

# SR SANKARAN CHAIR

Research on Rural Labour Matters • Through the Prism Equity Matters

**SRSC Seminar Proceedings**

## **GOVERNANCE, RESOURCES AND LIVELIHOODS OF ADIVASIS IN INDIA: IMPLEMENTATION OF PESA AND FRA**



**S. R. Sankaran Chair (Rural Labour)**

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## NIRD&PR's VISION

- To focus on the policies and programme that benefit the rural poor, strive to energise the democratic decentralisation processes, improve the operation and efficiency of rural development personnel, promote transfer of technology through its social laboratories, technology park and create environmental awareness.
- As a 'think-tank' for the Ministry of Rural Development, NIRD&PR while acting as a repository of knowledge on rural development would assist the Ministry in policy formulation and choice of options in rural development to usher in the change.

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- To examine and analyse the factors contributing to the improvement of economic and social well-being of people in rural areas on a sustainable basis with focus on the rural poor and the other disadvantaged groups through research, action research and consultancy efforts.
- To facilitate the rural development efforts with particular emphasis and focus on the rural poor by improving the knowledge, skills and attitudes of rural development officials and non-officials through organising training, workshops and seminars.

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- Organise training programmes, conferences, seminars and workshops for senior level development managers, elected representatives, bankers, NGOs and other stakeholders.
- Undertake, aid, promote and coordinate research.
- Study functioning of the Panchayati Raj Institutions and Rural Development programmes across the States.
- Analyse and propose solutions to problems in planning and implementation of the programmes for rural development; and
- Develop content and disseminate information through periodicals, reports, e-modules and other publications.

Considering the challenges faced by the Government in the development of a large section of rural poor across the country through its various policies and programmes, NIRD&PR as apex training Institute in the field of rural development has to cater to the training and capacity development needs of a large clientele. To achieve these objectives, a nation-wide network of training infrastructure has to play its rightful role. The clientele include a large number of elected PRI representatives at different levels, rural development functionaries, NGOs, Bankers and other stakeholders. Capacity building of rural development personnel and elected representatives is an intrinsic part of the entire rural development process. It helps to improve their managerial skills while keeping them abreast with the latest changes in strategies, government policies and programmes to augment their knowledge and working efficiency resulting in strengthening of the delivery mechanism for the benefit of all the stakeholders. The challenge is huge and NIRD&PR has been able to play its role in the country's rural development initiatives by facilitating qualitative changes in programmes implementation through a process of training, research, action research, consultancy, information dissemination and information building on a continual basis. This has enabled the Institute to emerge as the National Apex Institute for capacity development in the area of rural development.

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**NATIONAL SEMINAR**

**GOVERNANCE, RESOURCES AND  
LIVELIHOODS OF ADIVASIS IN INDIA:  
IMPLEMENTATION OF PESA AND FRA**

**18-19 NOVEMBER, 2016**



**S.R. Sankaran Chair (Rural Labour)**

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## FOREWORD

Improving the system of governance in tribal India as well as enhancing the livelihoods of Adivasis, dependent on natural resources, has been an important focus of policy planners. In this context, proper implementation of Panchayats (Extension to Scheduled Areas) Act, 1996 and Forest Rights Act, 2006 are considered to be paradigm shifts that can impact the tribal communities favourably. These Acts empower them on matters relating to decision-making and development of their community by ensuring access to resources and rights which facilitate self-governance.

The National Institute of Rural Development & Panchayati Raj (NIRD&PR) under the auspices of S. R. Sankaran Chair (Rural Labour), organised a two-day national seminar on "Governance, Resources and Livelihoods of Adivasis in India: Implementation of PESA and FRA", during 18-19 November, 2016 to discuss the progress, identify bottlenecks and explore the ways of improving efficacy of these Acts and other such programmes which are in operation in India.

The seminar has brought together academia (across disciplines), policy makers, NGOs and development practitioners to discuss in detail the functioning of these interventions and find a way forward for their effective implementation. We are grateful to the chief guest of the seminar Shri Ch. Vidyasagar Rao, Hon'ble Governor of Maharashtra and Tamil Nadu for his august presence, encouragement and valuable advice. I thank and richly complement my colleagues at NIRD&PR, both faculty and staff, for the success of the seminar.

I have no doubt that the deliberations of the seminar offer wide ranging recommendations in a number of areas to strengthen the implementation of PESA and FRA and other programmes relating to governance and livelihood issues of tribals in India.

This publication is placed in public domain for wider dissemination and discussion. I am sure it will prove to be a valuable document in guiding different stakeholders to work towards improvement of the system of governance in tribal areas and improving the well-being of tribal people in India.

*W. R. Reddy*

**Dr. W. R. Reddy, IAS**

Director General, NIRD&PR

March, 2017



## **ACKNOWLEDGEMENTS**

There is concern among policy planners and social thinkers as to how to protect the current sources of livelihood of tribal communities and promote their well-being through vibrant and pro-poor institutions and through the provision of tenure security of resources. In this context the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) and Scheduled Tribes and Other Tribal Forest Dwellers (Recognition of Forest Rights) Act, 2006, (FRA) are progressive laws that can impact the tribal communities favourably by ensuring access to resources and rights which facilitate self-governance.

In order to assess the progress, identify bottlenecks and explore ways of improving efficacy of these laws as well as other programmes in tribal areas, a two-day National seminar was organised by S.R. Sankaran Chair, NIRD&PR at Hyderabad during 18-19 November, 2016.

We are grateful to Shri Ch. Vidyasagar Rao, Hon'ble Governor of Maharashtra and Tamil Nadu, who was the chief guest in the inaugural session of the seminar, for his valuable suggestions for improving the well-being of tribal communities. We are also grateful to Dr. W.R. Reddy, IAS, Director General, NIRD&PR for his welcome address, Professor R. Radhakrishna, Chairman, S.R. Sankaran Advisory Committee for presiding over the function and for his presidential remarks and Mr. Tevita G. Boseiwaqa Tagniaवलau, Director General, Centre on Integrated Rural Development for Asia and the Pacific (CIRDAP), the guest of honour for his observations.

We are grateful to Professor K.B. Saxena, Professor C.H. Hanumantha Rao and Professor Amit Bhaduri for delivering the key note address, valedictory lecture and for presiding over the valedictory session of the seminar, respectively. It was graced by a number of eminent scholars, policy planners and civil society organisations. We thank all the participants, paper writers and commentators for their valuable suggestions.

We have received generous support and encouragement from NIRD&PR authorities and those associated with the S.R. Sankaran Chair. We are thankful to Dr. W.R. Reddy, IAS, Director General and Professor R. Radhakrishna, for their continuous encouragement and support for the seminar. Our sincere thanks are due to several officials including Shri Parimal Singh, IAS, Under Secretary to Hon'ble Governor at Raj Bhawan, Mumbai for their help relating to the seminar.

We thank Shri C. R. Bijoy, Dr. Sarmistha Pattanaik and Puja Mehta for improving the earlier draft of the manuscript. We have received generous support from Professor Suman Chandra, the then Head, Centre for Agrarian Studies during the seminar.

We also thank Shri Venkatanarayana Motkuri (at the initial stage), Mrs. N. S. Deepa and Shri Anand Meher for their contribution before and after the seminar.

This booklet contains the proceedings of the seminar. We hope that it will be useful to researchers, policy makers, development practitioners and all those interested in the study of issues pertaining to India's tribals and their well-being.

**Kailash Sarap**  
**Professor, S.R. Sankaran Chair**





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## I. Background

Adivasis in general and those residing in the Central belt along with Eastern and Western regions of the country in particular are amongst the most marginalised and isolated / excluded social groups in the development process. Issues relating to improvement in their standard of living have been drawing the attention of scholars and policy planners for a long time. The development strategies, as followed in tribal areas in India over the decades, have significantly not impacted their livelihood conditions. There is concern over how to protect the current sources of livelihood and promote economic and human development among these communities through vibrant and pro-poor institutions.

The history of the marginalisation of Adivasis dates back to the British rule and continues unabated even after more than six decades of Independence. One of the factors that contributed to it relates to the State policies and uniform laws without recognising the unique identity and way of life of tribal communities. The State policies, followed since the period of British rule, which were against their traditional self-governance and customary laws, have led to their exclusion from access to resources leading to deterioration in their level of living. The integration of tribal communities through uniform civil laws and policies of the State has resulted

in tribals (otherwise self-governed and self-sufficient subsistence tribal society/economy) losing control over and access to their customary land, forest and other resources. The land and forest policies of the British restricted their land-based and forest-based livelihood sources and opportunities. Besides, with the establishment of infrastructure and increase in connectivity, the spread of markets (with the entry of creditor/money lenders/traders into tribal areas) has adversely affected the tribal society and led to further land alienation and dispossession/displacement. Tribal peasants have long been exploited by money lenders and traders. Attempts towards integration of tribals into the mainstream society, deeply rooted in an unequal social structure, have further pushed them to the margins.

There are several constitutional provisions for protecting and safeguarding the interests and promoting the development of tribals. The tribal dominant areas have been identified as Scheduled Areas (V and VI). Governors of the States with Scheduled Areas were given discretionary powers in respect of administration of these areas. Tribes Advisory Councils (TACs) were formed to guide the policies related to tribal areas. Various welfare measures and development programmes have been initiated in subsequent plan periods. However, territorial autonomy and self-governance of tribal areas were not recognised and restored.

### **Context: The New Era of PESA and FRA**

Recognising the fact of continuous deprivation of tribals, efforts have been made to rectify it. In the context of 73<sup>rd</sup> Amendment that ushered in a national framework of decentralisation and local self-government through a three-tier Panchayati Raj (PR) system, steps were taken to ensure devolution and self-governance in tribal areas, particularly in Scheduled Areas. While the provisions in 73<sup>rd</sup> amendment were not made applicable to Scheduled Areas, the modified version of provisions that suited to tribal customs / traditions giving them right to protect and manage their resources and livelihoods, were extended to these areas in 1996 through an Act of Parliament referred to as the Panchayats (Extension to the Scheduled Areas) Act, 1996, popularly known as PESA. It is applicable to Fifth Schedule areas comprising 10 States, namely, Andhra Pradesh, Maharashtra, Madhya Pradesh, Gujarat, Rajasthan, Himachal Pradesh, Jharkhand, Chhattisgarh, Odisha and Telangana (newly formed State in 2014).

PESA Act bestows absolute power and authority on gram sabhas to enable them to function as institutions of self-government. They are also given the power to deal with those matters that have been affecting the lives and livelihoods of tribals such as prevention of land alienation, management of village markets,

imposition of ban on the consumption of intoxicants, ownership of minor forest produce, exercising control over money lending, control over institutions and functionaries in all social sectors and control over local plans and resources. Section 5 of PESA Act envisages that any provision of law which is inconsistent with the provisions of PESA will be null and void after one year of the presidential assent for the legislation.

A decade later, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, popularly known as Forest Rights Act or FRA, 2006, was passed by the Parliament on December 15, 2006. The Act came into force on January 1, 2008. FRA recognises the historical injustice done to Adivasis and forest dwelling communities who had been residing in such forests for generations and aims at correcting the injustice by granting them individual/community-based tenurial rights over forest land.

PESA and FRA are recognised as progressive laws that can impact the tribal communities favourably by ensuring access to resources and rights which facilitate self-governance. However, nearly two decades after the enactment of PESA and a decade after FRA, if one examines the implementation of these historical legislations and their impact on livelihoods of Adivasis in tribal areas, it

has not been satisfactory. Even several expert committees and independent studies, expressed dissatisfaction with the implementation of these Acts and hoped for better performance.

### Need for Dialogue

There is a need to have a holistic understanding of the functioning of PESA and FRA and other important programmes designed for improvement of livelihoods of tribals in the country. In this context, the S. R. Sankaran Chair at the National Institute of Rural Development and Panchayati Raj (NIRD&PR), Hyderabad organised a two-day National Seminar on 'Governance, Resources and Livelihoods of Adivasis in India: Implementation of PESA and FRA' during 18-19 November, 2016 at NIRD&PR Campus, Hyderabad. The main objective of the seminar was to assess the progress, identify the bottlenecks and explore the ways of improving efficacy of these Acts and other programmes in operation in tribal areas.

The focus areas of the seminar were as follows:

- Governance issues and functioning of existing institutions and their current status of implementation relating to PESA including the functioning of gram sabhas.
- Displacement of tribal persons, land acquisition, land alienation, PESA, FRA and LARR: What were intended to be achieved?

- Implementation of different provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
- Synergy in the Implementation of FRA with other related Acts/policies (such as PESA, MGNREGS).
- Habitat rights – A way forward to document, recognise and respect the cultural and religious practices of communities.
- Minor Forest Produce – its marketing and value chain.
- Functioning of other institutions/schemes such as Tribal Sub-Plan, MGNREGS and ITDA and Large Area Multipurpose Societies and synergy in their working.
- Working/micro/management plans of department and ownership of MFP by the gram sabha: How to resolve conflicts?

We received research papers from distinguished scholars as well as promising young researchers, civil society organisations and development practitioners. The participants were from different disciplines and background. They included researchers, policy makers, activists, NGOs and field practitioners. There were five technical sessions.

## II. Inaugural Session

Shri Ch. Vidyasagar Rao, Hon'ble Governor of Maharashtra and Tamil Nadu, the chief guest of the inaugural session, delivered the inaugural address. Prof. R. Radhakrishna, an eminent economist and Chairman, S. R. Sankaran Chair Advisory Committee, presided over the session. The seminar began with a welcome address by Dr. W. R. Reddy, IAS, Director General, NIRD & PR. It was followed by the presidential observations by Prof. R. Radhakrishna and then speech by Mr. Tevita G. Boseiwaqa Tagniaulau, Director General, Centre on Integrated Rural Development for Asia and the Pacific (CIRDAP). Prof. Kailash Sarap, Professor, S. R. Sankaran Chair briefed about the theme of the seminar.

### Welcome Address by Director General

Welcoming the guests, Dr W.R. Reddy said that PESA was meant specifically for granting wide ranging powers to tribals on matters relating to decision-making and development of their community. It empowered villages to perform multifarious functions such as protection of community resources, control of social sector functionaries, ownership of minor forest produce, management of water bodies, recommending for mining lease, consultation for land acquisition, enforcing prohibition and so on. The Act not only accepts the validity of

customary law, social and religious practices and traditional management practices of community resources, but also directs State governments to either make new laws or amend the existing ones which are in conflict with the provisions of PESA.

A decade later, the Scheduled Tribes and Other Traditional Forest Dwellers Act, 2006, popularly known as Forest Rights Act (FRA), was passed on December 18, 2006, and came into force on January 01, 2008. The FRA, an attempt to redress the historical injustice done to the Adivasis, grants—among a host of other provisions—individual and community-based tenurial rights over forest land. The enactment of these two historical legislations, namely PESA and FRA, is not only considered to be progressive, but also will favourably impact the tribal communities by giving them substantive powers related to self-governance and natural resource management. Other schemes such as the Tribal Sub-Plan are also in operation to ensure holistic development of tribal communities. However, concerns have been raised by independent researchers and in the reports of a number of expert groups and committees regarding the poor implementation of PESA provisions in most States. There have also been attempts by a number of States to dilute the provisions of these Acts either directly or indirectly on the pretext of harnessing the natural resources for overall economic development of the nation. The conflict between protecting

the entitlements of the tribal population through these Acts and attempts to harness the natural resources for overall economic development (especially mining, de-reserving forest land for development purpose and displacing the tribal population on the pretext of conserving wildlife habitat) has been escalating. There is a need to balance the equation by giving more weightage to tribal upliftment for obvious reasons. Dr. Reddy concluded by applauding the untiring efforts of the chief guest of the seminar, honourable Governor Shri Ch. Vidyasagar Rao, towards ensuring a fine balance and protecting the interests of tribal communities.

Dr. Reddy hoped that the seminar would throw up some interesting and feasible ideas to help policy makers respond better, thereby bringing about concrete changes and realisation of rights of the marginalised communities.

Prof. R. Radhakrishna in his address highlighted the level of living conditions of tribals who constitute about nine per cent of the total population of India. There are nearly 400 tribal communities—officially designated as Scheduled Tribes (ST)—spread across the country, with the highest concentration in central and northeast India. They mostly live in inaccessible terrains such as hills and forests that are rich in natural resources. Their heterogeneity, inaccessible habitations, and extreme deprivation pose a major constraint for

policy intervention, contributing to their exclusion.

In 2011-12, STs accounted for 17 per cent of the total poor in the country, whereas their share in total population was only nine per cent. The poverty level of STs was nearly double that of the all-India level and much higher than that of the Scheduled Castes (SC). The decline in poverty level between 1993-94 and 2011-12 was the least for STs. These tendencies indicate that poverty among STs will become severe over time. In spite of high economic development in Maharashtra and Gujarat, to cite another instance, the tribal groups have been hit hardest by malnutrition, disease, and illiteracy. Needless to say, poverty is not merely an economic phenomenon; it is also a social phenomenon.

In comparison to States like Chhattisgarh and Odisha which have numerically large population of STs, the northeastern States (other than Assam and Tripura) are advantageously placed with a low incidence of income poverty and better social indicators. This can be partly attributed to the quality of education imparted, especially in missionary schools, and to the inclusion of tribal communities in the governance system. Perhaps, inclusive governance may uplift the tribal groups in other States, too.

Land is the single most important resource base of tribals. Compared to other social groups, not only is the average size of landholding

high among tribals, but also the incidence of landlessness is reported to be low. However, most of the development efforts undertaken in the tribal regions have caused large-scale displacement and land alienation among STs. Professor Amit Bhaduri has, in his S.R. Sankaran Chair Public Lecture Series, characterised it as 'development with dispossession'.

Some of the laudable initiatives such as PESA and FRA were to ensure self-governance and devolution of power to the tribals living in areas under Fifth Schedule of the Constitution and to recognise the rights of the STs over land and other forest resources. However, the situation has not improved and tribals continue to live in abject poverty.

Hopefully, this seminar, which throws light on the status of PESA and FRA implementation in various States and their impact on the livelihoods of tribal communities, will help identify lacunas in the implementation process and suggest effective policy interventions to enhance tribal well-being.

Addressing the guests, Mr. Tevita G. Boseiwaqa Taginavulau said that he felt privileged and honoured to be invited to attend the seminar. Currently working as Director General of CIRDAP and recollecting having attended its training course on monitoring and evaluation in 2010 which benefitted him, Mr. Taginavulau said he was particularly happy with the

partnership between CIRDAP and NIRD&PR. Like Fiji, which is his native country, India is home to a large population of indigenous people who, owing to the adverse effects of development projects, are facing multiple challenges in life and of livelihood. Referring to Dr. W.R. Reddy's observations Mr. Taginavulau said districts with Schedule V areas reported a greater number of land-related conflicts, most likely as a result of ineffective enforcement of related laws.

Sharing his own experiences relating to positions held in various ministries, Mr. Taginavulau said that in Fiji, despite having laws to protect the rights of indigenous people over natural resources, one of the major challenges is lack of understanding of policies, rights and cultural practices. This may be attributed to the disharmony between laws and cultural practices. Therefore, only when harmony is established and tribals are apprised of the provisions of the laws relevant to them, will the country be able to effectively enforce existing regulations.

In Fiji, land is the prime tourism corridor but despite availability very few get to enjoy their land rights. This can be attributed to the manipulation of laws—both within and outside a tribe, in government offices, and elsewhere. In fact, many who deal with indigenous rights have drifted away from the basic values of honesty, good governance, and transparency, which is why things are not moving in the right direction.



Therefore, in addition to embracing basic values, important steps must be taken to ensure greater transparency in governance and better communication with the intended beneficiaries the indigenous population. A good way is to report the happenings on a monthly basis to keep the indigenous communities informed and updated about the activities.

**Address by Shri Ch. Vidyasagar Rao, Governor, Maharashtra and Tamil Nadu**

Addressing the guests, Mr. Tevita G. Boseiwaqa Taginavulau, Director General, Center on Integrated Rural Development for Asia and the Pacific (CIRDAP), Prof. R. Radhakrishna, Chairman of the Advisory Committee of S.R. Sankaran Chair (Rural Labour), Dr W.R. Reddy, Director General, NIRD & PR, practitioners from various fields, tribal rights activists and others, he said that he felt honoured to speak on the occasion.

Shri Vidyasagar Rao emphatically stated that for long tribal communities in India have been deprived of their natural rights as far as governance, natural resources and livelihoods are concerned. Though many solutions have been sought to address the same, none have worked. It is because any course correction as far as the approach towards tribal communities is concerned, cannot ignore the close linkages between guaranteeing access to resources,

ensuring self-governance and creating and sustaining livelihood opportunities.

It is often said that those who fail to learn from history are condemned to repeat it. Hence, it is necessary to trace the history of tribal dispossession over the last 150 years. The British ushered in forest laws not for the purpose of conservation or for environmental considerations. Their prime interest in introducing the Forest Act in 1865 was exploitative and aimed at establishing a monopoly over forest resources. The impact of forest laws was tragic for the self-governing, self-respecting tribal communities for whom forests were not only a source of livelihood and sustenance, but also a way of life. It is not surprising, therefore, that tribal communities repeatedly revolted against the British and local exploiters who took away their forests and lands. It is worth noting, that during the period between the passing of the first Indian Forest Act in 1865 and the Indian Forest Act of 1927, there were numerous tribal uprisings, many of which were brutally crushed by the British. Such tribal uprisings are a piece of neglected history. Indeed, tribal movements in pre-independence India were among the first expressions of the desire for freedom.

Unfortunately, even in independent India many problems facing tribal communities remain to be addressed. In our search for development, we have displaced and uprooted millions of tribals from their

habitats. Estimates suggest that while the percentage of Scheduled Tribes in India is around 8 per cent, their percentage among those displaced for development projects ranges between 40 and 55. The burden of development has fallen disproportionately on the shoulders of our tribal brethren; its fruits often not reaching the tribal communities.

For tribal communities, PESA and FRA assume immense importance in the context of historical denial of access to forests, displacement, alienation of land and denial of acceptance to local governance systems. Several legislations, across the world, have corrected past wrongs. Even the Parliament of India has apologised to our forest dwelling communities, in the Preamble to the Forest Rights Act, for the "historical injustices" that modern systems and laws inflicted on them. Though PESA provided a model for "self-governance" for tribal communities in Scheduled Areas "in consonance with the customary law, social and religious practices, and traditional management practices of community resources," it was hardly implemented in most States for a very long time. Besides, State legislations remained out of line with the letter and spirit of PESA; the autonomy of ownership over minor forest produce was not fully protected by local laws and due cognizance was not taken of local community practice and cultural traditions. Therefore, while charting the way forward, it is important

to reflect upon our collective failure to implement PESA. Also, there is a need to examine whether the provisions of the Forest Rights Act have been implemented in keeping with the letter and spirit of the legislation. The resistance of a segment of the bureaucracy to adopt the new paradigm of community ownership of natural resources is also a cause of concern.

The Fifth Schedule lays down responsibilities on the Governor to look after the welfare and advancement of the Scheduled Areas. Shri Ch. Vidyasagar Rao said that he himself, in the capacity of Governor, has taken certain humble steps to ensure effective implementation of PESA and FRA for general welfare of tribal communities and issued notifications to bring State legislations in line with the PESA Act.

Another issue that pertains to tribal communities is the issue of malnutrition, which has been a cause of grave concern. In order to allocate greater resources to tribal nutrition, Shri Ch. Vidyasagar Rao said that he had made various amendments to the National Food Security Act, 2013 with special focus on nutritional support to women and children. Besides, meetings with various government departments are held to ensure convergent action on a number of issues such as tribal health, education, livelihood, migration, access to resources, devolution of resources and functionaries.

Shri Vidyasagar Rao said that with the help of forest department,

agricultural universities and ITIs, training should be imparted to tribals in the use of sustainable practices, financial management, extension activities and value addition with regard to community forest resources. A day will come when many tribal "start-ups" shall trade in bamboo and bamboo products, including other minor forest produce in the Scheduled Areas of the country.

He recalled Pandit Jawaharlal Nehru's Panchsheel (five principles) ideology for tribal development. They are:

- (i) encourage tribal communities to develop along the lines of their own genius;
- (ii) respect their rights to land and forest;
- (iii) build a team of dedicated people from within the tribal community for administration and development work;
- (iv) encourage them to work through their own social and cultural institutions; and
- (v) judge results, not by statistics or the amount of money spent, but by the quality of human character.

These principles are as relevant today as they were 60 years ago. He said that we must respect and appreciate the tribal way of life and their attachment to nature, rather than sacrifice their culture and ethos at the altar of rapid growth.

Shri Vidyasagar Rao felt confident that this seminar would find answers to the challenges that confront tribal areas and wished for success in future endeavours.

The inaugural session concluded with a vote of thanks proposed by Ms. Chanda Pandit, Registrar and Director (Administration), NIRD&PR.

### **III. Governance Issues Relating to PESA and FRA**

Session I was presided over by Prof. R. Radhakrishna. The key note address was given by Professor K. B. Saxena. In his address Professor Saxena highlighted several issues which had adversely impacted on the effective implementation of PESA and FRA. These include unequal power relation between the tribals and others, lack of coordination between related departments, mal-functioning of grassroot level institutions (such as gram sabha), feeble interest shown by persons/officials in-charge of institutions to look after tribal welfare and weak bargaining power of tribal vis-à-vis others, etc. He pointed out that for effective implementation of these laws, favorable conditions have to be created among several stakeholders including bureaucracy, political leaderships, civil society organisations and activists as well as the primary stakeholders.

Professor Radhakrishna informed that there were several good practices found in different parts of tribal India

for successful implementation of some of these laws and programmes. There is a need to highlight those cases and lessons should be learnt as to how to follow those practices in other areas.

After the observations by Professor R. Radhakrishna first technical session began. It was presided over by Professor D.N. Reddy. There were two presentations. Professor Virginius Xaxa has focused on the issues of governance and livelihood of tribals in India in historical perspective. He said that land, forest and water have been critical resources of Adivasis and their livelihoods are predominantly centred on them. To situate the issue of governance in the case of tribes, especially in Scheduled Areas, it is important to look into these in their historical contexts. The foundation of governance structure that we have today is in a certain sense, the legacy of the colonial rule.

In colonial period the tribal areas, predominantly inhabited by tribal people, were broadly divided into excluded and partially excluded areas. These broad classifications were made keeping in mind the relative demographic composition of the population. General laws and regulations were not applicable in tribal areas unless the Governor of the Province was of the view that the law so enacted was in the interest of tribal population. He was to decide the applicability or non-applicability of laws and regulations in tribal areas. This

aspect of exclusion was meant to protect tribes from non-tribes and was introduced in the aftermath of series of revolts and rebellions by tribes against the British.

This arrangement continued in somewhat modified form in post-independence India. Provision made in the form of Fifth and Sixth Schedule of the Indian Constitution reflected the arrangement that prevailed in the colonial period. There was, however, some departure which was evident in the clause that laws/regulations of the government were applicable in tribal areas unless the Governor of the State thought otherwise. He was the custodian of tribal interests. In the Sixth Schedule areas tribes were to govern themselves though the Autonomous District Councils (ADC). For the Fifth Schedule areas, there was no such provision. Instead there is provision of Tribal Advisory Council (TAC).

Provisions under the Fifth Schedule had failed to deliver what it was supposed to deliver. The Governors did not use their constitutional power. The power of TAC is weak. In view of this, its role and composition need to be relooked.

In order to address this and other related issues, especially of governance, the Provisions of Panchayats Extension to Scheduled Areas (P-PESA) Act was enacted. In the Fifth Schedule Areas, this provided for self-governance. However P-PESA is

constrained in its effective functioning. The existing laws are in conflict with each of P-PESA. They are supposed to be synchronised with the P-PESA. However, this has not happened resulting in its ineffectiveness.

The higher tiers of P-PESA have been produced on the same line as the panchayat, whereas the Act envisaged such structure in the form of Sixth Schedule provisions.

Various government departments work independently of the panchayats rather than working with them. Ineffectiveness of the gram sabha and panchayat functionaries is due to poor capacity building.

FRA, unlike PESA, is applicable beyond the Fifth Schedule Areas. The problem in its implementation is greatly to do with ineffectiveness of P-PESA in addition to other factors.

Shri C. R. Bijoy provided a comprehensive picture of the current status of PESA in different States having Fifth Schedule area. No State has fully complied with PESA legally. The State subject laws that overlap with PESA have not been fully made compliant through necessary amendments. Therefore, contradictory laws are in place. Even where rules have been notified recently, i.e., in 5 out of 10 States, violations and non-compliance of different provisions by States is found to be common. In effect, PESA is not implemented. Rural areas are being upgraded to urban area and taken out

of the protective provision of PESA. The Parliament has failed to enact a suitable law in the municipal areas under Scheduled Area. The general laws governing municipal areas are made applicable in Scheduled Area which is a gross violation of the 74<sup>th</sup> amendment. Gram sabha consultation for land acquisition is ignored or manipulated. Incorporation of relevant provisions of PESA in Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 is noteworthy.

Similarly, he provided a critical overview of the current status of implementation of FRA. Overall its implementation has been abysmal with just about 10 per cent of the potential area actually being recognised. Violation of FRA as well as the procedure legally required to be complied with for diversion of forest for non-forest purposes is the norm. Tiger Reserves continue to be notified and expanded without complying with the relevant provisions of the Wildlife Protection Act amendment of 2006 as well as FRA; so same is the case with relocation from these Tiger Reserves. Elements of FRA have been incorporated in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013. Violation of forest rights is now an atrocity under the SC/ST (Prevention of Atrocities) Amendment Act, 2015. At the same time Compensatory Afforestation, Management and Planning Authority Act, 2016 does not even recognise the

existence of FRA. There are persistent attempts to dilute or violate FRA through legal and administrative measures both by the Central and State governments. Ministry of Environment, Forest and Climate Change has been persistent to get exemption from the need for gram sabha consent for diversion, as much as possible. As a way forward, he listed out specific legal and administrative steps that need to be taken to strengthen both PESA and FRA for their effective implementation. The presentations of this session set the tone for the subsequent sessions.

### **Discussion**

There was lively discussion on a range of issues raised during the presentation. These include the role of Ministry of Tribal Affairs in formulation of rules for implementation of Forest Rights Act (FRA), its role vis-a-vis Ministry of Environment, Forest and Climate Change and the role of gram sabha and representation of women members in gram sabha and improving governance of tribal areas. The paper presenters clarified the issues raised by different participants. Dr. Hrushikesh Panda, participating in the discussion, also pointed out as to how MOTA, when he was the Secretary, defended FRA and its provisions in the face of attempts to dilute the law and its faulty implementation. To strengthen its implementation, several decisions were taken and directions issued besides amending the rules for better clarity, proper functioning of gram sabha and

ensuring ownership and selling rights of Minor Forest Produce (MFP) by gram sabha. Similarly there was also discussion on the nature and issues of governance in tribal areas and ways forward to make it more pro-tribal given the fact that tribal communities are not homogenous and the way they are organised.

It was felt that there were gaps between the provisions of PESA and their actual implementation at local level. Even rules were not formulated by States for a long time and those formulated by some States were not in consonance with PESA. Another important issue was how to bring different departments of the States. The reasons that inhibit the implementation of PESA/FRA have been identified and efforts are being made for rectifying them.

Some speakers felt that the provisions of laws for the tribal areas adopt a top-down approach; instead there is a need to adopt a bottom-up approach by taking into account the socio-economic and cultural diversities of tribes living in different parts of the country including in the Fifth and Sixth Schedule areas. Proper implementation requires mobilisation of primary beneficiaries and other stakeholders for increasing collective access to resources. The lesson one has to learn over the years of struggle by the tribals and their supporters is that resistance of some actors (as for example the



forest bureaucracy) can be effectively overcome only by empowering them.

Several participants evinced interest on the provisions of Sixth Schedule Areas in Fifth Schedule Areas, to improve the quality of life of tribals living in hinterland and other parts of India. Professor Xaxa clarified that what was important was to realise what went wrong with the policies and programmes including the governance structure in mainland India and how to overcome these keeping the socio-cultural practices prevalent among the tribes. In this context the emphasis is to learn the good practices, both in terms of governance, policies and programmes that have enhanced the empowerment of tribals and their livelihood conditions in Sixth Schedule Areas and to include such practices in Fifth Schedule Areas. Prof. D. N. Reddy, the Chairman for the session, thanked the paper presenters and all the participants for their lively discussion.

#### **IV. Functioning of PESA in Scheduled Area States and Gender Issues**

The second technical session was chaired by Shri C. R. Bijoy. There were eight presentations. Prof. Satyakam Joshi assessed the genesis of PESA and FRA and their present status of implementation in general and Gujarat in particular. He argued that for almost two centuries now, Adivasis have been a witness to collapse of their multiple relationships with land and forest. The basis of their cultural ethos

and their system of meanings has faced collective onslaught of outsider-exploiters along with 'foreign' models of economic development conceived without their participation and implemented without their consent. Even Pandit Nehru's good intentions of allowing these communities to relate to industrial development on their own terms have been cynically abandoned. Through Acts like Land Acquisition Act and Indian Forest Act, pre and post-Independence, Indian State has total control over forest resources that constitute the basis of tribal economy. Only recently the Indian State has recognised the injustice done to tribals through enacting PESA, 1996 and FRA, 2006. However, implementation of these Acts has been tardy. In spite of prolonged struggles and mobilisation of tribals still these Acts are not being implemented in true spirit. The paper discussed the factors affecting adversely the implementation of these Acts, particularly in Gujarat. The moot question is how government ensures that the gains that come from these areas flow back to the areas and people residing there. There is a classic tension between the interests of economic growth and social justice. When the negative effects of development outweigh the positive, spontaneous outbursts of dissent and dissatisfaction result, which though location and context specific could crystallise into social movements against the perceived injustice.

Kamal Nayan Choubey analysed the working of PESA in general and in the State of Rajasthan in particular. He highlighted the factors inhibiting its proper implementation. PESA accepts that the tribal communities have constitutional rights to live an autonomous life according to their culture and customs and to use and manage their natural resources. Provisions of PESA, however, have not been implemented properly in most parts of the country. Many hurdles have been created by the State authorities in implementation. Further, the administrative apparatus (for example forest department) used other laws to curb the impact of PESA. While the State shows its seriousness for better implementation of this law, simultaneously it tries to push the 'development agenda of 'corporate' capital in Adivasi areas.

Tracing the historical developments related to the implementation of this law, the paper analysed the basic hurdles for its proper implementation and discussed some of the crucial issues related to it in different parts of Fifth Schedule Areas in general and Rajasthan in particular.

Bishnu Prasad Mohapatra and M. Gopinath Reddy discussed the functioning of different provisions of PESA at the village level in tribal areas of Odisha. The focus of discussion was on how the Panchayats have been institutionalised and made functional under PESA based on the data from two

Scheduled Area districts, Sundargarh and Koraput of Odisha. The study discussed the implementation of this Act in Odisha and the functioning of the Panchayats in these areas under the PESA, based on 300 households (244 ST households and 56 others). The study shows that PESA is a landmark law for making panchayats effective and inclusive.

This paper suggests that (I) there is a need of fostering better integration of the traditional village councils and panchayats, as in many cases the traditional councils reinforce the functioning of the panchayats in a positive way, (II) the institutionalisation and functioning of panchayats, including palli sabhas and gram sabhas needs to be more inclusive in nature so that they can facilitate better participation of tribals, (III) the overall functioning of panchayats, the palli sabhas and the gram sabhas should be more oriented to the provisions of PESA and (IV) the participation of tribals in the overall process of functioning (including designing plans and implementing development programmes) should be accorded priority considering the true spirit of PESA.

In her presentation Soma Kishore Parthasarathy argued for gender affirmative measures for enhancing overall tribal rights and through implementation of PESA and FRA. She analysed the trajectory of control of forests by the State and



showed as to how the tribal communities have been systematically divorced from their customary rights over forests due to commercial interest of States including industrial and infrastructural developments, both before and after Independence of the country. She argued that the introduction of private property regime and exclusion in the decision-making power of local self-governance units, namely gram sabha in tribal areas have affected the dignity and livelihoods of tribals. The growth and development agenda followed in the country, especially in tribal areas, eroded the right to natural resources of tribal communities. She pleaded for effective implementation of PESA and FRA in general, incorporating adequate representation of women in the decision-making process and increasing their access to ownership of forest land under Individual Forest Rights (IFR) and Community Forest Resources (CFR).

Nicholas Barla observed that though already 20 long years have passed ever since the enactment of PESA in 1996, its implementation is unsatisfactory due to a number of factors including the feeble interest shown by different related departments of States including the bureaucracy. The implementation of other laws such as FRA, LARR, and POA has been tardy. There is a need to implement all the laws related to tribal areas and tribals for raising their standard of living with dignity.

P. Trinadha Rao's presentation focused on the implementation of PESA in Andhra Pradesh, especially in a village (Manturu of Devipatnam Mandal in East Godavari district). He marshaled information from a variety of sources including field data and focus group discussions. After discussing the constitutional framework of Schedule V Areas and evolution of PESA Act, 1996 and its background, the paper identified the gaps in compliance of other statutory State laws with the PESA Act, 1996. Many provisions of PESA are not implemented in their true spirit. He suggested a number of measures for its proper implementation at the village level.

Anju Helen Bara focused on the factors hindering proper functioning of PESA in Jharkhand. She found that in most of the areas of State PESA is not functioning due to political apathy, internal conflict of Maoism and lack of knowledge of people. With these as the backdrop, the paper addresses governance and implementation of PESA in the State. It highlighted the factors as to why PESA is not functioning in Jharkhand. What are the barriers which are inhibiting the process and becoming obstacles in the implementing process? Jharkhand conducted its panchayat elections recently after 32 years. The decentralised governance is weak. The paper brings forth the opposition between State directed development and Adivasis's rights over land, resources, livelihood and their culture.

Within the discourse of development and governance, this paper seeks to unfold the struggle of the Adivasis for resources, livelihoods and survival.

Mr. N. Sambasiva Rao's presentation highlighted the functioning of indigenous tribal self-governance institutions and their interface with statutory panchayats in the context of Scheduled Areas of Andhra Pradesh. The traditional institutions found among the tribals exercise enormous socio-political control over these communities. Most of these communities preserved their own distinct cultural identities through their unwritten code of conduct and distinct traditional mechanisms to enforce the codes. The customary laws of the tribes encompassed all spheres of their activity and the jurisdiction of the traditional council was all pervasive before the introduction of statutory Panchayati Raj (PR) system in tribal areas. It discussed the different institutional arrangements found and their functioning in two villages. It also analysed the leadership pattern and interface of these institutions with the PRIs in these villages. These institutions form an important aspect of the village self-governance system despite the presence of the formal panchayat.

### **Discussion**

The presentations were followed by comments, queries and discussions. The general consensus was that there has been violation of different provisions of PESA in PESA

administered States. Not only many States have not framed rules for many years, but those who have done so have diluted the provisions of central PESA. The States have not changed the State laws in conformity with PESA. In this context Dr. Hrushikesh Panda clarified that one of the problems in the implementation of PESA was no rule making power for the central government under PESA. The Ministry of Panchayat Raj made model rules and sent to the State governments to make their own rules; this was not done.

Ritambhara Hebbar felt that PESA is to restore self governance of tribals. But Jharkhand has its own imagination of self-governance. It is centred on land and the idea that they belong to their heritage endowed and transmitted by their ancestors to future generations. It is about territoriality. She felt that the recently drafted PESA rules in Jharkhand do not fulfill the goal as it is a top-down model and suggested that there is a need to have continuous interaction with tribals to find a way out for designing rules for effective self-governance.

Intervening in the discussion Professor Satyakam Joshi questioned the assumptions of Bhuria committee's reports relating to tribal societies. These are: the tribal societies are by and large homogenous, egalitarian and they have a symbiotic relationship with the forest. Citing evidence from densely tribal inhabited Dang district of Gujarat, Joshi pointed out that there is dichotomy in

the thinking relating to conservation of forest between old and young generations of tribals. Under the malki system the tree owners receive 100 per cent of auction money from sale which is used for the well-being of their families. The younger generation is interested to continue the malki system, even bribing the forest, police and political agents. Thus the symbiotic relationship between the forest and the people is weak now and are problematic. In view of this Joshi submitted that there is need to rethink and revisit certain provisions of legislations from the view of tribal society given the ground reality in different areas.

Shri Dilip Gowde was optimistic about the outcome of legislations relating to empowerment of tribal society. He asserted that though implementation of provisions of PESA is not in expected direction and several violations have occurred, the emphasis should be on how best we can implement the provisions properly. In order to do it we have to find out the areas of opposition and how to reduce the gap. Efforts should be made to make the provisions implementable. To this Dr. Panda suggested that there is need to get all the concerned departments come together and find the solution.

Similarly Soma Kishore Parthasarathy emphasised that the empowerment of tribals has been a process of struggle though there has been resistance to this from various

departments/sections of people. She said that there are everyday resistances which one has to acknowledge. The struggles need not always take a phenomenal scale; they are there in everyday life, in dealing with the forest department and claims over resources. In such a situation it is the ability to negotiate as a group by forming organisations and to assert themselves for rights over resources. This has been happening in the context of management of forest resources by women themselves through forming cooperatives in different tribal areas.

The important issue is how to support the legitimate rights of such groups and negotiating those into the rules that the local self-government bodies make for themselves as is seen in tribal areas of Rajasthan. There is need to create support structure that allows people's own institutions to engage more positively.

Nicholas Barla asserted that there is need to recognise the tribal society from its own perspective. At the same time one has to make concerted and continuous efforts for effective implementation of laws and programmes meant for improvement of well-being of tribals. Even if the negotiations with the implementing agents/institutions are not in expected direction, we have to continue our efforts and exert pressure to negotiate to achieve the results later.

There was also concern among the participants about the way certain

indigenous tribal institutions are functioning in different areas.

At the end the chairman of the session Shri C. R. Bijoy thanked all the paper writers and participants for the lively and fruitful discussions on issues of governance in Schedule Areas.

## **V. Implementation of Forest Rights Act and Livelihood Issues**

The fourth session chaired by Professor K. B. Saxena, witnessed a total of ten presentations. Geetanjoy Sahu discussed the progress and problems associated with the implementation of FRA at national and State levels and found that the outcome has been far from satisfactory in relation to its potential. A recent report based on the analysis of the Census 2011 and the Forest Survey of India 1999 prepared by Rights and Resource Initiative, Vasundhara and Natural Resources Management Consultants (2015) suggests that through FRA, the forest dwellers have gained the opportunity to have their rights recognised over a minimum of 40 million hectares of forest land that they have been managing, using, and interacting with for centuries. If the Act is implemented effectively then it will benefit at least 150 million forest dwelling people of around 1,73,000 villages. He listed out the major challenges for its proper implementation and suggested measures to make the implementation of FRA more effective.

Rithambara Hebbar has critically examined the implementation of FRA, based on her ongoing research experience in different parts of the country including Jharkhand. The questions are: Does the Forest Rights Act really redress historical injustice and more importantly, what constitutes historical injustice in relation to forest dwellers? How does the Act address the historical injustice committed against forest dwellers? Where do we locate historical injustice towards forest dwellers? Based on research in several tribal areas of the country the paper reflects on these questions and reveals the limitations of the Act. Specifically, it refers to the ambiguities in the way the term 'community' is interchangeably used in the context of implementation of the Act. There is no clear definition of community in FRA. While the Act, particularly after the amendment brought in through the 2012 notification, adds the phrase 'community rights' and 'community forest resource' in its lexicon, but it leaves the term 'community' undefined. The paper refers to the politics and confusion around this significant omission. Similarly, the term 'encroachers', which ironically is the very basis on which historical injustice is explained in the context of the Act, continues to haunt the forest dwellers in their effort to claim forest rights through FRA. For many forest tribes, FRA has ended up as yet another exercise that demonstrates their vulnerability and inability to set out on

their own to demand their rights. She discussed the case of Siddis in Uttara Kannada, among whom FRA has not brought in a 'paradigm shift' in their lives, rather only reiterated their inability to navigate through the existing hierarchies to get access to the basic provisions of the Act.

Finally, she has discussed the model of governance in forest areas that continues to undermine the spirit of the Act inhibiting its implementation. Clearly forests are sites of competition between different interest groups and FRA has not equipped forest dwellers unequivocally to contest with them. Forest areas reveal how there is a 'structure of competition' over natural resources in which tribes are reduced to one of the stakeholders within the ensemble of claimants and benefactors. While FRA undermines the institutional authority of the forest department over control and management of forests, it does not in turn invest authority onto another institution or to tribal communities. Evidently, present day governance in tribal areas extends beyond the purview of the State, to varieties of actors and institutions in which the State is both a stakeholder, and the negotiator between competing interests. Through this she reveals the politics that undermines the Act and come in the way of its effective implementation.

Madhusudan Bandi has examined the implementation of Forest Rights Act in Chhattisgarh and Gujarat

on the basis of field survey and information collected from different sources. The findings of the paper reveal that the awareness level is too low among the tribals especially those living in the interior forest areas. These areas happen to be vast in Chhattisgarh. Such a poor awareness level is bound to affect the implementation process and evidently that is what has been happening. Further, the problems faced by the respondents in claiming their forestlands present a dismal picture as in the case of claims rejected in Gujarat for want of only 'satellite imagery' as evidence.

The exponents of FRA are well aware of the fact that this Act is not an end in itself in terms of improvising the lives of the tribals even though it is a significant milestone in the annals of tribal history. To improve their condition, the tribals require push as well as enforcement on ground with regard to welfare programmes including education, health, infrastructure, employment, regulated markets for their agriculture and forest produce. More importantly, all the rural development (RD) schemes that are available to the farmers belonging to the revenue villages should also be extended to the tribals living in the forest villages. In support of this, the amendment rules (September 6, 2012) have a specific provision according to which, all the departments concerned (revenue, RD, forest, irrigation, etc.) have to extend the benefits of various

welfare and developmental schemes of respective departments to the claimants who have been issued with documents of possession. Forest villages also need to be declared as revenue villages so that the people residing here become eligible for such benefits. There should be collective effort from both civil society and the related departments of government to meet the envisaged objectives of FRA.

Ambrish Mehta, while discussing the experience of implementation of Forest Rights Act in Scheduled Areas of Gujarat during last eight years, argued that passing of the legislation by the parliament – even with unanimous support from all political parties – is no guarantee that it would be properly implemented. Strong bureaucracy, especially all powerful forest department, can still create obstacles at each and every stage of implementation and easily defeat the very purpose of the Act. The author has shown that despite these obstacles and heavy odds, it is possible for the civil society organisations and Forest Right Committees (FRC) and Forest Communities to influence the course of events and change the situation for better, provided they are willing to put in lots of efforts and for long, without losing hope. He then discussed various interventions made by his organisation- ARCH Vahini.

His paper discussed a case study of 25 villages of Shool Paneshwar Sancturay area in Dediapada tehsil of

Narmada district. From the beginning, the Forest Right Committees of these villages carried out meticulous work to prepare and verify both Individual Forest Right (IFR) and CR/CFR claims and have got about 60 per cent of their IFRs and nearly 100 per cent of their CR as well as CFR rights approved by the district committees due to coordinated efforts by the NGO.

This too has boosted the confidence of the people who have already formed CFR Management Committees which started protecting forests from illicit cutting and fire and prepared a list of rules of management to be followed by all inhabitants of their villages. Some of these villages collected dry dead bamboo, that were accumulated in their forests over years and sold them in the market on their terms through gram sabha's decision and utilised the net income for financing investment, consumption and education purposes. This motivated other villages for such type of work and to grow and manage bamboo cultivation in forests as well as on their IFR lands.

Currently these gram sabhas are in the process of preparing detailed Community Forest Management and Village Development Plans with ARCH Vahini providing technical and other supports. These plans would then be submitted to the district collector.

In the end, the paper argues that this case study of Dediapada villages clearly shows that the dichotomy between individual and



community forest rights is a myth and that, in reality, recognition of both IFR and CR CFR rights is crucial, not only for the well being of tribals and other forest dwellers, but also for the regeneration and development of forests. The widespread belief amongst foresters and conservationists that the Forest Rights Act is not in the interests of forests is simply not true.

Rajanikanth and Gargi Das argued that the recognition of rights on land, alone, will not suffice for effective empowering of the tribals through FRA Act, 2006. Improved quality of life also falls within the mandate of the Act wherein the tribals require scientific knowledge and institutional investments to enhance soil productivity and access to good inputs along with diverse livelihood options such as livestock and fisheries. There is a need for post-implementation support to titleholders to ensure that they are integrated into all government schemes. Further, in the amended Rules of FRA notified in September 2012, Rule 16 was inserted emphasising on the need to bring in the convergence of schemes for the benefit of titleholders. The paper tried to highlight the implementation gaps and status of IFR title lands in the context of Andhra Pradesh and designed and implemented a number of measures to improve the capacities of beneficiaries to increase income from forest land.

Tapas Kumar Sarangi, while discussing the implementation of FRA

2006 in tribal and protected areas of Odisha argued that in these areas, natural resources support the livelihood needs of local communities, but human activity affects wildlife survival and biodiversity conservation. This led to serious conflict between livelihood and conservation. India has some of the best environmental and human rights legislations, but implementation is often very poor at the ground level. This paper discussed the conflict between conservation effort and livelihoods of the local populace, while suggesting ways to strengthen their livelihoods. Proper implementation of FRA provides stable property rights on forest land and enforces the entitlement of forest dwellers on forest produce. This entitlement, thus, reduces the perpetuated conflict between livelihood and conservation in various tribal dominated and protected areas.

Amrita Sen and Sarmistha Pattanaik discussed the politics of implementing Forest Rights Act in Sundarban, West Bengal. Their study recapitulated the growing distortions and bottlenecks which had become endemic within the implementation of the Act. Based on an ethnographic study in Sundarban, the study addresses two crucial research questions which have not been asked previously. They are: What are the contextual debates centering the recognition of forest rights of the 'non-scheduled' forest dependent communities whose habitations fall outside the coverage of the fifth and Sixth Schedule Areas as well as FRA?

To what extent does the FRA address all kinds of spatial-temporal (place based) resource distribution conflicts and regional political mobilisations facilitating or impeding forest rights? In spite of growing contestations and political struggles within a range of actors, FRA has not yet been implemented in Indian Sundarban, a biosphere reserve which houses a majority of forest dependent people in the lower island villages bordering the forests. The law has a sporadic implementation in all the districts of West Bengal (WB). Different examples of grassroot mobilisations in Sundarban have continually pushed towards the enactment in the face of considerable opposition from the Forest Department (FD). Recognising the fact that diverse regional contexts have different institutional arrangements for managing forest rights, their paper attempts to investigate the ownership arrangement of resources and the scope and flexibility of alternative legal discourses like FRA. By exploring the two earlier research questions throughout the study, the paper provides a critical analysis of not only the several definitional contradictions within the Act, but also a range of local political strategies and dominant power relations which influence the implementation of the Act across specific regional contexts. Through the fieldwork experiences, they argued that the corpus of implementation of a codified and institutionalised legal record like FRA is not only warranted

by the State but deeply implicated within regional political interests in determining forest rights, control of minor forest produce (MFP) and usage of forests deemed as 'protected areas' (PAs).

Brajaraja Mishra has discussed the process of implementation of FRA in the Protected Areas of Lakhari Valley Wildlife Sanctuary, Gajapati district, Odisha. The findings suggest low coverage of beneficiaries due to high information gap and Secluded Areas. A number of factors have adversely contributed for such a situation. He suggested a number of measures including technology and involvement of local NGOs/SHGs for the spread of information, imparting of training to implementing agencies and the potential beneficiaries.

Based on experience in the management of forest economy and tribal development programmes in Vidharbha region of Maharashtra, Mr. Dilip Gowde argued that Maharashtra had a tradition of adopting good governance institutions based on the recommendations of several expert committees' reports relating to Panchayati Raj Institutions. These Acts comprised suggestions for better governance of programmes, policies and areas; addressing regulatory mechanisms in the process of implementation of such programmes and addressing access to land rights of people from marginalised groups. Though different Acts have different



objectives the goals are same. They are ecological security; based on that livelihood security of people and dependence on natural resources on a sustainable basis. These goals are to be achieved through appropriate broad-based governance systems, access to ownership of forest land with provisions of inputs, irrigation and training and capacity building.

With the above understanding the VNCS, Nagpur has been working in hundreds of villages in the forested areas of Vidharbha region. The focus of their work has been on the management of forest-based economy of the region. After enforcement of FRA the focus of the NGO has been to help the forest dwellers to obtain tenure security for both IFR and CFR and to improve the forest-based economy. This has been possible by providing education and building awareness among forest dwellers; dialogues with the officials of department implementing FRA to understand it; strengthening gram sabhas; discussions and decisions in participatory manner at the level of government officials, civil society organisations (CSO) and village leaders and sensitising the policy makers. Their activities are spread over hundreds of villages with forest dwellers.

Mr. Gowde asserted that given the provisions of FRA these have to be acquainted with the potential beneficiaries and coordinated their activities with district/sub-divisional

officials so that their claims are granted. Further, in order to improve the livelihood of beneficiaries they have identified water bodies as potential resources, apart from forest through ownership, mobilised the State support through convergence of programmes and created business opportunities through planning and implementation of the same. Through coordination with different stakeholders, more than one lakh beneficiaries and about six thousand villages have got IFR and CFR, respectively. Further, they are managing livelihood activities in 50 villages with the support of UNDP & Maharashtra TDD.

The paper by Devjit Nandi et al., takes a critical look at the status of the devolution process under Forest Rights Act in Chhattisgarh. FRA in Chhattisgarh is being implemented by the forest department. The authors argued that to escape the extra workload the Chhattisgarh tribal department is letting the forest department to carry out the operations and the department is happy to play a secondary role in regard to implementation of FRA. The rights of the tribal people and the other forest dependent communities have been deprived as the hegemony of the forest department in the central province has been historical and there are many instances of recorded conflict between the tribals and the forest department. The paper explores the process adopted by the State in giving the rights to the tribal people which has been more

political rather than legal. For instance, 425 forest villages in Chhattisgarh have been converted into revenue villages without the consent of the gram sabha and the villages inside the protected areas have been displaced without fulfilling the process mentioned in the FRA. The faulty implementation of FRA has made the life of Baiga primitive tribe inside the Achanakmar sanctuary miserable. Also, the forest is gradually changing into monoculture plantations of teak and commercial trees rather than catering to the bio-diversity needs of the community.

### Discussion

Presentations were followed by observations, queries and comments by several participants and later responses by the presenters. Discussant, Soma K. Parthasarathy observed that the evidence coming out from the presentations relating to implementation of FRA is clear that the State apparatus through the forest and other departments is trying to create no information or misinformation. The State agencies, at times, are trying to interpret the data and the laws in ways that can allow them to circumvent the provisions of the law itself. On the other hand, there are community-based organisations and civil society interventions that have shown how the State acts can be used as opportunities to assert rights provided there is mobilisation and sustained intervention. Such interventions have led to positive outcomes.

On the discussion relating to super imposition of new institution to the existing ones run by communities she has observed that there is a need to debate and understand about the outcome. Given that we have multiple institutions and multiple understandings there is a need to coordinate the efforts by different stakeholders to find out solutions which would facilitate access to resources by local communities. Whatever the legislative framework, if seen as a process of ecological security and empowerment for livelihood and dignity of lives, then it has to be locally grounded. Making that happen should be the compulsion that drives all our efforts.

She reminded that there are very diverse situations where we have narratives from Gujarat and Gadchiroli. The terrain was not positive all the time but it had been possible to create positive narratives simply because the organisational and mobilisation efforts were systematic and were prone to understanding of what the underlined politics of the process was and how that could be circumvented with support from organisations rather than taking over. This is also the point made in the presentations concerning Andhra Pradesh by Rajinikanth and Gargi. How do we engage with the community so that the process of facilitation itself can be more embedded within the community's own priorities and empowering it, so that it becomes their

own institutional process rather than superimposed from elsewhere.

The learnings from the deliberation tell us that it is possible, provided we create those spaces for learning exchanges as well as document those as practices. There is a lot of talk on best practice and the danger of this practice is that how it serves in the training programmes of forest department, for instance. But these voices seldom come into the discussions about how the facilitative role can actually become something that they claim for themselves and start seeing the possibility. She asserted that there is a need to build the capabilities of the individuals and communities that will take forward the agenda of people's empowerment. For that we must invest in community-based institutions as much as in the development of livelihood activities and infrastructure.

## **VI. Displacement, Acquisition & Alienation in Scheduled Areas**

The fourth technical session was chaired by Virginus Xaxa. There were two presentations. Sarmista Pattnaik analysed the issues relating to land rights of tribals in the context of mining and land acquisition and how far FRA/PESA had been able to protect the land rights. The issue of land acquisition and dispossession through many revised Acts and policies in India has made the problem more complex as it has not only compelled the local people through

the coercive measures to sacrifice their land and livelihoods but also has caused a series of devastation and trauma in their lives after displacing them.

The State of Odisha is no exception in this case. Like other Indian States it has also welcomed mining corporations to generate revenues. Mining activities in various districts in the region have various impacts on the natural environment; most prominent of all are the clearing of patches of tropical forest, land alienation and water pollution resulting in livelihood loss. More so, the OLR 1960 forbids the transfer of tribal land to non-tribals in Non-Scheduled Areas. The OSATIP (Orissa Scheduled Areas Transfer of Immovable Property by Scheduled Tribes) 1956 forbids the same for the Scheduled Areas. Keeping in view this grave situation of displacement and dispossession in the State and further due to the controversial resettlement and rehabilitation Act, it is rather challenging to judge the implementation of the legislations such as FRA and PESA. The present paper, in this context, is based on the following research questions:

- i. How far the issues of displacement under 'eminent domain' doctrine still exist in India and in what form?
- ii. How does the question of 'land' in the new Bill of 2011 and 2013 address the issues evident in the political theory framework-State's relationship with its

- citizens through a 'political economy' discourse?
- iii. Whether FRA does make development more smooth or difficult in India and more specifically in Odisha to secure rights of the tribals and Other traditional forest dwellers
  - iv. Why cannot FRA / PESA prevent the acquisition of tribal and OTFDs land for various mining activities and protect their traditional livelihoods?
  - v. What FRA did in the State to improve the condition of the poor- through development and investment in Scheduled Areas-out of poverty?

The paper tried to seek answers through investigating the issues of land acquisition and dispossession in various districts of Odisha State. Apart from discussing a few case study analysis's, through various reports studied, the study has also been based on an exploratory field survey that was conducted in different phases during 2009-2013. The mineral resource base in Odisha is mainly spread in the tribal-dominated districts. Mineral intensive growth is known to create significant environmental externalities and this is clearly observed in the two major mineral rich districts of the State-Keonjhar and Sundergarh. This study has sought to explore the impact of mining on these two districts through

the land acquisition policy in the surrounding environment & on the most vulnerable sections of the society who are called as 'indigenous communities' and also due to other FDI projects in the district of Jagatsingpur. Another question is how does the issue of land acquisition prevail in this area among the OTFD communities and this through a strong people's resistance? Various stakeholders were interviewed for this purpose during the field survey. These included the officials of iron-ore and sponge industries, villagers who are mainly tribals and farmers, Orissa Pollution Control Board, activists and a number of key informants.

The paper delineates a brief historical overview of the LARR under 'Eminent Domain' doctrine in the country followed by a description of the problem regarding the ownership pattern in Odisha during colonial regime. Then it documents the study area, the land as commons and as a commodity in the lives of different actors involved in the whole debate of politicised environment in the field location with narratives. It again briefly describes the LARR in the liberalised era and its nexus with mining, details of contemporary trends in the livelihoods changing pattern, displacement and alienation of indigenous communities from CPR due to the endangered mining and land acquisition projects in the study area and also the provisions of FRA 2006 mentioned for those displaced and its implications.

At the end, the paper asked the question as to whether displacement produces new poverty and FRA secures rights of the displaced and dispossessed and prevent impoverishment.

Prof. M. Gopinath Reddy and Mr. P. Trinadh Rao's paper has critically examined the implementation of Tribe Sub-Plan (TSP) Act, 2013 in Telangana and Andhra Pradesh. The erstwhile Government of Andhra Pradesh brought out a historic legislation, AP Scheduled Caste Sub Plan & Tribal Sub Plan (Planning, Allocation & Utilizations of Financial Resources) Act, 2013 (Act 1 of 2013) for effective utilisation of SCSP and TSP funds. The Act aims to ensure accelerated development of the SCs and the STs with emphasis on achieving equality in the next ten years by earmarking a portion, in proportion to the population of the SCs and the STs in the State, of the total State plan outlay. The legislative framework is expected to spend the TSP funds to bridge the gap in the development of SC & ST communities. It is mentioned in the Act itself that only such schemes or programmes that secure direct and quantifiable benefits to these groups only should be included in the TSP budgets. The law also ensures equity among various groups within SC and ST communities in development. However, there are few inconsistencies and ambiguity in the law in the context of tribals and the Schedule V Areas of the States of Telangana and Andhra Pradesh. Thus the present law is not a complete code to address the systematic and tribal empowerment issues. It suffers from various weaknesses. It is observed that the Act

is silent about the elimination of exploitation of tribal people. The provisions of PESA Act were ignored while framing the TSP Act. In fact, harmonisation of all the policies and programmes and laws concerning the tribal people should have been the vantage point for Tribal Sub-Plan legislation, which has not given due space in its provisions. It is further observed that the provisions under the Sub-Plan law purport to provide monitoring mechanisms for implementation of the law through the institutions at State and District levels. Despite the fact that the PESA Act provides a self-autonomy to gram sabha and other local panchayat bodies in determining the socio-economic programmes concerning Fifth Schedule Areas and its financial allocations under Tribal Sub-Plan, the power to clear the programmes or projects conferred at higher level will certainly be contrary to the decentralised policy envisaged under the PESA Act.

The paper makes an initial assessment of field situation in the States of Telangana and AP and concludes that even though things look little better after the Act came into being, but it is still a long way to go before it achieves the stated objectives of the Act.

## **VII. Issues Involving Livelihood of Tribals**

The fifth technical session was chaired by Dr. Hrushkesh Panda. It has three presentations. Rohit Mutatkar's Paper titled 'Tribal Poverty and Governance Issues in Maharashtra'

focused on poverty, level of living and institution functioning in the tribal areas. The focus of his discussion was on Katkari tribal group, one of the particularly vulnerable primitive tribes. The analysis of various socio-economic indicators revealed that the primitive tribal groups have remained trapped in chronic poverty and they continue to lead a life of deprivations of various kinds, inspite of a number of development policies and programmes for tribals and tribal areas. A major gap in tribal development policies and administration has been that there is an absence of effective micro planning which would incorporate the perspective of people. Tribal people continue to be viewed from the lens of a provider-beneficiary approach, as passive beneficiaries of government interventions. The focus of tribal development should be human development approach rather than an area development approach. What the poor require by way of interventions are relief interventions to address their immediate survival concerns and sustainable development interventions to help them to come out of poverty and lead to a reduced dependence on relief interventions.

Prof. P. Purushotham and Mr. Brajaraja Mishra have analysed the problems of livelihood of tribal people in Poderu region of AP. Tribal households in Paderu region earn about half of their incomes from agriculture which is facing a number of challenges. The important among these include

high incidence of land alienation, poor access to institutional credit, lower levels of investment, absence of efficient market environment for competitive price discovery and lack of an effective extension system. Innovative strategies are needed to gain leverage from the organic trait of their farm produce. Similarly, proactive initiatives are required to build the farmers' institutions and pool their collective strength so that they can deal with markets, institutions, and development functionaries. Farmers should be imparted domain knowledge and managerial skills so that they could contribute to, and benefit from, the value addition to their produce. These measures should give them a voice so that they can have their say in the formulation and implementation of agricultural development policies and programmes.

Dr. L. Reddeppa discussed about 'Livelihood Promotion in FRA Lands through Convergence of Schemes in ITDA, Bhadrachalam in the erstwhile State of Andhra Pradesh'. The focus of the paper was to understand horticulture promotion with convergence of schemes like MGNREGS, micro-irrigation and land development in TSP areas. The study assessed how different schemes are really accessed by the tribals. It has also analysed the problems faced by the beneficiaries and the outcome in terms of achieving convergence in the process of promotion of income and livelihood options. The analysis is based on data



collected from 342 tribal farmers in 33 habitations spread over six mandals. The results indicate that the convergence of schemes has not been working well as per the guidelines. In view of this coordinated efforts and coordination among related departments are required to create awareness levels and capacity building to demand their entitlements with synergy, in order to achieve better results in regard to livelihood promotion in TSP areas.

### **Discussion**

The presentations were followed by lively discussion with questions and queries from the participants. The paper presenters, Dr. Hrushikesh Panda and others responded to the queries and clarified on many issues. The focus of discussion was how to increase the income of tribals by facilitating the marketing of crop and forest produce; increasing the productivity of crops and value addition of forest produce. A number of measures including sale of forest produce through self-help groups (SHGs) by women members, providing information about minimum support price of forest products, construction of godowns by State and NGOs working among the tribals, provision of training to individuals for value addition of forest produce etc., have been suggested. Another important aspect of discussion was how to improve the level of living including that of malnutrition and food security of most vulnerable primitive tribes. In this context it was suggested to study the good practices followed in

other tribal areas including Odisha and learn lessons from those practices to be implemented in other areas inhabited by MVPT. There is a need to focus on human development approach along with area development approach at local level by giving importance to development of households of these communities. There was also emphasis on adoption of synergy of various programmes in operation in tribal areas for getting better outcome of programmes.

### **VIII. Valedictory Session**

The Valedictory lecture was delivered by Professor C. H. Hanumantha Rao. It was presided by Professor Amit Bhaduri. Prof. Bhaduri said that he had, for long, been interested in both, the PESA Act and, to a lesser extent, in the FRA but mostly from the point of corporate growth. He further said that in the last ten to twelve years, he has travelled extensively in these areas only to get first-hand information on issues that persist in various parts of Bastar, Jarkhand, Bihar and Odisha. The visits to these places were also made with an intention to understand what was happening about PESA in particular and to know the rights of the people and their thoughts on the Act in general.

#### **Comments by Dr. W.R. Reddy**

Talking about governance issues relating to the Panchayats (Extension to Scheduled Areas) Act, 1996 or PESA and Forest Rights Act (FRA) of 2006,

Dr W.R. Reddy has said an important question that comes to mind is: Why are the vulnerable tribal groups, though small in number, not able to make a perceptible change? Dr. Reddy also said that he had had the opportunity of working with the Paniya tribe, a small ethnic group inhabiting the Wayanad and Kannur districts of Kerala. A notable problem observed among the marginalised communities was inability to relate their welfare to education and health. No doubt there are constraints and problems in the implementation of PESA/FRA and other relevant Acts, but even after six decades of talking about tribal welfare and development we are still focusing on small problems instead of big ones. Somewhere we have failed to step out of the box to help these marginalised and vulnerable communities, which constitute only nine per cent of the total population of India.

To cite another example from Kerala, despite acclaimed social development indicators, the tribals- who hardly make up two per cent of the total population of the State- are struggling with various problems. These problems are likely caused by intrastate disparities in literacy rate, maternal mortality ratio or child mortality rate, which do not allow the benefits of sustained growth to be evenly distributed. Another reason, according to Dr. Reddy, is corruption in terms of money and economic distortions which undermine their ability to frame and implement policies in areas in which government intervention is clearly

needed. There is thus a need to sensitise the top-level leadership to the pressing problems of the tribal community. In fact, efforts towards this end should be in the nature of a mission.

Education is one of the primary agents of transformation towards development and particularly for the tribals, it is an important avenue for upgrading their social and economic conditions. However, despite sincere efforts by the government for the holistic development of tribal communities, they still lag behind in almost all of the standard parametres of development. They are not able to participate in the process of development as they are not aware of most of the programmes and policies devised for their welfare. This is mainly due to high incidence of illiteracy and very low level of education among them, which, in turn, can be attributed to the high dropout rate among tribal children. Wrong medium of instruction and communication gap between the teachers and children, among others, are causes of high dropout rate in tribal schools. Hence, easy access to quality education and good governance are highly essential to achieve favourable results.

Though tribal development is taking place in India, the pace is rather slow. It thus becomes necessary for the government to take urgent steps to address the problems of tribal communities as well as provide more



opportunities for inclusive growth so as to bring them to the mainstream of economic development.

### **Valedictory Lecture by Prof. Ch. Hanumantha Rao**

The Panchayats (Extension to Scheduled Areas) Act, 1996 or PESA ensures self-governance through gram sabhas for people living in Schedule V Areas across ten States of India. The Forest Rights Act of 2006, on the other side, aims at correcting the historical injustices done to Adivasis and forest-dwelling communities by granting individual / community based tenurial rights over forest land. This empowerment of gram sabhas has aroused widespread expectations among Adivasis and there are several encouraging cases of implementation of these Acts in some States because of civil society activism and the good work done by NGOs. Nevertheless, a wide gap remains between the promises made and the performance/achievements on the ground.

A reading of the papers presented at this seminar clearly brings home the point that Adivasis' own awareness of the relevant Acts, rules and regulations, as well as their own initiative in taking up issues are critical for effective implementation of provisions of these Acts. Historian Ramchandra Guha in his essay on 'Tribal Tragedies in Independent India' (*Democrats and Dissenters*, Penguin Random House India, 2016), attributes insufficient political clout and low

bargaining power of tribals for their concentration in remote areas, unlike the dalits who live in mixed villages alongside other castes and communities. Further, while discussing poor leadership capabilities, Guha also mentions how jobs under the Scheduled Tribe quota as well as reserved seats in prestigious colleges go to tribals in North East, because of their superior English speaking skills- the outcome of promotion of English medium schools. Due to inadequate representation in higher civil services, tribals are subjected to harsh treatment at the hands of officials of forest, police, revenue and various other departments.

It is in recognition of inadequate awareness and low bargaining power of Adivasis that the Governors have been conferred with significant powers for Schedule V Areas in matters affecting the livelihood and empowerment of Adivasis. But, surprisingly, interventions by the institution of Governor in such matters have been very few. The gap between the powers given to the Governors by PESA and their actual exercise is very wide indeed, which can be attributed to lack of necessary awareness and initiatives from the grassroots.

Thus, for developing tribal leadership we need to look at the problem from a long-term perspective, especially in view of increasing rural-urban migration among tribal population and feminisation of tribal areas. Moreover, livelihood prospects

from natural resources are shrinking and becoming increasingly uncertain for tribals. Therefore, there is not only a need to strengthen policies for protecting the existing sources of livelihood, but also bold and far-reaching measures are needed to explore new avenues of livelihood. To begin with, (1) access to quality education through residential or Ashram schools will enable many of them to find remunerative jobs, including higher level services, (2) greater focus should be accorded to human development than area development, and (3) replacing top-down approach by micro-level planning will provide opportunities for the development of local level leadership. Towards this end, gram sabhas should be entrusted with the implementation of MGNREGS and such other programmes. A sustainable development policy can undeniably play a major role in uplifting the Adivasi community in the country.

### **Concluding Remarks by Prof. Amit Bhaduri**

Thanking Dr. Reddy and Prof. Ch. Hanumantha Rao for their illuminating comments, Prof. Amit Bhaduri said that there were several issues which need to be discussed to get a true picture of the present scenario. Firstly, he said, it is true that both PESA and FRA Acts are breakthrough legislations, which have empowered gram sabhas to ensure effective participation of tribal communities in their own development

and to preserve their traditional rights over natural resources. However, legal empowerment does not mean that a problem will be solved on its own. Rather, it views the poor and the marginalised as partners and seeks to help them find concrete solutions to their problems by strengthening their capacity to exercise their rights, either as individuals or as members of a community.

Prof. Bhaduri further said that despite provision of legal measures to protect the rights of the indigenous communities, it is found that the condition of this section of the population has not improved as hoped. There is low awareness among tribals about laws dealing with protection of their rights. Further, education is an important indicator of development among tribals. But there is lack of effective education including English medium and common schooling in tribal areas. In view of language barrier there is exclusion of tribal communities from the mainstream and it also hinders them from getting access to administration and outside jobs. Thus, the key challenge here is not about how tribal people can be brought within the fold of mainstream society, but how a voluntary and mutual interaction between tribes and mainstream society can be developed.

An important point for consideration is to ascertain the differences between income generating initiatives and capacity building projects. While income generating

activities are essential to spearhead sustainable livelihoods for the tribals, Prof. Bhaduri felt that it is more important to build capacity among the tribals to ensure continuous improvement in the management of natural resources, develop effective working relationships and maximise

positive outcomes for livelihood of tribals at the local level. However, at the macro level the State has to play an important role in terms of policies relating to conservation, development and management of natural resources as well as for overall development of tribals and tribal areas.

## APPENDIX

### **Address by Shri Ch. Vidyasagar Rao, Governor of Maharashtra and Tamil Nadu**

Respected Mr. Tevita G. Boseiwaqa Taginavulau, Director General, Center on Integrated Rural Development for Asia and the Pacific (CIRDAP), Prof. R. Radhakrishna, Chairman of the Advisory Committee of S R Sankaran Chair (Rural Labour), Dr. W R Reddy, Director General, NIRD & PR, practitioners from various fields, tribal rights activists and dear friends.

I am glad that the National Institute of Rural Development and Panchayati Raj has organised the National Seminar on "Governance, Resources and Livelihoods of Adivasis in India: Implementation of PESA and FRA". It is a matter of even greater pleasure that the seminar is being organised by the chair named after S. R. Sankaran, eminent bureaucrat and social activist and a living legend in his time.

The theme of this seminar is very appropriate and relevant. The tribal communities in India have been deprived of their natural rights for a very long time as far as governance, natural resources and livelihoods are concerned. It is also very pertinent to note at the outset that any course correction as far as our approach towards tribal communities is concerned cannot ignore the close linkages between guaranteeing access

to resources, ensuring self-governance and creating and sustaining livelihood opportunities. To put it in another way, to ensure "good governance" in tribal areas, we have to ensure self-governance of tribal communities and safeguard their right to access and manage the community's own resources. Only then we can have any real solution to the livelihoods problem.

It is often said that those who fail to learn from history are condemned to repeat it. Hence, it is necessary to trace the history of tribal dispossession over the last 150 years. We have to recognise that the British ushered in forest laws not for the purpose of conservation, or for environmental considerations. Their prime interest in introducing the Forest Act in 1865 was exploitative and was aimed at establishing a monopoly over forest resources. The impact of the forest laws was tragic for self-governing, self-respecting tribal communities. Forests, for these communities, were not only sources of livelihood and sustenance; they were a way of life, a way of worship and a way of staying in touch with themselves.

It is not surprising, therefore, that tribal communities repeatedly revolted against the British and local exploiters who took away their forests and lands. It is worth noting, that the first major forest legislation was passed in 1865 and the Indian Forest Act, as we know it today, was passed in 1927. Between these two periods, there were

numerous tribal uprisings and revolts. The list of tribal rebellions is long. Many of these revolts were brutally crushed by the British. Such tribal uprisings are a piece of neglected history. Indeed, the tribal movements in pre-independence India were among the first expressions of the desire for freedom.

Unfortunately, even in independent India many problems facing tribal communities remained to be addressed. Settlement of forests was made but the rights of forest dwellers were not settled. In our search for development, we displaced and uprooted millions of tribal persons from their communities. Estimates suggest that while the percentage of Scheduled Tribes in the population of India is around 8, their percentage among those displaced for development projects ranges from 40 to 55. The burden of development fell disproportionately on the shoulders of our tribal brethren; its fruits often did not reach tribal communities.

For tribal communities, PESA and Forest Rights Acts assume immense importance in the context of historical denial of access to forests, displacement, alienation of land and the denial of acceptance to local governance systems.

### **Dear brothers and sisters**

As far as I understand there are many legislations across the world which have corrected past wrongs. Very few, however, have apologised for a

wrong committed. I salute the genius of the Parliament that it had the courage to apologise to our forest dwelling communities- in the Preamble of the Forest Rights Act, for the "historical injustices" that modern systems and laws inflicted on them. Ten years before the Forest Rights Act, the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) was ushered in with great hope. PESA provided a model for "self-governance" for tribal communities in Scheduled Areas "in consonance with the customary law, social and religious practices, and traditional management practices of community resources."

Friends, it is no secret, that despite its potential to transform Scheduled Areas, PESA was hardly implemented for a very long time. PESA rules were not published in most States for a very long time. State legislations remained out of line with the letter and spirit of PESA. The autonomy of ownership over minor forest produce was not fully protected by local laws. Due cognizance was not taken of local community practice and cultural traditions. While charting the way forward, we therefore need to reflect upon our collective failure to implement PESA. We also need to examine whether the provisions of the Forest Rights Act have been implemented in keeping with the letter and spirit of the legislation. The resistance of a segment of the bureaucracy to come in line with the new paradigm of community ownership of natural resources is also a cause for great concern.

When the issue of fifth schedule comes up in academic discussions, the role of the Governors in implementing the fifth schedule is invariably discussed. The fifth schedule lays down responsibilities on the Governor to look after the welfare and advancement of the Scheduled Areas. In my State, certain humble steps have been taken by the institution of the Governor to ensure the effective implementation of FRA and PESA and for general welfare of tribal communities. A number of notifications have been issued by me, using the power of the Governor laid down in the fifth schedule. Some of these notifications have helped bring State legislations in line with PESA Act. Self-governance requires devolution of funds. Hence, I have mandated that at least 5 per cent of tribal sub-plan funds shall be devolved directly to gram panchayats and gram sabhas. The right of the gram sabhas to take all decisions about access, management and sharing of profits with regard to minor forest produce has been restored to them. The local State legislations with regard to minor forest produce have been amended to ensure that all minor forest produce, including bamboo and tendu, now belong to gram sabhas. I am glad to note that the district of Gadchiroli has become the beacon for entire country in the implementation of PESA. Hundreds of gram sabhas have started exercising their rights over bamboo and tendu and earning income ranging from Rs.10 lakh to about 70 to 80 lakh.

Due to the follow-up from my office, Maharashtra also stands at the forefront in the area vested under community forest rights with almost 20 lakh acres being handed over to forest dwelling communities for management. Many villages are coming together for afforestation within these areas. This development comprehensively proves wrong the doomsdayers who said that FRA and PESA would harm forests.

My office has, through rigorous follow-up, ensured the publication of PESA rules. The PESA rules of Maharashtra are recognised as progressive rules which answer the aspirations of those in Scheduled Areas. Maharashtra is also implementing the concept of hamlet level gram sabhas so that Panchayati Raj can filter down to the small gram sabhas envisaged at the community level.

Malnutrition among tribal communities has been a cause for grave concern. In order to allocate greater resources to tribal nutrition, I have amended the National Food Security Act, 2013 to ensure that in Scheduled Areas children get eggs 4 times in a week and pregnant and lactating mothers get "one full meal" every day. Regular meetings are also taken with various departments of the government to ensure convergent action on a number of issues such as tribal health, education, livelihood, migration, access to resources, devolution of resources and functionaries, etc. I personally believe that whenever legislations or

policies impact tribals unfavorably in Scheduled Areas, it becomes imperative on the institution of Governor to step in for the welfare of tribal communities.

There is a need also to build on the gains provided by FRA and PESA. A lot of handholding and convergent action is required. It is necessary to ensure agricultural inputs, better irrigation practices, and land improvement, in lands vested under Individual Forest Rights. Tribal communities should also be helped with training about sustainable practices, financial management, and value addition with regard to community forest resources. In view of the importance of bamboo as an important non-timber forest produce, it is necessary for the forest department, agricultural universities, and ITIs to come forward for imparting skill training, value addition inputs, and extension activities. Bamboo has great potential to be incorporated in a variety of traditional and novelty products. I am glad to state that one of the Universities in my State imparted training along with a social organisation to make Rakhis out of bamboo. I hope that a day will come when many tribal "start-ups" shall arise around bamboo

and other minor forest produce in Scheduled Areas of this country.

Dear friends, our first Prime Minister, Pandit Jawaharlal Nehru, had formulated the ideal of Panchsheel. This involved respecting tribal communities to develop along the lines of their own genius, respecting their rights in land and forests, and building a team of dedicated people from within the tribal community for administration and development. Panchsheel also required tribal communities to work through their own social and cultural institutions. Panchsheel also involved judging results not by statistics or the amount of money spent, but the quality of human character that is evolved. These principles are as relevant today as they were 60 years ago. We have to respect tribal ways of life, appreciate the importance that they attach to nature, and not sacrifice the tribal culture and ethos on the altar of rapid growth.

I am confident that this seminar will find answers to the challenges that confront tribal areas. I wish this seminar and future efforts all success.

Jai Hind!!



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*National Seminar on*  
**“Governance, Resources and Livelihoods of Adivasis in  
 India; Implementation of PESA and FRA”**  
 18-19 November, 2016

## Programme Schedule

Day 1:	18 <sup>th</sup> November, 2016 (Friday)
<b>9.15 AM to 9.45 AM</b>	<b>Registration at S. K. Rau Conference Hall</b>
<b>10.00 AM to 11.00 AM</b>	<b>Inaugural Session at Vikas Auditorium</b> <b>Chief Guest:</b> Shri. Ch. Vidyasagar Rao, Hon'ble Governor of Maharashtra & Tamil Nadu <b>Guest of Honour :</b> Mr.Tevita G. Boseiwaqa Tagniavulau, Director General, Centre on Integrated Rural Development for Asia and the Pacific (CIRDAP)
10.00 AM – 11.00 AM	<b>Welcome Address:</b> Dr. W. R. Reddy, Director General, NIRD&PR <b>Opening Remarks by</b> Prof. R. Radhakrishna, Chairperson <b>About the Conference: Prof. Kailash Sarap</b> Book Release by Chief Guest Inaugural Address by Chief Guest Shri.Ch.Vidyasagar Rao Vote of Thanks: Ms. Chanda Pandit, Registrar & Director (Admn) <b>SK Rau Conference Hall</b>
11.15 AM – 12.15 PM	Chairperson – Prof. R. Radhakrishna Keynote – Prof. K. B. Saxena
<b>Technical Session I</b>	<b>Governance Issues Relating to PESA and FRA</b>
12.15 PM-1.30 PM	<b>Chairperson:</b> Prof. D. N.Reddy <b>Presentations:</b> 1 Virginus Xaxa – Governance Structure in the Fifth Scheduled Areas 2 C.R. Bijoy-Securing Rights: Towards a Communitised Governance Regime

<b>Technical Session II</b>	<b>Functioning of PESA in Scheduled Area States and Gender Issues</b>
2.10 PM – 6.00 PM	<b>Chairperson :</b> C. R. Bijoy
1	Satyakam Joshi-State, Laws and Tribals - Rethinking the Possibility of Social Justice in the Context of PESA and FRA Acts
2	Soma KishoreParathasarth- Gender issues in the Context of PESA and FRA
3	Kamal Nayan Choubey- Web of 'Legal Pluralism' 'Administrative Control' and 'Benign State': Some Ethnographic Notes on the Fate of PESA
4	Bishnu Prasad Mahapatra & M. Gopinath Reddy – Functioning of Panchayats in PESA Administered Areas of Odisha: Field View
<b>Discussants</b>	Dr. Geetanjoy Sahu
5	Nicholas Barla -Functioning of PESA in Odisha
6	P. Trinadh Rao –Assessment of Implementation of Panchayats Extension to Scheduled Area (PESA) Act in Andhra Pradesh –Case Study of a Scheduled Village
7	Anju Helen Bara-A Critical Inquiry of the Rule of PESA in Jharkhand
8	N. Sambasiva Rao -Interface of Tribal Self-Governance Institutions and Statutory Panchayats: A Study in Scheduled Areas of A.P
<b>Day 2:</b>	<b>19<sup>th</sup> November, 2016</b>
<b>Technical Session III</b>	<b>Implementation of Forest Rights Act (FRA) and Livelihood Issues</b>
9.15 AM to 12.15 PM	<b>Chairperson:</b> Prof.K. B. Saxena
1	Geetanjoy Sahu – Implementation of Community Forest Rights under Forest Rights Act 2006 in Gondia District of Maharashtra
2	Rithambara Hebbar-Forest Rights Act: Lessons from the Field
3	Madhusudan Bandi – The Forest Rights Act and Beyond: Field Experiences from Chhattisgarh and Gujarat
4	Ambrish Mehta –FRA Implementation in Gujarat Challenges and Opportunities ARCH Vahini
5	Tapas Sarangi - Contextualising the Conflict between Livelihood and Conservation : Implementation of FRA 2006 in Odisha

	6	Rajanikanth Paladi & Gargi Das: Status and Challenges of Individual Forest Rights Title holders
	7	Amrita Sen & Sarmistha Pattanaik: The Politics of Implementing Forest Rights Act in Sundarban, West Bengal
	8	Brajaraj Mishra -Implementation of the Forest Rights Act in the Protected Areas of Odisha
	9	Dilip Gowde - Working of Community Forest Area in Vidarbha, Maharashtra
	10	D. Nandi, D. Sarkar and B. Mondal - Implementation of Forest Rights Act in Chhattisgarh
<b>Discussants</b>		Soma Kishore Parthasarathy
12.15 PM -1.30 PM		<b>Chairperson :</b> Virginius Xaxa
<b>Discussants</b>		<b>Displacement, Acquisition &amp; Alienation in PESA Areas</b> Sarmista Pattnaik- Land Acquisitions, Mining and Tribal Rights; Does PESA & FRA protect M. Gopinath Reddy - Assessment of Scheduled Tribes Sub-plan (TSP) Act, 2013 in Telangana and Andhra Pradesh Kamal Nayan Choubey
<b>Technical Session IV</b>		<b>Issues Involving Livelihood of Tribals</b>
02.15 PM-3.15 PM		<b>Chairperson:</b> Hrusikesh Panda
	1	Rohit Mutatkar - Governance and Tribal Poverty of 'Vulnerable Tribal Groups' in Maharashtra
	2	Puroshottam & Mishra - Tribal Agriculture in Paderu Region, Visakhapatnam: Some Observations
	3	L Reddapa - Convergence of Schemes in Tribal Sub-plan Areas to Enhance Livelihood of Tribals: Evidence from ITDA, A.P.
<b>Discussants</b>		Sarmistha Pattanaik
4.30 PM – 5.30 PM		<b>Valedictory Session</b>
<b>Vote of Thank</b>		<b>Chairperson :</b> Prof. Amit Bhaduri Prof. C. H. Hanumatha Rao, Honorary Professor, CESS Prof. Kailash Sarap





## About S.R. Sankaran

Shri S. R. Sankaran, a Civil Servant, is known for his commitments and actions for the upliftment of the poor and the marginalised. The seamless integrity between his life, ideas and work was the unique dimension of his personality. As a Civil Servant, he took Constitution as a mandate and made every opportunity to put in practice the fundamental principles of equality, non-discrimination, justice and affirmative action in favour of the economically backward sections. He believed that his true vocation as a civil servant was to serve the people where the poor occupied the primacy of position. Within the poor, his concern was about SCs and STs as they have been at the lowest rung of the social hierarchy, wallowing in chronic misery and deprivation and subjected to daily acts of injustice and indignity.

The transformative role that Shri Sankaran as a Civil Servant, played in the lives of the poor is exemplary to date. His deep understanding of the social environment of the poor is remarkable. In his view, the poor are typically unorganised, hard to reach, inarticulate, often invisible by residing in periphery. Along with lack of access to land and other natural resources, lack of access to education makes them vulnerable to manipulation by adversaries they suffer leading them to internalise the ideology of dependence and submission. The conditions of poor can be compressed into five disabilities, such as lack of access to land and employment; unfree labour; low wages; institutionalised discrimination; and deprivation in social services. His work during his career and after retirement devoted to uplifting the poor by relieving them from such adversaries and organising them. While working for the poor he had not only used his professional skill but also brought to bear on the problem of human touch and his moral values.

Shri Sankaran was a legendary civil servant, a crusader for social justice, a civil rights activist, a perceptive critic of development and public policy with extraordinary sensitivity, clarity, and above all, an epitome of compassion. A single social goal of his entire life's work was the reduction of contradiction between political and socio-economic inequality.

## S.R. Sankaran Chair

S. R. Sankaran Chair (Rural Labour) is instituted at the National Institute of Rural Development and Panchayati Raj (NIRD&PR), Hyderabad by the Ministry of Rural Development (MoRD), Govt. of India with the objective of promoting research on issues that would enhance understanding and help in improving the world of work and the life worlds of the rural labour. Collaborative research, seminars, workshops and policy dialogues involving institutions, organisations, policy makers and other stakeholders with similar objectives, and placing the results in the larger public domain through working papers, articles in learned journals, books and policy briefs are part of the activities set out for the Chair.



**S. R. Sankaran Chair (Rural Labour)**

**National Institute of Rural Development and Panchayati Raj**

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