Pradeep Pradhan , vill: Majangapata, Daringbadi(student of Kirikuti Nodal UP School) | Rs. 60,000/- |
| 4 | 2013 | Daringbadi P.S case No. 73/13 76/13 | Sebika Pradhan, D/O Ranjan Pradhan, vill: Basabadi, Daringbadi(student of Kirikuti Nodal UP School) | Rs. 60,000/- |
| 5 | 2013 | Daringbadi P.S case No. 73/13 76/13 | Kabaita Pradhan, D/O Basanta Pradhan , vill: Majangapata, Daringbadi(student of Kirikuti Nodal UP School) | Rs. 60,000/- |
| 6 | 2013 | Daringbadi P.S case No. 73/13 76/13 | Philimina Pradhan , D/O Smi Basanti Pradhan, vill: Dadamaha (student of Kirikuti Nodal UP School) (Daringbadi school) | Rs. 60,000/- |
| 7 | 2018 | Daringbadi PS case No. 65/18 | Mama Sunamajhi, D/O Joseph Susnamajhi. Vill: Dabedi, Daringbadi(student of Greenbadi High School) | Rs. 1,00,000/- |
| 8 | 2018 | Sarangada PS case No.81/18 | Hosana Digal, D/O Pratap Digal of Pisamaha, Simanbadi, Daringbadi(student of Gudrikiya PUPS) | Rs. 1,00,000/- |

1415

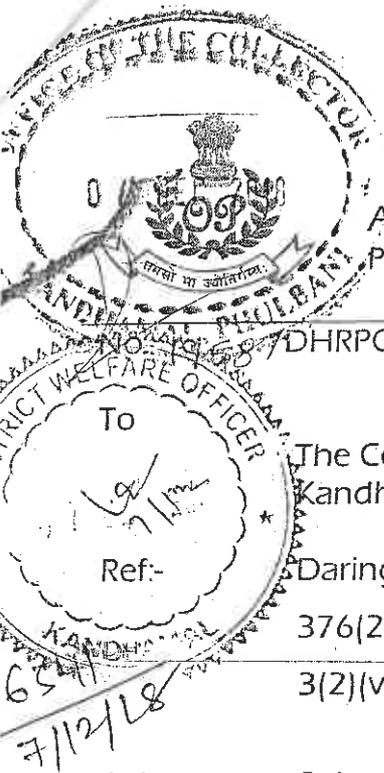
10/12/18

ODISHA POLICE
DISTRICT HEADQUARTERS: KANDHAMAL

At/Post- Phulbani Dist- Kandhamal PIN- 762001 (Odisha)
Phone No(s): - 06842-253610 (Office), 253611 (Res), 253609 (Fax)
Email id : spkdml.odpol@nic.in

DHRPC,

Date. 05 . 12.2018



To
The Collector & District Magistrate,
Kandhamal, Phulbani

Ref:- Daringbadi PS Case No. 65 dated 30.04.2018 u/s 354(A)/341/
376(2)(f)/376(2)(i)/376 (c)(b) IPC / Sec 10 of POCSO Act / Sec
3(2)(v)(vii) SC/ST PoA Act – 2015 (SR No. 119/18)

Sub: Submission of joint enquiry report.

Madam,

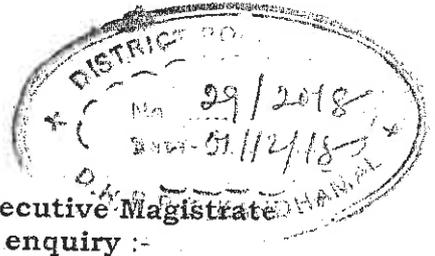
DWSO

With reference to the above noted case and subject cited, a copy of
JER in Balliguda PS Case No. 65 dated 30.04.2018 u/s
354(A)/341/376(2)(f)/376(2)(i)/376 (C) (b) IPC/Sec 10 of POCSO Act / Sec 3
(2)(v)(vii) SC/ST PoA Act – 2015 sent herewith for favour of information and
necessary action.

Yours faithfully

Superintendent of Police
Kandhamal, Phulbani

JOINT ENQUIRY REPORT



Name of the Police officer
with Designation holding enquiry :-

Name of the Executive Magistrate
Jointly holding enquiry :-

Sri Nitin Kusalkar, IPS.
S.D.P.O. Balliguda

Sri Nitish Tripathy, OAS
Tahasildar-cum-E.M., Daringbadi.

Date of holding enquiry: - 29.4.2018.

| | | |
|---|---|--|
| 1 | Name of the PS, Case No & Sec. of Law | Daringbadi PS Case No. 65 Dt.30.04.2018 U/s Sec. 354(A) /341/376(2)(f)/376(2)(i)/376(c)(b) IPC / Sec. 10 of POCSO Act / Sec. 3(2)(v)(vii) SC/ST POA Act 2015 |
| 2 | Name & Address of the Complt, Caste & Religion. | Complt Joseph Sunamajhi (50) S/o Kasi Sunamajhi of village Dabedi, PS Daringbadi, Dist. Kandhamal, Caste = ST (KANDHA) |
| 3 | Date and time of occurrence | 22.04.2018 at 7.30 AM |
| 4 | Place of occurrence | Govt. High School premises, Greenbadi. |
| 5 | Whether public place | Yes |
| 6 | Name of the alleged accused with Caste Reference. | Aditya Prasad Ratha S/o late Aparna Charan Ratha of village Kahakapure, PS Rambha, Dist. Ganjam. A/p H.M. Govt. High School Greenbadi, PS Daringbadi. "Brahmin" by caste. |

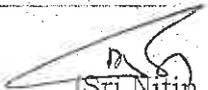
7. **Gist of FIR:** - That on 30.04.2018 at 2.00 PM complt. Joseph Sunamajhi (50) S/o Kasi Sunamajhi of village Dabedi, PS Daringbadi, Dist. Kandhamal appeared at Daringbadi PS and reported in writing that he has admitted his daughter Mama Sunamajhi at Greenbadi High School and she is reading in class 8th. On 22.4.2018 at about 2.30 PM the school head master Aditya Prasad Ratha called his daughter to his house and make some domestic work by her and tried molest her. His daughter escaped through the back door and waited some time at bus stand. When she found her aunty she left with her to her village Pangali. She returned to his village Dabedi on 23.4.2018. When the complt. asked to his daughter as to why she returned to home. On this his daughter replied that she will not read at that school. On 29.4.2018 night his daughter described before her mother about the detail incident at school. Hence the complt. reported the matter at Daringbadi PS for taking of legal action against the head master. Latter the case was turned to section 354(A) /341/376(2)(f)/376(2)(i)/376(c)(b) IPC / Sec. 10 of POCSO Act / Sec. 3(2)(v)(vii) SC/ST POA Act 2015. SDPO Balliguda took up investigation of the case as per orders of SP Kandhamal.

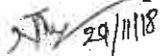
8. **Summary of the enquiry:** - During Joint enquiry it came to light that complt. Joseph Sunamajhi (50) S/o Kasi Sunamajhi is and inhabitant of village Dabedi, Sonepure, PS Daringbadi, Dist. Kandhamal and belongs to ST caste. He had four daughters and one son. The victim girl Mama Sunamajhi is the 3rd one who is reading in class 8th in the Govt. High School at Greenbadi and was staying in the tribal hostel of that school since two years. The accused head master Aditya Prasad Ratha is an inhabitant of village Kahakapur under Rambha PS of Ganjam district, an belongs to general caste (Brahmin). After being transferred from Huma high school, Ganjam to Govt. High School, Greenbadi, he joined as Head master since 2012. On the day of occurrence i.e 22.04.2018 as was Sunday, the accused HM directed to all teachers to clean the school premises by engaging the hostel students. As the school area is large, the teachers distributed the area among the students class wise and the front of the office of the HM was the area of the victim with her friends. When the cleaning was going on by the students, at that time at about 7.30 AM the accused HM Aditya Prada Ratha called the victim girl Mama Sunamajhi and another girl namely Rinima to clean his office. The victim Mama Sunamajhi and Rinima went to the HMs office,

out the HM send Rinima to outside of the office. The victim was asked to fold the dresses of the HM alone. During this work accd. HM committed penetrative sexual assault on her and threatened the victim not to shout nor to disclose the matter. In fear, the victim run away from the office to her friends and disclosed the matter to her friends. As the victim did not feel well, she came to Daringbadi market from where she went to village Pangali and then to her village out of fear and shame. She disclosed the offence committed on her by the HM in delay to her mother. Hence the complt. reported the matter at Daringbadi PS for taking of legal action against the head master. From the investigation it appears to be a true case u/s 376(2)(i)(f)/376(c)(b)/506 IPC / Sec. 6 of POCSO Act / Sec. 3(2)(v)(va)(vii) SC/ST POA Act against accd Aditya Prasad Ratha S/o late Aparna Charan Ratha of village Kahakapure, PS Rambha, Dist. Ganjam. A/p H.M. Govt. High School Greenbadi, PS Daringbadi.

9. **Opinion of the Officer holding enquiry and note clearly whether Atrocity has been committed and on whom** - It is opined that Atrocity has been committed upon the above noted victim Mama Sunamajhi D/o Joseph Sunamajhi of village Dabedi, Sonepure, PS Daringbadi, Dist. Kandhamal.

10. **Opinion regarding recommendation of compensation to the person who has affected with Name:** It is recommended for grant of compensation as per provisions.

 29/11/18
(Sri Nitin Kusalkar, IPS)
S.D.P.O., Balliguda

 29/11/18
(Sri Nitish Tripathy, OAS)
Tahasildar-cum-EM, Daringbadi.

DR 70-1789 / SDPO

DT 29.11.18

1412
10/12/18

ODISHA POLICE

DISTRICT HEADQUARTERS: KANDHAMAL

At/Post- Phulbani Dist- Kandhamal PIN- 762001 (Odisha)

Phone No(s) :- 06842-253610 (Office), 253611 (Res), 253609 (Fax)

Email id : spkdml.odpol@nic.in

DHRPC,

Date. 05.12.2018

To

The Collector & District Magistrate.
Kandhamal, Phulbani

Ref:

Sarangada PS Case No. 81 dated 11.11.2018 u/s 354-A(1)(i) IPC/Sec 8
of POCSO Act/3(1)(w)(i) SC/ST (PoA) Amendment Act (SR No.
345/18)

Sub: Submission of joint enquiry report.

Madam,

With reference to the above noted case and subject cited, a copy of
JER in Sarangada PS Case No. 81 dated 11.11.2018 u/s 354-A(1)(i) IPC/Sec 8 of
POCSO Act/3(1)(w)(i) SC/ST (PoA) Amendment Act sent herewith for favour of
information and necessary action.

Yours faithfully

Superintendent of Police
Kandhamal, Phulbani



JOINT ENQUIRY REPORT OF Sri Ratikanta Panda, O.A.S.-I-J.B., TAHASILDAR CUM EXECUTIVE MAGISTRATE, K.NUAGAON, KANDHAMAL AND SRI J.K.Behera, O.P.S., SDPO G.UDAYAGIRI, IN SARANGADA P.S. CASE NO-81 Dt.11.11.2018 U/S-354 (A)(1)(i)IPC/Sec.8 POCSO Act/3(1)(w)(i)SC/ST(POA)Amendment Act.

On 11.11.2018, at 2.45PM informant Rupanti Digal(65) w/o Swadhin Digal of village Lengerikia, PS-Sarangada alleged that, her granddaughter Hosana Digal @Sapnima(10Yrs) D/O Pratap Digal of village Pisamaha, Simanbadi, PS-Daringbadi was staying with her and prosecuting her study in Gudrikiya PUPS since last 2 years. They belong to Pano (SC) by caste. On 05.11.2018, at about 2 PM Sri Bijaya Kumar Satapathy, Headmaster of the School called her granddaughter Hosana to his Office room on the plea to take her measurement for providing School Uniform, but molested her by squeezing her breast and committed sexual assault finding her alone. Her granddaughter when returned home from School, on the same day disclose the matter before her, but due to her illness she could not lodge complaint at PS immediately. She informed the fact to the local Sarpanch and parents of the child. As the Headmaster did not admit his guilt, she lodged the case and requested to investigate the matter.

We the Tahasildar cum Executive Magistrate, K.Nuagaon, Kandhamal and SDPO G.Udayagiri, both jointly enquired into the case on 26/11/2018.

The Spot in this case is village Gudrikiya PUPS situated at village Gudrikiya at a distance of 17 kms south-east to Sarangada PS. The village road runs from east to west in front of the school. The main gate of the school faces to north having vast open field on the opposite side of road. There are five class rooms including separate office room for the Headmaster at the eastern row and there is an old Hostel room in front of the gate. There is a separate Boys Hostel at the south-east corner having secured compound wall. The Houses of one Joginder Pradhan and Bhagyabati Pradhan situated at the east and west on the southern side of the main road. The village Dadabali, Langerikia, Gandrighaon are situated at a distance of ½ kms to 2 kms from the school building. A detail spot map prepared in CDF enclosed in separate sheet.

During investigation, it came to light that, the informant is the grandmother of Hosana Digal(10 yrs), the child victim of the present case. Sri Pratap Digal(father) and Smt. Nirupama Digal(mother) are permanent resident of village Pisamaha, Simanbadi P.S-Daringbadi and the victim being the 3rd child used to stay with her Grandmother and pursuing her study in class-V at Gudrikiya PUPS, Gandrighaon GP under Sarangada PS. There is no female Teacher/staff posted to the school though 22 Girl students, out of 96 total strength are prosecuting their study from class-I to VIII. No internal committee formed in the school for hearing the complaint about ragging /sexual harassment to the students violating guidelines of Govt. & to check such type of allegations which comes under the category of opportunist crime committed in private spaces.

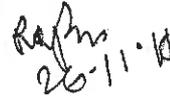
As per the allegation, Sri Bijaya Kumar Satapathy, Headmaster of the school called the victim child to his office room on 05.11.2018 at about 2.00PM and molested by squeezing her breast with plea to take her measurement for providing school uniform. The Headmaster who well known to the child and a person of Trust committed child sexual abuse in his educational institution, taking opportunity of her tender age, thinking that she may not understand the difference in between a good touch and bad touch. The allegation of informant was fully corroborated by the victim child and she was produced before nearest Judicial Magistrate on the same day for recording of statement u/s 164 Cr.P.C. The statement of victim child inspire confidence, appeared like that of competent witness and no likely hood of tutor. The circumstantial evidence well proved the intention of accused when he get out the accompanying friend Sandhya Behera from his office room and detained the victim alone and it is also true that new sets of school uniform is available with the HM for distribution which contains positive proof linking the accused with the incident and is capable to bring home the charges against him.

From the facts and circumstances as well as preliminary enquiry so far conducted contains positive proof, linking the accused Sri Bijaya Ku. Satapathy, Headmaster with the incident and he is liable u/s 354(A)IPC/Sec.8 POCSO Act/3(1)(w)(i)SC/ST(POA) Amendment Act.

Hence we recommended a sum of Rs.20,000/- (Twenty Thousand only) towards compensation for the victim Child Hosana Digal(10Yrs) D/O Pratap Digal of village Pisamaha, Simanbadi PS-Daringbadi, Kandhamal through her legal guardian as she suffered from mental agony due to child sexual abuse in the school by her own Teacher who committed the offence knowing that child belong to SC community.



Sri J.K. Behera, OPS
SDPO, G. Udayagiri
Sub-Division, Kandhamal


20.11.18

(Sri Ratikanta Panda, O.A.S.-(I) JB
Tahasildar Cum Executive
Magistrate, K. Nuagaon.

DR NO-1059/SDPO
dt. 28.11.2018



852
01-09-17

ODISHA POLICE
DISTRICT HEADQUARTERS: KANDHAMAL
At Post: Phulbani Dist- Kandhamal PIN- 762001 (Odisha)
Phone Nos): 06842 253610 (Office), 253611 (Res), 253609 (Fax)
Email id : spkdml.odpol@nic.in

By Fax No. 011-2465 1332 / MAIL / Regd. Post

To

The Asst. Registrar, (Law), N.H.R.C,
(Law Division), Manavadhikar-Bhawan,
Block-'C' GPO Complex.
INA New Delhi-110023

Ref: NHRC Case No. 2028/18/26/2014.

Sub: Submission of Fresh JER in connection with Daringbaidi PS case No. 76/13.

3265
9/5/17
Sir,

With reference to NHRC Case and subject cited above it is to intimate that a fresh JER in connection with Daringbadi PS Case No. 76 dtd 11.11.2013 u/s 328/376/506 IPC/ Sec 4 of POCSO Act / Sec 3 (1)(x)/3 (2)(v) of SC/ST PoA Act has been submitted by SDPO, Balliguda in view of direction of Hon'ble Commission which in turns has been sent to Collector & District Magistrate Vide No. 1171/DHRPC dated 06.06.2017 and NHRC, New Delhi vide this Office Letter No. 1169/DHRPC dated 06.06.2017 for necessary follow-up action.

However a fresh JER in connection with Daringbadi PS Case No. 76/13 is again sent herewith for favour of kind information.

Yours faithfully,

Sd/-

Superintendent of Police,
Kandhamal, Phulbani

Memo No. /DHRPC, dtd. .07.2017

Copy along with its enclosures forwarded to I.G of Police, SR, Berhampur for favour of kind information.

Sd/-

Superintendent of Police
Kandhamal, Phulbani

Encl: As above

Memo No. 1575/DHRPC, dtd. 31 .07.2017

Copy along with its enclosures forwarded to the Collector & District Magistrate, Kandhamal for favour of kind information.

Encl: As above

Superintendent of Police
Kandhamal, Phulbani

JOINT ENQUIRY REPORT

Name of the Police officer
with Designation holding enquiry :-

Name of the Executive Magistrate
Jointly holding enquiry :-

Sri S.N.Murmu, OPS.
S.D.P.O. (S) Phulbani

Sri Dayanidhi Ratha, ORS,
Tahasildar-cum-E.M, Daringbadi.

Date of holding enquiry: - 31.05.2017.

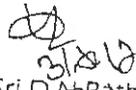
| | | |
|---|---|---|
| 1 | Name of the PS, Case No & Sec. of Law | Daringbadi PS Case No. 76 Dt.11.11.2013 U/s 328/376/506 IPC / Sec. 4 of POCSO Act/ RW Sec.3 (1) (x)/3(2)(v) of SC/ST (PoA) Act. |
| 2 | Name & Address of the Complt. Caste & Religion. | Complt. Smt. Basnati Pradhan W/o Late Putuka Pradhan of village Dadadamaha, PS Daringbadi Caste = Kandha (ST) |
| 3 | Date and time of occurrence | 28.02.2012 |
| 4 | Place of occurrence | Kirikuti Nodal U.P. School, PS Daringbadi. |
| 5 | Whether public place | Yes |
| 6 | Name of the accd. Person with Caste Reference. | Hajari Sahu of Kirikuti Nodal U.P. School, PS Daringbadi Kandhamal Caste = General. |

7. Gist of FIR: - That complt. Smt. Basanti Pradhan W/o Late Putuka Pradhan of village Dadadamaha, PS Daringbadi alleged in writing that her daughter Philmina Pradhan was reading in class 3rd in Kirikuti Nodal U.P. School at village Kirikuti. During her stay at school accd. Hajari Sahu husband of cook Smt. Sukanti Sahu forcibly gave some poisonous food to her daughter. So her daughter became very weak. Then the accd. Hajari Sahu took her forcibly from class room and committed sexual assault on her. He also threatened her for not to disclose the matter before anybody by swearing her in the name of lord Ganesha. The matter was informed to Headmaster Purna Chandra Bisoi and hostel warden Jyoschnarani Devi, but suppressed the matter and threatened them. Later health condition of her daughter became more serious. So the cook Sukanti Sahu dropped the victim girl to the house of complt instead of taking care of her at the school. When health condition became more serious it was intimated to school teacher Kousalya Naik of Kirikuti Nodal U.P. School who along and Uncle Okila Pradhan took the victim to Sub-Divisional Balliguda on 19.09.2013 in Sub-Divisional Balliguda, the treating doctor stated them that the victim girl was raped and advised them to inform police and then he would start the treatment of the victim. Then teacher Kaousalya Naik took the victim to a private physician for treatment. The victim girl was handed over to her parents after her treatment on 12.10.2013. The matter was also intimated to BDO Daringbadi and he visited the school on 22.09.2013 and enquired into it. But there was no assistance to the victim girl for her treatment. The victim girl disclosed that other inmate girls of the school namely 1. Seba Pradhan D/o Ranjan Pradhan of village Basabadi, 2. Rinki Pradhan D/o Radha Pradhan of village Basabadi, 3. Kabita Pradhan D/o Late Basanta Pradhan of Majangapata, 4. Franklina Pradhan D/o Radhakanta Pradhan Basabadi and 5. Anima Pradhan D/o Pradeep Pradhan of Majangapata all are of PS Daringbadi, Dist Kandhamal were also sexually assaulted by the same accd. Hajari Sahu. Hence this case.

3. Summary of the enquiry: - During Joint enquiry it came to light that during investigation the IO visited the spot and examined the com and other witnesses. The IO arrested the accd. Hajari Sahu on 9.10.2013 in Daringbadi PS case No.64 /2013 and forwarded to court. The remand report was submitted in this case on 15.11.2013. The victim girls were medically examined on 11.11.2013 and 12.11.2013. During course investigation it came to light that this was a true case u/s 328/376/506 IPC / Sec. 4 of POCSO Act / Sec. 3(i) (x)/3(2)(v) of SC/ST (PoA) Act against accd. Hajari Sahu and accordingly the charge sheet submitted against him to face his trial in the court of law.

10. Opinion regarding recommendation of compensation to the person who has affected with Name: Rs.1, 20, 000/- (One lakh Twenty thousand) in total is recommended for each to the victims girls namely 1. Philmina Pradhan D/o Smt. Basnati Pradhan of village Dadadamaha, 2. Seba Pradhan D/o Ranjan Pradhan of village Basabadi, 3. Rinki Pradhan D/o Radha Pradhan of village Basabadi, 4. Kabita Pradhan D/o Late Basanta Pradhan of Majangapata, 5. Franklina Pradhan D/o Radhakanta Pradhan Basabadi and 6. Anima Pradhan D/o Pradeep Pradhan of Majangapata all are of PS Daringbadi, Dist. Kandhamal. Since the case has been charge sheeted, hence 50% of the amount may be paid to each victims as per norms for relief amount consequent-upon enhancement of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 2011 vide Gazette Notification Dtd. 23.12.11 published in the Gazette of India vide GSR No. 896 (E), dtd.23.12.2011.


(S.N. Murmu)
S.D.P.O., (S) Phulbani


(Sri D. P. Patra) Idar
Tahasildar-cum-EM, Daringbadi
Daringbadi, Kandhamal

Collector & D.N. Kandhamal, P.B.

POCSO
(Koraput)

Teenage Pregnancy cases of SSD School and Hostels of Koraput District.

| Sl. No. | Name of the District | Name of the School | Molestation/harrasment cases detected from 2015 till date (5 years) | Teenage pregnancy detected from 2015 till date (5 years) | Compensation. |
|---------|----------------------|--------------------------------------|--|--|--|
| 1. | Koraput | Kundra Sevashram | Allegation of Sexual assault against the Head Sevak to a student namely Rambha Miniyaka | | 90,000/- from Atrocity. |
| 2. | Koraput | Chandaka Sevashram | Allegation of taking away a boarder namely Gabardhan Parida , Ex-Head Sevak to a girl namely Jayanti Khinibuli | | |
| 3. | Koraput | Govt. (SSD) Girls High School, Balda | | Teenage pregnancy detected to a girl namely Dahana Sisa | 375000/- From Govt. under (SSD) Odisha and Red Cross Society, Koraput. |
| 4. | Koraput | Ashram School , Umuri | | Teenage pregnancy detected to a girl namely Suranjita Pujarui | |
| 5. | Koraput | Govt. High School Nandapur (S & ME) | | A boarder of 100 seated ST girls hostel namely Butuli Disari is detected pregnant. | |
| 6. | Koraput | Mondaguda Girls High School | Urmila Gadaba | Teenage pregnancy case of 2016-17 | 135000/- Atrocity |
| 7. | Koraput | Phampuni Sevashram | Mamata Amanatya | Teenage pregnancy case of 2019-20 | |

| Sl No. | Name & Address of Petitioner | Details of Victim | Date | Case | Case No. | U/S | Claim Amount | Amount Paid (where paid) | Comm |
|--------|------------------------------|--------------------------------------|--------------------------------|----------------------------|--|---|--------------|--------------------------|------------------------|
| 1 | Rajani Tinsary | " | 28/2/18 | SDSM, SMCN 28/2/18 | 9476 no. 710/2018 Salem P.S case no. 133/2017 | 392, 302, 397, 201, 414 21, 34 ER | 300000 | 240000 | By 1st date 21/6/18 |
| 2 | Sikanda Sahoo | Anjali Sahoo 16 yrs. (D.A.P.E) | 28/2/18 5/6/3/18 | ADJ SPLS SMA | Talaxana P.S. GR no. 116/17 | 363, 376, 506 3 ER, 6 POCSSO | - | 250000 | 1,25,000 21/7/18 |
| 3 | Minakanta Munderi | Sanjana Munderi | 25/5/18 | ADJ. SPLS. SMA | Spl. SR No. 417/B Bisra P.S Case no. 20/2017 | 336(231)10C 6 POCSSO | - | 700000 | 13,12,19. |
| 4 | Anura Oraon | Anura Oraon 28 yrs | 2/4/18 | Eden P.S | | 450, 376 506 ER | - | 400000 | 23.2.19 |
| 5 | Sabon Saha | Padma Saha 11 yrs. | 9/4/18 | ADJ. SPLS. Dinamitnagar | Spl. case no. GR No. 12/2018 | 376 10C 6 POCSSO | - | 300000 | 26.5.18. |
| 6 | Tapaswini Sa | Sakalou. Sa | 12.3.18 | Hemghn. P.S Case No. 31 | | 302/34 3 ER | - | 10,00,000 | 30.8.19. |
| 7 | Ratnamani Lakada | Sanjana Lakada 13 yrs. | 28/3/18 | ADJ. SPLS | SPL GR no. 10 36/18. | 376 10C 6 POCSSO | - | 300000 | 26/5/18 |
| 8 | Suna Biswal | Sibani Biswal 17 yrs | 15/3/18 | SPL. J. ADJ | G.R. No. 30/18 Towar. P.C. Case No. 56 | 376(231)10C 3 ER, 1 ER 6 POCSSO | - | 250000 | 30/6/18 |
| 9 | Tyhi Borka | Mahima Borka | 20/4/18 | SPLS. SMA | Kutna (D.P.S Case No. 46/18 | 363 ER Equipment 6 POCSSO | - | 500000 | 30.5.19 |
| 10 | Bini Borka | Subhadra Borka 17 yrs. | 3/7/18 | SPLS ADJ SMA | Town P.S. | 366, 376(231) 6 POCSSO | - | 1000000 | 10.00.000 |
| 11 | Parak Minz | Sweet Minz | 9/7/18 | Sending Sundergarh | | 302/307 ER | - | 200000 | 21.7.18 |
| 12 | | Manisha Teki 13 yrs | 15/6/18 | SPLS. ADJ | Raigangpur P.C GR 65/18 | 363, 506 4 POCSSO | - | 500000 | 21.7.18 |
| | | | | | | | | 25/8/18 | |
| | | | | | | | | 27/10/18 | |

| Sl. No. | Name of Employee | Details of Victim | Date | Cont | Case No. | o/s | Case | Award | Case |
|---------|--------------------|-------------------------------|---------|------------------------------------|-------------------------------|-------------------------------|--------|--------------------|----------------------------------|
| 13 | Savitri Lakshna | Savitri Lakshna 15 yrs. | 14/5/18 | SPL PDOS | GR 53/18 | 366, 376 506, 60000 | - | 250000 25/8/18 | 125000 100 2/10/18 |
| 14 | Birathi Majhi | Birathi Majhi 20 yrs. | 31/5/18 | SPL PDOS Bungoon P.C | GR 61/18 | 376, 408 | - | 100000 25/8/18 | 50000 2/12/19 |
| 15 | Sakun Patra | Biranchi Baborga 13 yrs. | 25/8/18 | SPL PDOS | GR No. 14/18 | 376, 60000 | - | 300000 6/10/18 | - |
| 16 | Oranujaya Kua | Rina Kua 18 yrs. | 17/2/18 | SPL PDOS | GR 22/2018 | 376 60000 | - | 200000 6/10/18 | 100000 6/11/18 |
| 17 | Randhan Tantiy | Prathna Tantiy 4 yrs. | 30/8/18 | SPL PDOS | GR 35/18 | 366, 376 60000 | - | 600000 23/10/18 | 300000 5/11/19 |
| 18 | Daiselma Munda | Susmita Munda 17 yrs. | 5/8/18 | SPL PDOS | GR 85/18 | 376 60000 | - | 700000 30.8.19 | 150000 2.12.19 |
| 19 | Leenukini Pokhidas | Demaganti Pokhidas | 24/9/18 | PMTO | Town P.S Case No. 196 | 315, 376 | 300000 | 500000 23/2/19 | 150000 20/12/19 |
| 20 | Anla Kujun | Anla Kujun 23 yrs. | 5/11/18 | Addition Section 3. SPL Cont | GR No. 19/18 Talarana P.S. | 376, 506 60000 | - | 700000 23.2.19 | 350000 |
| 21 | Purna Pokhidas | Hemakanti Pokhidas. 16 yrs | 1/12/18 | Adi Samant Cont, Spl. S. | GR 55/18 Kanjinkela P.S. | 376, 506 60000 | - | 700000 23.2.19 | 26.3.19 |
| 22 | Marianus Munda | Sawani Munda 7 yrs. | 5/11/18 | PMSSB | Mano. No. 342/18 | 263, 376 307 60000 | - | 700000 23.2.19 | 350000 26.3.19 |
| 23 | Binala Onam | Pani Onam 11 yrs. | 5/11/18 | Add. Secm Cont Spl. S. | GR 125 23/11/18 | 376, 408 307 60000 | - | 700000 30.8.19 | 350000 4.4.19 |
| 24 | Benedict Chama | Prathna Chama 14 yrs. | 22/1/19 | " | GR No. 113/18 | 376, 408 60000 | - | 700000 30.8.19 | 150000 |
| 25 | Sulekha Sekhapaty | Sulekha Sekhapaty | 1/7/19 | " | GR. 36/19 | 408, 408 376, 408 60000 | - | 700000 30.8.19 | 150000 4.12.19 |

